

SENATE BILL No. 891

March 27, 2014, Introduced by Senator CASPERSON and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101, 20107a, 20114, 20114c, 20114d, 20116, 20118, 20120a, 20120b, 20120d, and 20126 (MCL 324.20101, 324.20107a, 324.20114, 324.20114c, 324.20114d, 324.20116, 324.20118, 324.20120a, 324.20120b, 324.20120d, and 324.20126), section 20101 as amended by 2013 PA 141, section 20107a as amended by 2010 PA 233, sections 20114, 20114c, 20114d, 20120a, 20120b, and 20126 as amended by 2012 PA 446, sections 20116 and 20118 as amended by 1995 PA 71, and section 20120d as amended by 2010 PA 228, and by adding section 20121.

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

1 or other natural phenomenon of an exceptional, inevitable, and
2 irresistible character, the effects of which could not have been
3 prevented or avoided by the exercise of due care or foresight.

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

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

18 (d) "Attorney general" means the department of the attorney
19 general.

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

26 (i) The hazardous substance complies with the statewide default
27 background levels under ~~R-299.5746~~ **R 299.46** of the Michigan

1 administrative code.

2 (ii) The hazardous substance is listed in the department's 2005
3 Michigan background soil survey and falls within the typical ranges
4 published in that document.

5 (iii) The hazardous substance is listed in any other study or
6 survey conducted or approved by the department and is within the
7 concentrations or falls within the typical ranges published in that
8 study or survey.

9 (iv) A site-specific demonstration.

10 (f) "Baseline environmental assessment" means a written
11 document that describes the results of an all appropriate inquiry
12 and the sampling and analysis that confirm that the **PARCEL OR**
13 **PARCELS OF** property **OR PORTION OF A PARCEL OF PROPERTY** is a
14 facility. ~~However, for~~ **FOR** purposes of a baseline environmental
15 assessment, the all appropriate inquiry ~~under 40 CFR 312.20(a) may~~
16 ~~be conducted within 45 days after the date of acquisition of a~~
17 ~~property and the components of an all appropriate inquiry under 40~~
18 ~~CFR 312.20(b) and 40 CFR 312.20(e)(3) may be conducted or updated~~
19 **PRIOR TO OR** within 45 days after the **EARLIER OF THE** date of
20 ~~acquisition of a property.~~ **PURCHASE, OCCUPANCY, OR FORECLOSURE.**

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

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

27 (i) "Cleanup criteria for unrestricted residential use" means

1 ~~either ANY~~ of the following:

2 (i) Cleanup criteria that satisfy the requirements for the
3 residential category in section 20120a(1)(a). ~~or (16).~~

4 (ii) Cleanup criteria for unrestricted residential use under
5 part 213.

6 **(iii) SITE-SPECIFIC CLEANUP CRITERIA APPROVED BY THE DEPARTMENT**
7 **FOR UNRESTRICTED RESIDENTIAL USE PURSUANT TO SECTION 20120B.**

8 (j) "Department" means the director of the department of
9 environmental quality or his or her designee to whom the director
10 delegates a power or duty by written instrument.

11 (k) "Director" means the director of the department of
12 environmental quality.

13 (l) "Directors" means the directors or their designees of the
14 departments of environmental quality, community health, agriculture
15 and rural development, and state police.

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

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

26 (o) "Environment" or "natural resources" means land, surface
27 water, groundwater, subsurface strata, air, fish, wildlife, or

1 biota within the state.

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

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

11 (r) "Exacerbation" means the occurrence of either of the
12 following caused by an activity undertaken by the person who owns
13 or operates the property, with respect to contamination for which
14 the person is not liable:

15 (i) Contamination that has migrated beyond the boundaries of
16 the property which is the source of the release at levels above
17 cleanup criteria for unrestricted residential use unless a
18 criterion is not relevant because exposure is reliably restricted
19 as otherwise provided in this part.

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

22 (s) "Facility" means any area, place, ~~or~~ **PARCEL OR PARCELS OF**
23 **PROPERTY, OR PORTION OF A PARCEL OF** property where a hazardous
24 substance in excess of the concentrations that satisfy the cleanup
25 criteria for unrestricted residential use has been released,
26 deposited, disposed of, or otherwise comes to be located. Facility
27 does not include any area, place, ~~or~~ **PARCEL OR PARCELS OF PROPERTY,**

1 OR PORTION OF A PARCEL OF property where any of the following
2 conditions are satisfied:

3 (i) Response activities have been completed under this part OR
4 THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND
5 LIABILITY ACT, 42 USC 9601 TO 9675, that satisfy the cleanup
6 criteria for unrestricted residential use.

7 (ii) Corrective action has been completed under part 111 OR
8 PART 213 that satisfies the cleanup criteria for unrestricted
9 residential use.

10 (iii) Site-specific criteria that have been approved by the
11 department for application at the area, place, ~~or~~ PARCEL OF
12 PROPERTY, OR PORTION OF A PARCEL OF property are met or satisfied
13 and both of the following conditions are met:

14 (A) ~~The~~ IF THE site-specific criteria ~~do not~~ depend on any A
15 land use or resource use restriction to ensure protection of the
16 public health, safety, or welfare or the environment, THE
17 RESTRICTION IS RECORDED IN THE DEED RECORDS FOR THE PROPERTY OR IS
18 PUBLICLY PUBLISHED AND MAINTAINED AS A MUNICIPAL CORPORATION CODE,
19 REGULATION, OR ORDINANCE.

20 (B) Hazardous substances at the area, place, or property that
21 are not addressed by site-specific criteria satisfy the cleanup
22 criteria for unrestricted residential use.

23 (iv) THE PROPERTY, WHICH DOES NOT CONTAIN HAZARDOUS SUBSTANCES
24 IN EXCESS OF CONCENTRATIONS THAT SATISFY THE CLEANUP CRITERIA FOR
25 UNRESTRICTED RESIDENTIAL USE, IS LAWFULLY SPLIT, SUBDIVIDED, OR
26 DIVIDED FROM A PROPERTY OR PORTION OF PROPERTY THAT DOES EXCEED
27 THOSE CRITERIA.

1 (v) NATURAL ATTENUATION OR OTHER NATURAL PROCESSES HAVE
2 REDUCED CONCENTRATIONS OF HAZARDOUS SUBSTANCES TO LEVELS BELOW THE
3 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.

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

6 (u) "Financial assurance" means a performance bond, escrow,
7 cash, certificate of deposit, irrevocable letter of credit,
8 corporate guarantee, or other equivalent security, or any
9 combination thereof.

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

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

17 (W) ~~(x)~~ "Fund" means the cleanup and redevelopment fund
18 established in section 20108.

19 (X) ~~(y)~~ "Hazardous substance" means 1 or more of the
20 following, but does not include fruit, vegetable, or field crop
21 residuals or processing by-products, or aquatic plants, that are
22 applied to the land for an agricultural use or for use as an animal
23 feed, if the use is consistent with generally accepted agricultural
24 management practices at the time of the application:

25 (i) Any substance that the department demonstrates, on a case
26 by case basis, poses an unacceptable risk to the public health,
27 safety, or welfare, or the environment, considering the fate of the

1 material, dose-response, toxicity, or adverse impact on natural
2 resources.

3 (ii) Hazardous substance as defined in the comprehensive
4 environmental response, compensation, and liability act, 42 USC
5 9601 to 9675.

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

7 (iv) Petroleum as described in part 213.

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

19 (Z) ~~(aa)~~—"Lender" means any of the following:

20 (i) A state or nationally chartered bank.

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

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

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

27 (v) An insurance company authorized to do business in this

1 state pursuant to the insurance code of 1956, 1956 PA 218, MCL
2 500.100 to 500.8302.

3 (vi) A motor vehicle finance company subject to the motor
4 vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141,
5 with net assets in excess of \$50,000,000.00.

6 (vii) A foreign bank.

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

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

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

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

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

20 **(AA)** ~~(bb)~~—"Local health department" means that term as defined
21 in section 1105 of the public health code, 1978 PA 368, MCL
22 333.1105.

23 **(BB)** ~~(cc)~~—"Local unit of government" means a county, city,
24 township, or village, an agency of a local unit of government, an
25 authority or any other public body or entity created by or pursuant
26 to state law. Local unit of government does not include the state
27 or federal government or a state or federal agency.

1 (CC) ~~(dd)~~—"Method detection limit" means the minimum
2 concentration of a hazardous substance which can be measured and
3 reported with 99% confidence that the analyte concentration is
4 greater than zero and is determined from analysis of a sample in a
5 given matrix that contains the analyte.

6 (DD) "MIGRATING NAPL" MEANS THAT TERMS AS IT IS DEFINED IN
7 SECTION 21302.

8 (EF) "MOBILE NAPL" MEANS THAT TERM AS IT IS DEFINED IN SECTION
9 21302.

10 (FF) "NAPL" MEANS THAT TERM AS IT IS DEFINED IN SECTION 21302.

11 (GG) ~~(ee)~~—"No further action letter" means a written response
12 provided by the department under section 20114d confirming that a
13 no further action report has been approved after review by the
14 department.

15 (HH) ~~(ff)~~—"No further action report" means a report under
16 section 20114d detailing the completion of remedial actions and
17 including a postclosure plan and a postclosure agreement, if
18 appropriate.

19 (II) "NONRESIDENTIAL" MEANS THAT CATEGORY OF LAND USE FOR
20 PARCELS OF PROPERTY OR PORTIONS OF PARCELS OF PROPERTY THAT IS NOT
21 RESIDENTIAL. NONRESIDENTIAL INCLUDES, BUT IS NOT LIMITED TO, ANY OF
22 THE FOLLOWING:

23 (i) INDUSTRIAL, COMMERCIAL, RETAIL, OFFICE, AND SERVICE USES.

24 (ii) RECREATIONAL PROPERTIES THAT ARE NOT CONTIGUOUS TO
25 RESIDENTIAL PROPERTY.

26 (iii) HOTELS, HOSPITALS, AND CAMPGROUNDS.

27 (iv) FARM FIELDS, PASTURES, AND NATURAL AREAS SUCH AS

1 WOODLANDS, BRUSHLANDS, GRASSLANDS, AND WETLANDS AT FARMS AND OTHER
2 LARGE PROPERTIES.

3 (JJ) ~~(gg)~~ "Operator" means a person who is in control of or
4 responsible for the operation of a facility. Operator does not
5 include either of the following:

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

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

12 (KK) ~~(hh)~~ "Owner" means a person who owns a facility. Owner
13 does not include either of the following:

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

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

21 (II) ~~(ii)~~ "Panel" means the response activity review panel
22 created in section 20114e.

23 (MM) ~~(jj)~~ "Permitted release" means 1 or more of the
24 following:

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

27 (ii) A lawful and authorized discharge into a permitted waste

1 treatment facility.

2 (iii) A federally permitted release as defined in the
3 comprehensive environmental response, compensation, and liability
4 act, 42 USC 9601 to 9675.

5 (NN) ~~(kk)~~—"Postclosure agreement" means an agreement between
6 the department and a person who has submitted a no further action
7 report that prescribes, as appropriate, activities required to be
8 undertaken upon completion of remedial actions as provided for in
9 section 20114d.

10 (OO) ~~(ll)~~—"Postclosure plan" means a plan for land use or
11 resource use restrictions or permanent markers at a facility upon
12 completion of remedial actions as required under section 20114c.

13 (PP) ~~(mm)~~—"Release" includes, but is not limited to, any
14 spilling, leaking, pumping, pouring, emitting, emptying,
15 discharging, injecting, escaping, leaching, dumping, or disposing
16 of a hazardous substance into the environment, or the abandonment
17 or discarding of barrels, containers, and other closed receptacles
18 containing a hazardous substance. Release does not include any of
19 the following:

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

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

25 (iii) A release of source, by-product, or special nuclear
26 material from a nuclear incident, as those terms are defined in the
27 atomic energy act of 1954, 42 USC 2011 to 2297h-13, if the release

1 is subject to requirements with respect to financial protection
2 established by the nuclear regulatory commission under 42 USC 2210,
3 or any release of source by-product or special nuclear material
4 from any processing site designated under 42 USC 7912(a)(1) or 42
5 USC 7942(a).

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

15 (v) A release does not include fruits, vegetables, field crop
16 processing by-products, or aquatic plants, that are applied to the
17 land for an agricultural use or for use as an animal feed, if the
18 use is consistent with generally accepted agricultural and
19 management practices at the time of the application.

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

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

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

3 (SS) "RESIDENTIAL" MEANS THAT CATEGORY OF LAND USE FOR PARCELS
4 OF PROPERTY OR PORTIONS OF PARCELS OF PROPERTY WHERE PEOPLE LIVE
5 AND SLEEP FOR SIGNIFICANT PERIODS OF TIME SUCH THAT THE FREQUENCY
6 OF EXPOSURE IS REASONABLY EXPECTED OR FORESEEABLE TO BE
7 APPROXIMATELY 350 DAYS PER YEAR AND THE DURATION OF EXPOSURE
8 APPROXIMATELY 10 YEARS OR MORE. RESIDENTIAL USES INCLUDE HOMES AND
9 SURROUNDING YARDS, CONDOMINIUMS, AND APARTMENTS. HOMES AND ADJACENT
10 YARDS AND GARDENS AT FARMS AND OTHER LARGE PROPERTIES ARE
11 RESIDENTIAL USES.

12 (TT) ~~(pp)~~ "Residential closure" means a property at which the
13 contamination has been addressed in a no further action report that
14 satisfies the limited residential cleanup criteria under section
15 20120a(1)(c) or the site-specific residential cleanup criteria
16 under sections 20120a(2) and 20120b, that contains land use or
17 resource use restrictions, and that is approved by the department
18 or is considered approved by the department under section 20120d.

19 (UU) ~~(qq)~~ "Response activity" means evaluation, interim
20 response activity, remedial action, demolition, providing an
21 alternative water supply, or the taking of other actions necessary
22 to protect the public health, safety, or welfare, or the
23 environment or the natural resources. Response activity also
24 includes health assessments or health effect studies carried out
25 under the supervision, or with the approval of, the department of
26 community health and enforcement actions related to any response
27 activity.

1 (VV) ~~(rr)~~ "Response activity costs" or "costs of response
2 activity" means all costs incurred in taking or conducting a
3 response activity, including enforcement costs.

4 (WW) ~~(ss)~~ "Response activity plan" means a plan for
5 undertaking response activities. A response activity plan may
6 include 1 or more of the following:

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

8 (ii) A plan for evaluation activities.

9 (iii) A feasibility study.

10 (iv) A remedial action plan.

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

23 (YY) ~~(uu)~~ "Target detection limit" means the detection limit
24 for a hazardous substance in a given environmental medium that is
25 specified by the department on a list that it publishes not more
26 than once a year. The department shall identify 1 or more
27 analytical methods, when a method is available, that are judged to

1 be capable of achieving the target detection limit for a hazardous
2 substance in a given environmental medium. The target detection
3 limit for a given hazardous substance is greater than or equal to
4 the method detection limit for that hazardous substance. In
5 establishing a target detection limit, the department shall
6 consider the following factors:

7 (i) The low level capabilities of methods published by
8 government agencies.

9 (ii) Reported method detection limits published by state
10 laboratories.

11 (iii) Reported method detection limits published by commercial
12 laboratories.

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

15 **(ZZ)** ~~(vv)~~ "Threatened release" or "threat of release" means
16 any circumstance that may reasonably be anticipated to cause a
17 release.

18 **(AAA)** ~~(ww)~~ "Venting groundwater" means groundwater that is
19 entering a surface water of the state from a facility.

20 (2) As used in this part:

21 (a) The phrase "a person who is liable" includes a person who
22 is described as being subject to liability in section 20126. The
23 phrase "a person who is liable" does not presume that liability has
24 been adjudicated.

25 (b) The phrase "this part" includes "rules promulgated under
26 this part".

27 Sec. 20107a. (1) A person who owns or operates property that

1 he or she has knowledge is a facility shall do all of the following
2 with respect to hazardous substances at the facility:

3 (a) Undertake measures as are necessary to prevent
4 exacerbation.

5 (b) Exercise due care by undertaking response activity
6 necessary to mitigate unacceptable exposure to hazardous
7 substances, mitigate fire and explosion hazards due to hazardous
8 substances, and allow for the intended use of the facility in a
9 manner that protects the public health and safety.

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

13 (d) Provide reasonable cooperation, assistance, and access to
14 the persons that are authorized to conduct response activities at
15 the facility, including the cooperation and access necessary for
16 the installation, integrity, operation, and maintenance of any
17 complete or partial response activity at the facility. Nothing in
18 this subdivision shall be interpreted to provide any right of
19 access not expressly authorized by law, including access authorized
20 pursuant to a warrant or a court order, or to preclude access
21 allowed pursuant to a voluntary agreement.

22 (e) Comply with any land use or resource use restrictions
23 established or relied on in connection with the response activities
24 at the facility.

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

1 (2) The owner's or operator's obligations under this section
2 shall be based upon the current numeric cleanup criteria under
3 section 20120a(1) **OR SITE-SPECIFIC CRITERIA APPROVED UNDER SECTION**
4 **20120B.**

5 (3) A person who violates subsection (1) who is not otherwise
6 liable under this part for the release at the facility is liable
7 for response activity costs and natural resource damages
8 attributable to any exacerbation and any fines or penalties imposed
9 under this part resulting from the violation of subsection (1) but
10 is not liable for performance of additional response activities
11 unless the person is otherwise liable under this part for
12 performance of additional response activities. The burden of proof
13 in a dispute as to what constitutes exacerbation shall be borne by
14 the party seeking relief.

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

18 (5) Subsection (1)(a) to (c) does not apply to the state or to
19 a local unit of government that is not liable under section
20 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local
21 unit of government that acquired property by purchase, gift,
22 transfer, or condemnation prior to June 5, 1995 or to a person who
23 is exempt from liability under section 20126(4)(c). However, if the
24 state or local unit of government, acting as the operator of a
25 parcel of property that the state or local unit of government has
26 knowledge is a facility, offers access to that parcel on a regular
27 or continuous basis pursuant to an express public purpose and

1 invites the general public to use that property for the express
2 public purpose, the state or local unit of government is subject to
3 this section but only with respect to that portion of the facility
4 that is opened to and used by the general public for that express
5 purpose, and not the entire facility. Express public purpose
6 includes, but is not limited to, activities such as a public park,
7 municipal office building, or municipal public works operation.
8 Express public purpose does not include activities surrounding the
9 acquisition or compilation of parcels for the purpose of future
10 development.

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

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

18 (a) ~~Determine~~**SUBJECT TO SUBSECTION (6), DETERMINE** the nature
19 and extent of a release **FOR WHICH THAT OWNER OR OPERATOR IS LIABLE**
20 at the facility.

21 (b) Make the following notifications:

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

26 (ii) If the owner or operator has reason to believe that 1 or
27 more hazardous substances are emanating from or have emanated from

1 and are present beyond the boundary of his or her property at a
2 concentration in excess of cleanup criteria for unrestricted
3 residential use, notify the department and the owners of property
4 where the hazardous substances are present within 30 days after
5 obtaining 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 **TAKE STEPS TO** stop or prevent ~~the~~**AN ONGOING**
13 release at the source. **AS USED IN THIS SUBDIVISION, "SOURCE" MEANS**
14 **THE PLACE, DEVICE, OR EQUIPMENT FROM WHICH THE RELEASE ORIGINATES**
15 **AND FIRST ENTERS THE ENVIRONMENT, SUCH AS A LEAKING STORAGE TANK,**
16 **DRUM, PIPELINE, CONTAINMENT AREA, LANDFILL OR IMPOUNDMENT.**

17 (d) Immediately implement ~~source control or removal~~ measures
18 to **ADDRESS**, remove, or contain hazardous substances that are
19 released after June 5, 1995 if those measures are technically
20 practical, **ARE** cost effective, and ~~provide protection to~~**ABATE AN**
21 **UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE** OR the
22 environment. At a facility where hazardous substances are released
23 after June 5, 1995, and those hazardous substances have not
24 affected groundwater but are likely to, groundwater contamination
25 shall be prevented if it can be prevented by measures that are
26 technically practical, cost effective, and ~~provide protection to~~
27 **ABATE AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE**

1 OR the environment.

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

4 ~~(f) Immediately initiate removal of a hazardous substance that~~
5 ~~is in a liquid phase, that is not dissolved in water, and that has~~
6 ~~been released.~~ **USING BEST PRACTICES FOR MANAGING NAPL, INCLUDING,**
7 **BUT NOT LIMITED TO, BEST PRACTICES DEVELOPED BY THE AMERICAN**
8 **SOCIETY FOR TESTING AND MATERIALS OR THE INTERSTATE TECHNOLOGY AND**
9 **REGULATORY COUNCIL, INITIATE A REMEDIAL ACTION THAT IS NECESSARY**
10 **AND FEASIBLE TO ADDRESS UNACCEPTABLE RISKS ASSOCIATED WITH**
11 **MIGRATING NAPL AND MOBILE NAPL.**

12 (g) Diligently pursue response activities necessary to achieve
13 the cleanup criteria established under this part. Except as
14 otherwise provided in this part, in pursuing response activities
15 under this subdivision, the owner or operator may do either of the
16 following:

17 (i) Proceed under section 20114a to conduct self-implemented
18 response activities.

19 (ii) Proceed under section 20114b if the owner or operator
20 wishes to, or is required to, obtain departmental approval of 1 or
21 more aspects of planning response activities.

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

24 (i) Provide a response activity plan containing a plan for
25 undertaking interim response activities and undertake interim
26 response activities consistent with that plan.

27 (ii) Provide a response activity plan containing a plan for

1 undertaking evaluation activities and undertake evaluation
2 activities consistent with that plan.

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

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

8 (v) Submit to the department for approval a response activity
9 plan containing a remedial action plan that, when implemented, will
10 achieve the cleanup criteria established under this part.

11 (vi) Implement an approved response activity plan in accordance
12 with a schedule approved by the department pursuant to this part.

13 (vii) Submit a no further action report under section 20114d
14 after completion of remedial action.

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

23 (3) Except as provided in subsection (4), a person who holds
24 an easement interest in a portion of a property who has knowledge
25 that there may be a release within that easement shall report the
26 release to the department within 24 hours after obtaining knowledge
27 of the release. This subsection applies to reportable quantities of

1 hazardous substances established pursuant to 40 CFR 302.4 and 302.6
2 (July 1, 2012 edition).

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

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

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

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

11 (6) IF A HAZARDOUS SUBSTANCE IS RELEASED AT A PROPERTY AND
12 THERE IS NO AVAILABLE ANALYTICAL METHOD OR GENERIC CLEANUP CRITERIA
13 FOR THAT HAZARDOUS SUBSTANCE, THE OWNER OR OPERATOR SHALL NOTIFY
14 THE DEPARTMENT DESCRIBING WHAT IS KNOWN ABOUT THE HAZARDOUS
15 SUBSTANCE AND THE RELEASE OF THAT HAZARDOUS SUBSTANCE. THE OWNER OR
16 OPERATOR NEED NOT DETERMINE THE NATURE AND EXTENT OF THE RELEASE
17 UNLESS AND UNTIL THE DEPARTMENT DEMONSTRATES THAT THE HAZARDOUS
18 SUBSTANCE COULD POSE AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH,
19 SAFETY, OR WELFARE, OR THE ENVIRONMENT, AT THE SITE. IF THE
20 DEPARTMENT DEMONSTRATES THAT THE HAZARDOUS SUBSTANCE COULD POSE AN
21 UNACCEPTABLE RISK, THE NATURE AND EXTENT OF THE HAZARDOUS SUBSTANCE
22 MAY BE DETERMINED BY ANY OF THE FOLLOWING MEANS, SINGLY OR IN
23 COMBINATION:

24 (A) IF ANOTHER HAZARDOUS SUBSTANCE WITH AN AVAILABLE
25 ANALYTICAL METHOD WAS RELEASED AT THE SAME LOCATION AND HAS SIMILAR
26 FATE AND MOBILITY CHARACTERISTICS, DETERMINE THE NATURE AND EXTENT
27 OF THAT HAZARDOUS SUBSTANCE AS A SURROGATE.

1 (B) USE MODELING, AN ECOLOGICAL DEMONSTRATION, OR A
2 COMBINATION OF BOTH TO DETERMINE WHETHER THE HAZARDOUS SUBSTANCE
3 HAS REACHED SURFACE WATER.

4 (C) DEVELOP AND PROPOSE TO THE DEPARTMENT AN ANALYTICAL METHOD
5 FOR APPROVAL BY THE DEPARTMENT.

6 (D) IN LIEU OF DETERMINING THE NATURE AND EXTENT OF THE
7 HAZARDOUS SUBSTANCE RELEASE, ELIMINATE THE POTENTIAL FOR EXPOSURE
8 IN AREAS WHERE THE HAZARDOUS SUBSTANCE IS EXPECTED TO BE LOCATED
9 THROUGH REMOVAL, CONTAINMENT, EXPOSURE BARRIERS, OR LAND USE OR
10 RESOURCE USE RESTRICTIONS.

11 (7) AS USED IN THIS SECTION, "AVAILABLE ANALYTICAL METHOD"
12 MEANS A METHOD THAT IS APPROVED AND PUBLISHED BY A GOVERNMENTAL
13 AGENCY, IS CONDUCTED ROUTINELY BY COMMERCIAL LABORATORIES IN THE
14 UNITED STATES, AND IDENTIFIES AND QUANTITATIVELY MEASURES THE
15 SPECIFIC HAZARDOUS SUBSTANCE.

16 Sec. 20114c. (1) If remedial actions at a facility satisfy
17 cleanup criteria for unrestricted residential use, land use or
18 resource use restrictions or monitoring is not required.

19 (2) Upon completion of remedial actions at a facility for a
20 category of cleanup that does not satisfy cleanup criteria for
21 unrestricted residential use, the person conducting the remedial
22 actions shall prepare and implement a postclosure plan for that
23 facility. A postclosure plan shall include both of the following:

24 (a) Land use or resource use restrictions as provided in
25 ~~subsection (3)~~. **SECTION 20121.**

26 (b) Permanent markers to describe restricted areas of the
27 facility and the nature of any restrictions. A permanent marker is

1 not required under this subdivision if the only applicable land use
2 or resource use restrictions relate to 1 or more of the following:

3 (i) A facility at which remedial action satisfies the cleanup
4 criteria for the nonresidential category under section
5 20120a(1)(b).

6 (ii) Use of groundwater.

7 (iii) Protection of the integrity of exposure controls that
8 prevent contact with soil, and those controls are composed solely
9 of asphalt, concrete, or landscaping materials. This subparagraph
10 does not apply if the hazardous substances that are addressed by
11 the barrier exceed a cleanup criterion based on acute toxic
12 effects, reactivity, corrosivity, ignitability, explosivity, or
13 flammability.

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

16 ~~—— (3) Land use or resource use restrictions that assure the~~
17 ~~effectiveness and integrity of any containment, exposure barrier,~~
18 ~~or other land use or resource use restrictions necessary to assure~~
19 ~~the effectiveness and integrity of the remedy shall be described in~~
20 ~~a restrictive covenant. A restrictive covenant developed to comply~~
21 ~~with this part shall be in a format made available on the~~
22 ~~department's website, with modifications to reflect the facts~~
23 ~~applicable to the facility. The restrictive covenant shall be~~
24 ~~recorded with the register of deeds for the county in which the~~
25 ~~property is located within 21 days after the completion of the~~
26 ~~remedial actions or within 21 days after the completion of~~
27 ~~construction of the containment or barrier, as appropriate. The~~

1 ~~restrictive covenant shall only be recorded by the property owner~~
2 ~~or with the express written permission of the property owner. The~~
3 ~~restrictions shall run with the land and be binding on the owner's~~
4 ~~successors, assigns, and lessees. The restrictive covenant shall~~
5 ~~include a survey and property description that define the areas~~
6 ~~addressed by the remedial actions and the scope of any land use or~~
7 ~~resource use restrictions. At a minimum, the restrictive covenant~~
8 ~~shall do all of the following:~~

9 ~~—— (a) Describe the general uses of the property that are~~
10 ~~consistent with the cleanup criteria.~~

11 ~~—— (b) Restrict activities at the facility that may interfere~~
12 ~~with remedial actions, operation and maintenance, monitoring, or~~
13 ~~other measures necessary to assure the effectiveness and integrity~~
14 ~~of the remedial actions.~~

15 ~~—— (c) Restrict activities that may result in exposures above~~
16 ~~levels attained in the remedial actions.~~

17 ~~—— (d) Grant to the department the ability to enforce the~~
18 ~~restrictive covenant by legal action in a court of appropriate~~
19 ~~jurisdiction.~~

20 ~~—— (4) A person shall not record a restrictive covenant~~
21 ~~indicating approval by the department unless the department has~~
22 ~~approved the recording of the restrictive covenant.~~

23 (3) ~~(5)~~ A person who implements a postclosure plan shall
24 provide notice of the land use or resource use restrictions to the
25 department and to the zoning authority for the local unit of
26 government in which the facility is located within 30 days after
27 recording the land use or resource use restrictions with the

1 register of deeds.

2 ~~—— (6) The department, with the approval of the state~~
3 ~~administrative board, may place restrictive covenants related to~~
4 ~~land use or resource use restrictions on deeds of state owned~~
5 ~~property.~~

6 (4) ~~(7)~~—Implementation of remedial actions does not relieve a
7 person who is liable under section 20126 of that person's
8 responsibility to report and provide for response activity to
9 address a subsequent release or threat of release.

10 (5) ~~(8)~~—Implementation by any person of remedial actions
11 without department approval does not relieve that person of an
12 obligation to undertake response activities or limit the ability of
13 the department to take action to require response activities
14 necessary to comply with this part by a person who is liable under
15 section 20126.

16 Sec. 20114d. (1) Upon completion of remedial actions that
17 satisfy the requirements of this part, a person may submit a no
18 further action report to the department. A person may submit a no
19 further action report under this subsection for remedial actions
20 addressing contamination for which the person is or is not liable.
21 Remedial actions included in a no further action report may address
22 all or a portion of contamination at a facility as follows:

23 (a) The remedial actions may address 1 or more releases at a
24 facility.

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

27 (c) The remedial actions may address contamination in 1 or

1 more environmental media at a facility.

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

4 (e) The remedial actions may address contamination at a
5 facility through any combination of subdivisions (a) through (d).

6 (2) A no further action report submitted under subsection (1)
7 shall document the basis for concluding that the remedial actions
8 have been completed. A no further action report may include a
9 request that, upon approval, the release or conditions addressed by
10 the no further action report be designated as a residential
11 closure. A no further action report shall be submitted with a form
12 developed by the department. The department shall make this form
13 available on its website.

14 (3) A no further action report submitted under subsection (1)
15 shall be submitted with the following, as applicable:

16 (a) If the remedial action at the facility satisfies the
17 cleanup criteria for unrestricted residential use for the hazardous
18 substances and portion of the facility addressed in the no further
19 action report, neither a postclosure plan or a proposed postclosure
20 agreement is required to be submitted.

21 (b) If the remedial action requires only land use or resource
22 use restrictions and financial assurance is not required or the
23 financial assurance is de minimis, a postclosure plan is required
24 but a proposed postclosure agreement is not required to be
25 submitted.

26 (c) For circumstances other than those described in
27 subdivision (a) or (b), a postclosure plan and a proposed

1 postclosure agreement are required to be submitted.

2 (4) A proposed postclosure agreement that is submitted as part
3 of a no further action report shall include all of the following:

4 (a) Provisions for monitoring, operation and maintenance, and
5 oversight necessary to assure the effectiveness and integrity of
6 the remedial action.

7 (b) Financial assurance to pay for monitoring, operation and
8 maintenance, oversight, and other costs determined by the
9 department to be necessary to assure the effectiveness and
10 integrity of the remedial action.

11 (c) A provision requiring notice to the department of the
12 owner's intent to convey any interest in the facility 14 days prior
13 to consummating the conveyance. A conveyance of title, an easement,
14 or other interest in the property shall not be consummated by the
15 property owner without adequate and complete provision for
16 compliance with the terms and conditions of the postclosure plan
17 and the postclosure agreement.

18 (d) A provision granting the department the right to enter the
19 property at reasonable times for the purpose of determining and
20 monitoring compliance with the postclosure plan and postclosure
21 agreement, including the right to take samples, inspect the
22 operation of the remedial action measures, and inspect records.

23 ~~———— (5) A postclosure agreement may modify the terms of a
24 postclosure plan as follows:~~

25 ~~———— (a) If the exposure to hazardous substances addressed in the
26 no further action report may be reliably restricted by an
27 institutional control in lieu of a restrictive covenant, and~~

1 ~~imposition of land use or resource use restrictions through~~
2 ~~restrictive covenants is impractical, the postclosure agreement may~~
3 ~~allow for a remedial action under section 20120a(1)(c) or (d) or~~
4 ~~(2) to rely on an institutional control in lieu of a restrictive~~
5 ~~covenant in a postclosure plan. Mechanisms that may be considered~~
6 ~~under this subsection include, but are not limited to, an ordinance~~
7 ~~that restricts the use of groundwater or an aquifer in a manner and~~
8 ~~to a degree that protects against unacceptable exposures. An~~
9 ~~ordinance that serves as an exposure control pursuant to this~~
10 ~~subsection shall be published and maintained in the same manner as~~
11 ~~zoning ordinances and shall include a requirement that the local~~
12 ~~unit of government notify the department at least 30 days prior to~~
13 ~~adopting a modification to the ordinance, or to the lapsing or~~
14 ~~revocation of the ordinance.~~

15 (5) ~~(b)~~—A postclosure agreement may waive the requirement for
16 permanent markers.

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

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

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

8 (b) Professional liability errors and omissions insurance.
9 This policy may not exclude bodily injury, property damage, or
10 claims arising out of pollution for environmental work and shall 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 a no further action report shall
23 maintain all documents and data prepared, acquired, or relied upon
24 in connection with the no further action report for not less than
25 10 years after the later of the date on which the department
26 approves the no further action report under this section, or the
27 date on which no further monitoring, operation, or maintenance is

1 required to be undertaken as part of the remedial action covered by
2 the report. All documents and data required to be maintained under
3 this section shall be made available to the department upon
4 request.

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

1 action reports submitted to the department under this section in
2 each calendar year.

3 (9) If the department fails to provide a written response
4 within the time frames required by subsection (8), the no further
5 action report is considered approved.

6 (10) A person requesting approval of a no further action
7 report under subsection (8) may appeal the department's decision in
8 accordance with section 20114e.

9 (11) Any time frame required by this section may be extended
10 by mutual agreement of the department and a person submitting a no
11 further action report. An agreement extending a time frame shall be
12 in writing.

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

22 Sec. 20116. (1) A person who has knowledge or information or
23 is on notice through a recorded instrument that a **PORTION OR THE**
24 **ENTIRETY OF A** parcel of ~~his or her real~~**THAT PERSON'S** property is a
25 facility shall not transfer an interest in that real property
26 unless he or she provides written notice to the purchaser or other
27 person to which the property is transferred ~~that the real property~~

1 ~~is a facility and discloses~~ **DISCLOSING** the **KNOWN** general nature and
2 extent of the **HAZARDOUS SUBSTANCE** release **AND ANY LAND OR RESOURCE**
3 **USE RESTRICTIONS THAT ARE KNOWN BY THE PERSON TO APPLY. A**
4 **RESTRICTIVE COVENANT OR NOTICE THAT CONTAINS THE REQUIRED**
5 **INFORMATION THAT IS RECORDED IN THE DEED RECORDS FOR THE PROPERTY**
6 **SATISFIES THIS REQUIREMENT.**

7 (2) The owner of real property for which a notice required in
8 subsection (1) has been recorded may, upon completion of ~~all~~ **A**
9 ~~response activities~~ **ACTIVITY OR CORRECTIVE ACTION** for the facility,
10 ~~as approved by the department,~~ record with the register of deeds
11 for the appropriate county a certification that ~~all~~ **THE** response
12 activity ~~required in an approved remedial action plan~~ **OR CORRECTIVE**
13 **ACTION** has been completed.

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

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

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

27 (a) Assure the protection of the public health, safety, and

1 welfare, and the environment.

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

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

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

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

17 (5) The department may select or approve of a remedial action
18 plan meeting the criteria provided for in section 20120a that does
19 not attain a degree of control or cleanup of hazardous substances
20 that complies with ~~R-299.5705(5)~~ **R 299.3(5)** or ~~R-299.5705(6)~~ **R**
21 **299.3(6)** of the Michigan administrative code, or both, if the
22 department makes a finding that the remedial action is protective
23 of the public health, safety, and welfare, and the environment.
24 Notwithstanding any other provision of this subsection, the
25 department shall not approve of a remedial action plan that does
26 not attain a degree of control or cleanup of hazardous substances
27 that complies with ~~R-299.5705(5)~~ **R 299.3(5)** or ~~R-299.5705(6)~~ **R**

1 299.3(6) of the Michigan administrative code if the remedial action
2 plan is being implemented by a person who is liable under section
3 20126 and the release was grossly negligent or intentional, unless
4 attaining that degree of control is technically infeasible, or the
5 adverse environmental impact of implementing a remedial action to
6 satisfy the rule would exceed the environmental benefit of that
7 remedial action.

8 (6) A remedial action plan may be selected or approved
9 pursuant to subsection (5) with regard to ~~R 299.5705(5)~~ **R 299.3(5)**
10 or ~~R 299.5705(6)~~, **R 299.3(6)**, or both, of the Michigan
11 administrative code, if the department determines, based on the
12 administrative record, that 1 or more of the following conditions
13 are satisfied:

14 (a) Compliance with ~~R 299.5705(5)~~ **R 299.3(5)** or ~~R 299.5705(6)~~,
15 **R 299.3(6)**, or both, of the Michigan administrative code is
16 technically impractical.

17 (b) The remedial action selected or approved will, within a
18 reasonable period of time, attain a standard of performance that is
19 equivalent to that required under ~~R 299.5705(5)~~ **R 299.3(5)** or ~~R~~
20 ~~299.5705(6)~~ **R 299.3(6)** of the Michigan administrative code.

21 (c) The adverse environmental impact of implementing a
22 remedial action to satisfy ~~R 299.5705(5)~~ **R 299.3(5)** or ~~R~~
23 ~~299.5705(6)~~, **R 299.3(6)**, or both, of the Michigan administrative
24 code would exceed the environmental benefit of the remedial action.

25 (d) The remedial action provides for the reduction of
26 hazardous substance concentrations in the aquifer through a
27 naturally occurring process that is documented to occur at the

1 facility and both of the following conditions are met:

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

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

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

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

25 (9) Any liability a person may have under this part shall be
26 unaffected by a decision of the department pursuant to subsection
27 (5), (6), or (7), including liability for natural resources damages

1 pursuant to section 20126a(1)(c).

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

5 ~~— (a) Information addressed by R 299.5519(2)(a) to (l) of the~~
6 ~~Michigan administrative code.~~

7 **(A)** ~~(b)~~ Identification of points of compliance for judging the
8 effectiveness of the remedial action.

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

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

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

26 **(13) A STATE OR LOCAL PERMIT OR PERMIT PROCEDURAL REQUIREMENT**
27 **SHALL NOT BE REQUIRED FOR RESPONSE ACTIVITIES APPROVED BY THE**

1 DEPARTMENT EXCEPT FOR PERMITS OR PERMIT PROCEDURAL REQUIREMENTS
2 THAT ARE REQUIRED BY FEDERAL LAW OR THOSE PERMITS OR PERMIT
3 PROCEDURAL REQUIREMENTS THAT CANNOT BE WAIVED DUE TO RESTRICTIONS
4 IMPOSED BY A FEDERAL PROGRAM AUTHORIZATION OR DELEGATION.

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

12 (a) Residential.

13 (b) Nonresidential. The nonresidential cleanup criteria shall
14 be the former industrial categorical cleanup criteria developed by
15 the department pursuant to this section until new nonresidential
16 cleanup criteria are developed and published by the department
17 pursuant to subsection (17).

18 (c) Limited residential.

19 (d) Limited nonresidential.

20 (2) As an alternative to the categorical criteria under
21 subsection (1), the department may approve a response activity plan
22 or a no further action report containing site-specific criteria
23 that satisfy the requirements of section 20120b and other
24 applicable requirements of this part. The department shall utilize
25 only reasonable and relevant exposure pathways in determining the
26 adequacy of a site-specific criterion. Additionally, the department
27 may approve a remedial action plan for a designated area-wide zone

1 encompassing more than 1 facility, and may consolidate remedial
2 actions for more than 1 facility.

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

17 (4) If a hazardous substance poses a carcinogenic risk to
18 humans, the cleanup criteria derived for cancer risk under this
19 section shall be the 95% upper bound on the calculated risk of 1
20 additional cancer above the background cancer rate per 100,000
21 individuals using the generic set of exposure assumptions
22 established under subsection (3) for the appropriate category or
23 subcategory. If the hazardous substance poses a risk of an adverse
24 health effect other than cancer, cleanup criteria shall be derived
25 using appropriate human health risk assessment methods for that
26 adverse health effect and the generic set of exposure assumptions
27 established under subsection (3) for the appropriate category or

1 subcategory. A hazard quotient of 1.0 shall be used to derive
2 noncancer cleanup criteria. For the noncarcinogenic effects of a
3 hazardous substance present in soils, the intake shall be assumed
4 to be 100% of the protective level, unless compound and site-
5 specific data are available to demonstrate that a different source
6 contribution is appropriate. If a hazardous substance poses a risk
7 of both cancer and 1 or more adverse health effects other than
8 cancer, cleanup criteria shall be derived under this section for
9 the most sensitive effect.

10 (5) If a cleanup criterion derived under subsection (4) for
11 groundwater in an aquifer differs from either: (a) the state
12 drinking water standard established pursuant to section 5 of the
13 safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the
14 national secondary drinking water regulations established pursuant
15 to 42 USC 300g-1, or (c) if there is not national secondary
16 drinking water regulation for a contaminant, the concentration
17 determined by the department according to methods approved by the
18 United States environmental protection agency below which taste,
19 odor, appearance, or other aesthetic characteristics are not
20 adversely affected, the cleanup criterion shall be the more
21 stringent of (a), (b), or (c) unless the department determines that
22 compliance with this subsection is not necessary because the use of
23 the aquifer is reliably restricted under provisions of a
24 postclosure plan or a postclosure agreement **OR THE DEPARTMENT HAS**
25 **APPROVED SITE-SPECIFIC CRITERIA UNDER SECTION 20120B.**

26 (6) The department shall not approve a remedial action plan or
27 no further action report in categories set forth in subsection

1 (1)(b) to (d), unless the person documents that the current zoning
2 of the property is consistent with the categorical criteria being
3 proposed, or that the governing zoning authority intends to change
4 the zoning designation so that the proposed criteria are consistent
5 with the new zoning designation, or the current property use is a
6 legal nonconforming use. The department shall not grant final
7 approval for a remedial action plan or no further action report
8 that relies on a change in zoning designation until a final
9 determination of that zoning change has been made by the local unit
10 of government. The department may approve of a remedial action plan
11 or no further action report that achieves categorical criteria that
12 are based on greater exposure potential than the criteria
13 applicable to current zoning. In addition, the remedial action plan
14 or no further action report shall include documentation that the
15 current property use is consistent with the current zoning or is a
16 legal nonconforming use. Abandoned or inactive property shall be
17 considered on the basis of zoning classifications as described
18 above.

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

22 (8) The need for soil remediation to protect an aquifer from
23 hazardous substances in soil shall consider the vulnerability of
24 the aquifer or aquifers potentially affected if the soil remains at
25 the facility. Migration of hazardous substances in soil to an
26 aquifer is a pertinent pathway if appropriate based on
27 consideration of site specific factors.

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

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

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

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

14 (10) If the target detection limit or the background
15 concentration for a hazardous substance is greater than a cleanup
16 criterion developed for a category pursuant to subsection (1), the
17 criterion shall be the target detection limit or background
18 concentration, whichever is larger, for that hazardous substance in
19 that category.

20 (11) The department may also approve cleanup criteria if
21 necessary to address conditions that prevent a hazardous substance
22 from being reliably measured at levels that are consistently
23 achievable in samples from the facility in order to allow for
24 comparison with generic cleanup criteria. A person seeking approval
25 of a criterion under this subsection shall document the basis for
26 determining that the relevant published target detection limit
27 cannot be achieved in samples from the facility.

1 (12) In determining the adequacy of a land-use based response
2 activity to address sites contaminated by polychlorinated
3 biphenyls, the department shall not require response activity in
4 addition to that which is subject to and complies with applicable
5 federal regulations and policies that implement the toxic
6 substances control act, 15 USC 2601 to 2692.

7 (13) Remedial action to address the release of uncontaminated
8 mineral oil satisfies cleanup criteria under this part for
9 groundwater or for soil if all visible traces of mineral oil are
10 removed from groundwater and soil.

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

20 (15) If a discharge of venting groundwater complies with this
21 part, a permit for the discharge is not required.

22 ~~(16) Remedial actions shall meet the cleanup criteria for~~
23 ~~unrestricted residential use or shall provide for acceptable land~~
24 ~~use or resource use restrictions in a postclosure plan or a~~
25 ~~postclosure agreement.~~

26 (16) ~~(17)~~ Remedial actions that rely on categorical cleanup
27 criteria developed pursuant to subsection (1) shall also consider

1 other factors necessary to protect the public health, safety, and
2 welfare, and the environment as specified by the department, if the
3 department determines based on data and existing information that
4 such considerations are relevant to a specific facility. These
5 factors include, but are not limited to, the protection of surface
6 water quality and consideration of ecological risks if pertinent to
7 the facility based on the requirements of this part.

8 (17) ~~(18)~~ Not later than December 31, 2013, the department
9 shall evaluate and revise the cleanup criteria derived under this
10 section. The evaluation and any revisions shall incorporate
11 knowledge gained through research and studies in the areas of fate
12 and transport and risk assessment and shall take into account best
13 practices from other states, reasonable and realistic conditions,
14 and sound science. Following this revision, the department shall
15 periodically evaluate whether new information is available
16 regarding the cleanup criteria and shall make revisions as
17 appropriate. The department shall prepare and submit to the
18 legislature a report detailing any revisions made to cleanup
19 criteria under this section.

20 (18) ~~(19)~~ A person demonstrates compliance with indoor air
21 inhalation criteria for a hazardous substance at a facility under
22 this part if all of the following conditions are met:

23 (a) The facility is an establishment covered by the
24 classifications provided by sector 31-33 - manufacturing, of the
25 North American industry classification system, United States, 2012,
26 published by the office of management and budget.

27 (b) The person complies with the Michigan occupational safety

1 and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the
2 rules promulgated under that act applicable to the exposure to the
3 hazardous substance, including, but not limited to, the
4 occupational health standards for air contaminants, R 325.51101 to
5 R 325.51108 of the Michigan administrative code.

6 (c) The hazardous substance is included in the facility's
7 hazard communication program under section 14a of the Michigan
8 occupational safety and health act, 1974 PA 154, MCL 408.1014a, and
9 the hazard communication rules, R 325.77001 to R 325.77003 of the
10 Michigan administrative code, except that unless the hazardous
11 substance is in use in the facility, the requirement to have a
12 material safety data sheet in the workplace requires only a generic
13 material safety data sheet for the hazardous substance and the
14 labeling requirements do not apply.

15 **(19) THE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE THE**
16 **ALGORITHMS USED TO CALCULATE ALL RESIDENTIAL AND NONRESIDENTIAL**
17 **GENERIC CLEANUP CRITERIA, AND TABLES LISTING, BY HAZARDOUS**
18 **SUBSTANCE, ALL TOXICITY, EXPOSURE, AND OTHER ALGORITHM FACTORS OR**
19 **VARIABLES USED IN THE DEPARTMENT'S CALCULATIONS.**

20 Sec. 20120b. (1) The department shall approve numeric or
21 nonnumeric site-specific criteria in a response activity under
22 section 20120a if such criteria, in comparison to generic criteria,
23 better reflect best available information concerning the toxicity
24 or exposure risk posed by the hazardous substance or other factors.

25 (2) Site-specific criteria approved under subsection (1) may,
26 as appropriate:

27 (a) Use the algorithms for calculating generic criteria

1 established by rule or propose and use different algorithms.

2 (b) Alter any value, parameter, or assumption used to
3 calculate generic criteria, **WITH THE EXCEPTION OF THE RISK TARGETS**
4 **SPECIFIED IN SECTION 20120A(4)**.

5 (c) Take into consideration the depth below the ground surface
6 of contamination, which may reduce the potential for exposure and
7 serve as an exposure barrier.

8 (d) Be based on information related to the specific facility
9 or information of general applicability, including peer-reviewed
10 scientific literature.

11 (e) Use probabilistic methods of calculation.

12 (f) Use nonlinear-threshold-based calculations where
13 scientifically justified.

14 (3) **CHILD DAY CARE CENTERS, NURSING HOMES, RECREATIONAL**
15 **PROPERTIES LOCATED CONTIGUOUS TO RESIDENTIAL PROPERTY, AND SIMILAR**
16 **LAND USES SHALL BE MANAGED AS FOLLOWS:**

17 (A) **A PERSON MAY DEVELOP AND SUBMIT FOR APPROVAL SITE-SPECIFIC**
18 **CRITERIA UNDER SUBSECTIONS (1) AND (2).**

19 (B) **THE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE EXPOSURE**
20 **FACTORS THAT A PERSON MAY USE TO CALCULATE SITE-SPECIFIC CRITERIA**
21 **FOR THESE USES. THESE FACTORS INCLUDE ADJUSTMENTS TO AGE-ADJUSTED**
22 **EXPOSURE FACTORS, EXPOSURE FREQUENCY, EXPOSURE DURATION, INGESTION**
23 **RATE, INHALATION RATE, AND ANY OTHER FACTORS THAT THE DEPARTMENT**
24 **CONSIDERS APPROPRIATE, TO REFLECT REASONABLY EXPECTED AND**
25 **FORESEEABLE EXPOSURE CONDITIONS FOR THESE USES. SITE-SPECIFIC**
26 **CALCULATIONS MADE USING THE DEPARTMENT'S EXPOSURE FACTORS ARE**
27 **CONSIDERED APPROVED BY THE DEPARTMENT.**

1 (C) THE PERSON MAY APPLY GENERIC RESIDENTIAL CLEANUP CRITERIA.

2 (4) IF THERE IS NOT A GENERIC CLEANUP CRITERION FOR A
3 HAZARDOUS SUBSTANCE IN REGARD TO A RELEVANT EXPOSURE PATHWAY,
4 RELEASES OF THE HAZARDOUS SUBSTANCE MAY BE ADDRESSED THROUGH ANY OF
5 THE FOLLOWING MEANS, SINGLY OR IN COMBINATION:

6 (A) ELIMINATE EXPOSURE TO THE HAZARDOUS SUBSTANCE THROUGH
7 REMOVAL, CONTAINMENT, EXPOSURE BARRIERS, OR LAND USE OR RESOURCE
8 USE RESTRICTIONS.

9 (B) IF A HAZARDOUS SUBSTANCE IS EXPECTED TO HAVE SIMILAR FATE,
10 MOBILITY, BIOACCUMULATION, AND TOXICITY CHARACTERISTICS, APPLY THE
11 CLEANUP CRITERIA FOR THAT HAZARDOUS SUBSTANCE AS A SURROGATE.
12 BEFORE USING A SURROGATE, THE PERSON SHALL NOTIFY THE DEPARTMENT
13 AND REQUEST APPROVAL. IF THE DEPARTMENT DOES NOT NOTIFY THE PERSON
14 THAT IT DISAPPROVES THE USE OF THE CHOSEN SURROGATE WITHIN 90 DAYS
15 AFTER RECEIPT OF THE NOTICE, THE SURROGATE IS CONSIDERED APPROVED.
16 A HAZARDOUS SUBSTANCE MAY BE USED AS A SURROGATE FOR A SINGLE
17 HAZARDOUS SUBSTANCE OR FOR A CLASS OR CATEGORY OF HAZARDOUS
18 SUBSTANCES.

19 (C) USE MODELING, AN ECOLOGICAL DEMONSTRATION, OR A
20 COMBINATION OF BOTH TO DEMONSTRATE THAT THE HAZARDOUS SUBSTANCE IS
21 NOT LIKELY TO MIGRATE TO A SURFACE WATER BODY OR HAS NOT OR WILL
22 NOT IMPAIR THE EXISTING OR DESIGNATED USES FOR A SURFACE WATER
23 BODY.

24 (D) IF TOXICITY INFORMATION IS AVAILABLE FOR THE HAZARDOUS
25 SUBSTANCE, DEVELOP SITE-SPECIFIC CLEANUP CRITERIA FOR THE HAZARDOUS
26 SUBSTANCE PURSUANT TO SUBSECTIONS (1) AND (2), OR DEVELOP
27 SIMPLIFIED SITE-SPECIFIC SCREENING CRITERIA BASED UPON TOXICITY AND

1 CONCENTRATIONS FOUND ON SITE, AND REQUEST DEPARTMENT APPROVAL. IF
2 THE DEPARTMENT DOES NOT NOTIFY THE PERSON THAT IT DISAPPROVES THE
3 SITE-SPECIFIC CRITERIA OR SCREENING CRITERIA WITHIN 90 DAYS AFTER
4 RECEIPT OF THE REQUEST, THE CRITERIA ARE CONSIDERED APPROVED.

5 (E) ANY OTHER METHOD APPROVED BY THE DEPARTMENT.

6 Sec. 20120d. (1) At a facility where state funds will be spent
7 to develop or implement a remedial action plan or where the
8 department determines there is a significant public interest,
9 within 30 days after the completion of a remedial investigation for
10 the facility, the department shall provide the county and the
11 township, city, or village in which the facility is located a
12 notice of the completion of the remedial investigation, a summary
13 of the remedial investigation, and notice of an opportunity for
14 residents of the local unit of government to meet with the
15 department regarding the remedial investigation and any proposed
16 feasibility study for the facility. Upon a request for a public
17 meeting by the governing body of the local unit of government or by
18 25 citizens of the local unit of government, the department shall,
19 within 30 days of the request, meet with persons in the local unit
20 of government. The person or persons requesting the public meeting
21 shall publicize and provide accommodations for the meeting. The
22 meeting shall be held in the local unit of government in which the
23 facility is located. The department shall provide copies of the
24 notices and summary required in this subsection to the governing
25 body of the local unit of government, to the known persons who are
26 liable under section 20126, and to the main public library of the
27 local unit of government in which the facility is located. The

1 department shall send representatives to the meeting who are
2 familiar with the facility and who are involved with determining
3 the appropriate remedial actions to be taken at the facility.
4 Persons who are liable under section 20126 for the facility may
5 send representatives to the meeting.

6 (2) Before approval of a proposed remedial action plan, ~~which~~
7 ~~is to be implemented with money from the fund, or is~~ **RESPONSE**
8 **ACTIVITY PLAN, OR NO FURTHER ACTION REPORT** based on categorical
9 criteria provided for in section 20120a(1)(c) or (d) or (2), ~~or if~~
10 ~~section 20118(5) or (6) applies, or~~ **AND WHERE** the department
11 determines that there is significant public interest, the
12 department shall do all of the following:

13 (a) Publish a notice and brief summary of the proposed
14 remedial action plan, **RESPONSE ACTIVITY PLAN, OR NO FURTHER ACTION**
15 **REPORT.**

16 (b) Provide for public review and comment pertinent to
17 documents relating to the proposed remedial action plan, ~~including,~~
18 ~~if applicable, the feasibility study that outlines alternative~~
19 ~~remedial action measures considered.~~ **RESPONSE ACTIVITY PLAN, OR NO**
20 **FURTHER ACTION REPORT.**

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

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

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

1 public meeting.

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

4 (d) Provide a document that summarizes the major issues raised
5 by the public and how they are to be addressed by the final
6 approved remedial action plan, **RESPONSE ACTIVITY PLAN, OR NO**
7 **FURTHER ACTION REPORT.**

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

13 (4) The department shall prepare a summary document that
14 explains the reasons for the selection or approval of a remedial
15 action plan, ~~under subsection (2).~~ **RESPONSE ACTIVITY PLAN, OR NO**
16 **FURTHER ACTION REPORT.** In addition, the department shall compile an
17 administrative record of the decision process that results in the
18 selection of a remedial action plan. The administrative record
19 shall contain all of the following:

20 (a) Remedial investigation data regarding the facility.

21 (b) If applicable, a feasibility study and ~~potential~~ remedial
22 actions **PLANNED OR COMPLETED.**

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

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

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

4 (f) Other information appropriate to the facility.

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

10 **SEC. 20121. (1) A PERSON MAY IMPOSE LAND OR RESOURCE USE**
11 **RESTRICTIONS TO REDUCE OR RESTRICT EXPOSURE TO HAZARDOUS**
12 **SUBSTANCES, TO ELIMINATE A POTENTIAL EXPOSURE PATHWAY, TO ASSURE**
13 **THE EFFECTIVENESS AND INTEGRITY OF CONTAINMENT OR EXPOSURE**
14 **BARRIERS, TO PROVIDE FOR ACCESS, OR TO OTHERWISE ASSURE THE**
15 **EFFECTIVENESS AND INTEGRITY OF RESPONSE ACTIVITIES UNDERTAKEN AT A**
16 **PROPERTY.**

17 (2) A RESTRICTIVE COVENANT USED TO IMPOSE LAND OR RESOURCE USE
18 RESTRICTIONS UNDER SUBSECTION (1) SHALL, AT A MINIMUM, INCLUDE ALL
19 OF THE FOLLOWING:

20 (A) A DESCRIPTION OF THE PROPERTY THAT IS SUBJECT TO THE
21 RESTRICTIONS THAT IS SUFFICIENT TO IDENTIFY THE PROPERTY AND IS
22 SUFFICIENT TO RECORD THE DOCUMENT WITH THE REGISTER OF DEEDS FOR
23 THE COUNTY WHERE THE PROPERTY IS LOCATED.

24 (B) A BRIEF NARRATIVE DESCRIPTION OF RESPONSE ACTIVITIES AND
25 CONTAMINATION AT THE PROPERTY OR IDENTIFY A PUBLICLY ACCESSIBLE
26 INFORMATION REPOSITORY WHERE THAT INFORMATION MAY BE OBTAINED, SUCH
27 AS A PUBLIC LIBRARY.

1 (C) A DESCRIPTION OF THE ACTIVITY AND USE LIMITATIONS IMPOSED
2 ON THE PROPERTY. THE DESCRIPTION SHOULD BE DRAFTED, TO THE EXTENT
3 PRACTICABLE, USING PLAIN, EVERYDAY LANGUAGE IN AN EFFORT TO MAKE
4 THE ACTIVITY AND USE LIMITATIONS UNDERSTANDABLE TO THE READER
5 WITHOUT HAVING TO REFERENCE STATUTORY OR REGULATORY TEXT OR
6 DEPARTMENT GUIDANCE.

7 (D) A GRANT TO THE DEPARTMENT OF THE ABILITY TO ENFORCE THE
8 RESTRICTIVE COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE
9 JURISDICTION.

10 (E) A SIGNATURE OF THE PROPERTY OWNER OR SOMEONE WITH THE
11 EXPRESS WRITTEN CONSENT OF THE PROPERTY OWNER UNLESS THE
12 RESTRICTIVE COVENANT HAS BEEN ORDERED BY A COURT OF COMPETENT
13 JURISDICTION. FOR CONDOMINIUM COMMON ELEMENTS AND SIMILAR COMMONLY
14 OWNED PROPERTY, THE RESTRICTIVE COVENANT MAY BE SIGNED BY AN
15 AUTHORIZED PERSON.

16 (3) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (2), A
17 RESTRICTIVE COVENANT MAY CONTAIN OTHER INFORMATION, RESTRICTIONS,
18 REQUIREMENTS, AND RIGHTS AGREED TO BY THE PERSONS SIGNING IT,
19 INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

20 (A) A PROVISION REQUIRING NOTICE TO THE DEPARTMENT OR OTHER
21 PERSONS UPON TRANSFER OR BEFORE CONSTRUCTION OR CHANGES IN USE THAT
22 COULD AFFECT CONTAMINATION OR INCREASE EXPOSURE AT THE PROPERTY.

23 (B) A PROVISION GRANTING RIGHTS OF ACCESS TO THE DEPARTMENT OR
24 OTHER PERSONS. THESE RIGHTS MAY INCLUDE, BUT ARE NOT LIMITED TO,
25 THE RIGHT TO ENTER THE PROPERTY FOR THE PURPOSE OF MONITORING
26 COMPLIANCE WITH THE RESTRICTIVE COVENANT, THE RIGHT TO TAKE
27 SAMPLES, AND THE RIGHT TO IMPLEMENT RESPONSE ACTIVITIES.

1 (C) A PROVISION SUBORDINATING A PROPERTY INTEREST THAT HAS
2 PRIORITY, IF AGREED TO BY THE PERSON THAT OWNS THE SUPERIOR
3 INTEREST.

4 (D) A PROVISION GRANTING THE RIGHT TO ENFORCE THE RESTRICTIVE
5 COVENANT TO PERSONS IN ADDITION TO THE DEPARTMENT, INCLUDING, BUT
6 NOT LIMITED TO, THE LOCAL UNIT OF GOVERNMENT IN WHICH THE PROPERTY
7 IS LOCATED OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

8 (E) A PROVISION OBLIGATING THE OWNER OF THE LAND SUBJECT TO
9 THE RESTRICTIVE COVENANT TO INSPECT OR MAINTAIN EXPOSURE BARRIERS,
10 PERMANENT MARKERS, FENCES, OR OTHER ASPECTS OF THE RESPONSE ACTION
11 OR REMEDY.

12 (F) A PROVISION LIMITING THE RESTRICTIVE COVENANT TO A
13 SPECIFIC DURATION, OR TERMINATING THE RESTRICTIVE COVENANT UPON THE
14 OCCURRENCE OF A SPECIFIC EVENT OR CONDITION, SUCH AS THE COMPLETION
15 OF ADDITIONAL RESPONSE ACTIVITIES THAT ARE APPROVED BY THE
16 DEPARTMENT.

17 (G) A PROVISION PROVIDING NOTICE OF HAZARDOUS SUBSTANCES THAT
18 EXCEED AESTHETIC-BASED CLEANUP CRITERIA.

19 (4) A RESTRICTIVE COVENANT USED TO IMPOSE LAND OR RESOURCE USE
20 RESTRICTIONS UNDER THIS SECTION SHALL BE RECORDED WITH THE REGISTER
21 OF DEEDS FOR THE COUNTY WHERE THE PROPERTY IS LOCATED.

22 (5) A RESTRICTIVE COVENANT UNDER THIS SECTION THAT IS RECORDED
23 UNDER SUBSECTION (4) DOES BOTH OF THE FOLLOWING:

24 (A) RUNS WITH THE LAND.

25 (B) IS PERPETUAL UNLESS, BY ITS TERMS, IT IS LIMITED TO A
26 SPECIFIC DURATION OR IS TERMINATED BY THE OCCURRENCE OF A SPECIFIC
27 EVENT.

1 (6) A RESTRICTIVE COVENANT THAT MEETS THE REQUIREMENTS OF THIS
2 SECTION NEED NOT BE APPROVED BY THE DEPARTMENT EXCEPT AS EXPRESSLY
3 REQUIRED ELSEWHERE IN THIS PART.

4 (7) THE FOLLOWING INSTRUMENTS MAY IMPOSE THE LAND OR RESOURCE
5 USE RESTRICTIONS DESCRIBED IN SUBSECTION (1) IF THEY MEET THE
6 REQUIREMENTS OF A RESTRICTIVE COVENANT UNDER THIS SECTION:

7 (A) A CONSERVATION EASEMENT.

8 (B) A COURT ORDER OR JUDICIALLY APPROVED SETTLEMENT INVOLVING
9 THE PROPERTY.

10 (8) AN INSTITUTIONAL CONTROL MAY BE USED TO IMPOSE THE LAND OR
11 RESOURCE USE RESTRICTONS DESCRIBED IN SUBSECTION (1) INSTEAD OF OR
12 IN ADDITION TO A RESTRICTIVE COVENANT. INSTITUTIONAL CONTROLS THAT
13 MAY BE CONSIDERED INCLUDE, BUT ARE NOT LIMITED TO, LOCAL ORDINANCES
14 OR STATE LAWS AND REGULATIONS THAT LIMIT OR PROHIBIT THE USE OF
15 CONTAMINATED GROUNDWATER, PROHIBIT THE RAISING OF LIVESTOCK,
16 PROHIBIT DEVELOPMENT IN CERTAIN LOCATIONS, OR RESTRICT PROPERTY TO
17 CERTAIN USES, SUCH AS A ZONING ORDINANCE. A LOCAL ORDINANCE THAT
18 SERVES AS AN INSTITUTIONAL CONTROL UNDER THIS SECTION SHALL BE
19 PUBLISHED AND MAINTAINED IN THE SAME MANNER AS A ZONING ORDINANCE
20 AND SHALL INCLUDE A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT
21 NOTIFY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO ADOPTING A
22 MODIFICATION TO THE ORDINANCE OR PRIOR TO THE LAPSING OR REVOCATION
23 OF THE ORDINANCE.

24 (9) THE DEPARTMENT, WITH THE APPROVAL OF THE STATE
25 ADMINISTRATIVE BOARD, MAY PLACE RESTRICTIVE COVENANTS DESCRIBED IN
26 THIS SECTION ON DEEDS OF STATE-OWNED PROPERTY.

27 (10) A RESTRICTIVE COVENANT RECORDED PURSUANT TO THIS PART,

1 WHETHER RECORDED BEFORE OR AFTER THE EFFECTIVE DATE OF THE
2 AMENDATORY ACT THAT ADDED THIS SECTION, IS VALID AND ENFORCEABLE
3 EVEN IF 1 OR MORE OF THE FOLLOWING SITUATIONS EXIST:

4 (A) IT IS NOT APPURTENANT TO AN INTEREST IN REAL PROPERTY.

5 (B) THE RIGHT TO ENFORCE IT CAN BE OR HAS BEEN ASSIGNED.

6 (C) IT IS NOT OF A CHARACTER THAT HAS BEEN RECOGNIZED
7 TRADITIONALLY AT COMMON LAW.

8 (D) IT IMPOSES A NEGATIVE BURDEN.

9 (E) IT IMPOSES AN AFFIRMATIVE OBLIGATION ON A PERSON HAVING AN
10 INTEREST IN THE REAL PROPERTY.

11 (F) THE BENEFIT OR BURDEN DOES NOT TOUCH OR CONCERN REAL
12 PROPERTY.

13 (G) THERE IS NO PRIVITY OF ESTATE OR CONTRACT.

14 (H) THE OWNER OF THE LAND SUBJECT TO THE RESTRICTIVE COVENANT
15 AND THE PERSON BENEFITED OR BURDENED ARE THE SAME PERSON.

16 (11) RESTRICTIVE COVENANTS OR OTHER INSTRUMENTS THAT IMPOSE
17 LAND OR RESOURCE USE RESTRICTIONS THAT WERE RECORDED BEFORE THE
18 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION ARE
19 NOT INVALIDATED OR MADE UNENFORCEABLE BY THIS SECTION. EXCEPT AS
20 PROVIDED IN SUBSECTION (10), THIS SECTION ONLY APPLIES TO A
21 RESTRICTIVE COVENANT OR OTHER INSTRUMENT RECORDED AFTER THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THIS
23 SECTION DOES NOT INVALIDATE OR RENDER UNENFORCEABLE ANY INSTRUMENT
24 OR INTEREST THAT IS OTHERWISE ENFORCEABLE UNDER THE LAW OF THIS
25 STATE.

26 (12) AS USED IN THIS SECTION, "CONTAMINATION" MEANS THE
27 PRESENCE OF HAZARDOUS SUBSTANCES AT LEVELS ABOVE THOSE ESTABLISHED

1 **IN CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.**

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 becomes an owner or
13 operator on or after June 5, 1995, unless the owner or operator
14 complies with both of the following:

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

20 (ii) The owner or operator provides a baseline environmental
21 assessment to the department and subsequent purchaser or transferee
22 within 6 months after the earlier of the date of purchase,
23 occupancy, or foreclosure.

24 (d) A person who by contract, agreement, or otherwise arranged
25 for disposal or treatment, or arranged with a transporter for
26 transport for disposal or treatment, of a hazardous substance owned
27 or possessed by the person, by any other person, at a facility

1 owned or operated by another person and containing the hazardous
2 substance. This subdivision does not include any of the following:

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

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

25 (iii) A person who arranges the lawful transport or disposal of
26 any product or container commonly used in a residential household,
27 which is in a quantity commonly used in a residential household,

1 and which was used in the person's residential household.

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

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

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

15 (3) Notwithstanding subsection (1), the following persons are
16 not liable under this part with respect to contamination at a
17 facility resulting from a release or threat of release unless the
18 person is responsible for an activity causing that release or
19 threat of release:

20 (a) The state or a local unit of government that acquired
21 ownership or control of a facility involuntarily through
22 bankruptcy, tax delinquency, abandonment, a transfer from a lender
23 pursuant to subsection (5), or other circumstances in which the
24 government involuntarily acquires title or control by virtue of its
25 governmental function or as provided in this part, a local unit of
26 government to which ownership or control of a facility is
27 transferred by the state or by another local unit of government

1 that is not liable under subsection (1), or the state or a local
2 unit of government that acquired ownership or control of a facility
3 by seizure, receivership, or forfeiture pursuant to the operation
4 of law or by court order.

5 (b) A state or local unit of government that holds or acquires
6 an easement interest in a facility, holds or acquires an interest
7 in a facility by dedication in a plat, or by dedication pursuant to
8 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an
9 interest in a facility for a transportation or utility corridor,
10 including sewers, pipes, and pipelines, or public right of way.

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

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

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

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

26 (g) A person who acquires a facility as a result of the death
27 of the prior owner or operator of the facility, whether by

1 inheritance, devise, or transfer from an inter vivos or
2 testamentary trust.

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

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

21 (j) A lessee who uses the leased property for a retail,
22 office, or commercial purpose regardless of the level of the
23 lessee's hazardous substance use.

24 (k) A person who holds a license, easement, or lease, or who
25 otherwise occupies or operates property, for the purpose of siting,
26 constructing, operating, or removing a wind energy conversion
27 system or any component of a wind energy conversion system. As used

1 in this subdivision, "wind energy conversion system" means that
2 term as defined in section 13 of the clean, renewable, and
3 efficient energy act, 2008 PA 295, MCL 460.1013.

4 (l) A person who owns or occupies a residential condominium
5 unit for both of the following:

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

8 (ii) Contamination of any general common element, limited
9 common element, or common area in which the person has an ownership
10 interest or right of occupation by reason of owning or occupying
11 the residential condominium unit.

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

14 (a) The owner or operator of ~~a hazardous waste treatment,~~
15 ~~storage, or disposal facility regulated pursuant to part 111~~
16 **PROPERTY AT OR** from which there is a release or threat of release
17 ~~solely from the treatment, storage, or disposal facility, or a~~
18 ~~waste management unit at the facility~~ and the release or threat of
19 release is subject to corrective action under part 111 **OR IS BEING**
20 **ADDRESSED AS PART OF A CORRECTIVE ACTION UNDER PART 111. HOWEVER, A**
21 **CORRECTIVE ACTION UNDER PART 111 MAY APPLY CLEANUP CRITERIA**
22 **CALCULATED PURSUANT TO SECTIONS 20120A AND 20120B, UTILIZE THE**
23 **RESPONSE ACTIVITY REVIEW PANEL AS SET FORTH IN SECTION 20114E, SHOW**
24 **COMPLIANCE WITH INDOOR AIR CRITERIA PURSUANT TO SECTION 20120A(19),**
25 **ADDRESS VENTING GROUNDWATER PURSUANT TO SECTION 20120E, IMPOSE LAND**
26 **USE AND RESOURCE USE RESTRICTIONS AS SET FORTH IN SECTION 20121,**
27 **OBTAIN ACCESS TO PROPERTY IN ACCORDANCE WITH SECTION 20135A, APPLY**

1 SECTION 20114(6) IN APPROPRIATE CIRCUMSTANCES, AND STREAMLINE
2 PERMIT REQUIREMENTS PURSUANT TO SECTION 20118(13). HOWEVER, A
3 RELEASE OR THREAT OF RELEASE THAT IS SUBJECT TO OR THAT HAS BEEN OR
4 IS BEING ADDRESSED THROUGH PART 111 CORRECTIVE ACTION SHALL NOT
5 ALSO BE SUBJECT TO REMEDIATION AND DEPARTMENT OVERSIGHT UNDER THIS
6 PART.

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

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

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

17 (i) An act of God.

18 (ii) An act of war.

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

23 (e) Any person for environmental contamination addressed in a
24 no further action report that is approved by the department or is
25 considered approved under section 20114d. Notwithstanding this
26 subdivision, a person may be liable under this part for the
27 following:

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

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

7 (iii) If the no further action report relies on land use or
8 resource use restrictions, an owner or operator who desires to
9 change those restrictions is responsible for any response
10 activities necessary to comply with this part for any land use or
11 resource use other than the land use or resource use that was the
12 basis for the no further action report.

13 (iv) If the no further action report relies on monitoring
14 necessary to assure the effectiveness and integrity of the remedial
15 action, an owner or operator who is otherwise liable for
16 environmental contamination addressed in a no further action report
17 is liable under this part for additional response activities
18 necessary to address any potential exposure to the environmental
19 contamination demonstrated by the monitoring in excess of the
20 levels relied on in the no further action report.

21 (v) If the remedial actions that were the basis for the no
22 further action report fail to meet performance objectives that are
23 identified in the no further action report, an owner or operator
24 who is otherwise liable for environmental contamination addressed
25 in the no further action report is liable under this part for
26 response activities necessary to satisfy the performance objectives
27 or otherwise comply with this part.

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

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

13 (7) Notwithstanding subsection (1)(c), if the owner or
14 operator of the facility became the owner or operator of the
15 facility on or after June 5, 1995 and prior to March 6, 1996, and
16 the facility contains an underground storage tank system as defined
17 in part 213, that owner or operator is liable under this part only
18 if the owner or operator is responsible for an activity causing a
19 release or threat of release.

20 (8) An owner or operator who was in compliance with subsection
21 (1)(c) prior to December 14, 2010 is considered to be in compliance
22 with subsection (1)(c).