Act No. 446
Public Acts of 2012
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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senator Casperson

ENROLLED SENATE BILL No. 1328

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 11506, 19608, 19612, 20101, 20104, 20114, 20114c, 20114d, 20114e, 20120a, 20120b, 20120c, 20126, 21301b, 21302, 21303, 21304, 21304a, 21304b, 21304c, 21304d, 21307, 21307a, 21308a, 21309a, 21310a, 21311a, 21312a, 21313a, 21315, 21316a, 21319a, 21323a, 21323j, 21323m, 21326, 21332, and 21333 (MCL 324.11506, 324.19608, 324.19612, 324.20101, 324.20104, 324.20114, 324.20114c, 324.20114d, 324.20114e, 324.20120a, 324.20120b, 324.20120c, 324.20126, 324.21301b, 324.21302, 324.21303, 324.21304, 324.21304a, 324.21304b, 324.21304c, 324.21304d, 324.21307, 324.21307a, 324.21308a, 324.21309a, 324.21310a, 324.21311a, 324.21312a, 324.21313a, 324.21315, 324.21316a, 324.21319a, 324.21323a, 324.21323j, 324.21323m, 324.21326, 324.21332, and 324.21333), section 11506 as amended by 2010 PA 345, section 19608 as amended by 2003 PA 252, section 19612 as added by 1998 PA 288, sections 20101 and 20104 as amended by 2010 PA 229, section 20114 as amended by 2010 PA 234, sections 20120a, 20120b, and 20120c as amended and sections 20114c and 20114d as added by 2010 PA 228, section 20114e as amended and sections 21332 and 21333 as added by 2012 PA 109, section 20126 as amended by 2010 PA 227, section 21301b as added by 1996 PA 116, sections 21302 and 21303 as amended by 2012 PA 111, sections 21304a, 21304b, 21307, 21307a, 21309a, 21310a, 21315, and 21316a as amended and sections 21304c, 21304d, 21323a, 21323j, and 21323m as added by 2012 PA 108, sections 21308a, 21311a, and 21312a as amended by 2012 PA 110, sections 21313a and 21319a as amended by 2012 PA 112, and section 21326 as amended by 2012 PA 113, and by adding sections 20114f, 20114g, and 21323n; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial and solid industrial waste, and animal waste other than organic waste generated in the production of livestock and poultry. However, solid waste does not include the following:

(a) Human body waste.

(b) Medical waste.

(c) Organic waste generated in the production of livestock and poultry.

(d) Liquid waste.

(e) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department. Food processing residuals, precipitated calcium carbonate from

sugar beet processing, wood ashes resulting solely from a source that burns only wood that is untreated and inert, lime from kraft pulping processes generated prior to bleaching, or aquatic plants may be applied on, or composted and applied on, farmland or forestland for an agricultural or silvicultural purpose, or used as animal feed, as appropriate, and such an application or use does not require a plan described in this subdivision or a permit or license under this part. In addition, source separated materials approved by the department for land application for agricultural and silvicultural purposes and compost produced from those materials may be applied to the land for agricultural and silvicultural purposes and such an application does not require a plan described in this subdivision or permit or license under this part. Land application authorized under this subdivision for an agricultural or silvicultural purpose, or use as animal feed as provided for in this subdivision shall be performed in a manner that prevents losses from runoff and leaching. Land application under this subdivision shall be at an agronomic rate consistent with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(h) Materials approved for emergency disposal by the department.

(i) Source separated materials.

(j) Site separated material.

(k) Fly ash or any other ash produced from the combustion of coal, when used under any of the following circumstances:

(*i*) As a component of concrete, grout, mortar, or casting molds, if the fly ash has not more than 6% unburned carbon.

(*ii*) As a raw material in asphalt for road construction, if the fly ash has not more than 12% unburned carbon and passes Michigan test method for water asphalt preferential test, MTM 101, as set forth in the state transportation department's manual for the Michigan test methods (MTM's).

(*iii*) As aggregate, road, or building material that in ultimate use will be stabilized or bonded by cement, limes, or asphalt.

(*iv*) As a road base or construction fill that is covered with asphalt, concrete, or other material approved by the department and that is placed at least 4 feet above the seasonal groundwater table.

(*v*) As the sole material in a depository designed to reclaim, develop, or otherwise enhance land, subject to the approval of the department. In evaluating the site, the department shall consider the physical and chemical properties of the ash, including, but not limited to, leachability, and the engineering of the depository, including, but not limited to, the compaction, control of surface water and groundwater that may threaten to infiltrate the site, and evidence that the depository is designed to prevent water percolation through the material.

(*l*) Soil that is washed or otherwise removed from sugar beets, has not more than 35% moisture content, and is registered as a soil amendment under part 85. Any testing required to become registered under part 85 is the responsibility of the generator.

(m) Soil that is relocated under section 20120c.

(n) Other wastes regulated by statute.

(2) "Solid waste hauler" means a person who owns or operates a solid waste transporting unit.

(3) "Solid waste processing plant" means a tract of land, building, unit, or appurtenance of a building or unit or a combination of land, buildings, and units that is used or intended for use for the processing of solid waste or the separation of material for salvage or disposal, or both, but does not include a plant engaged primarily in the acquisition, processing, and shipment of ferrous or nonferrous metal scrap, or a plant engaged primarily in the acquisition, processing, and shipment of slag or slag products.

(4) "Solid waste transporting unit" means a container, which may be an integral part of a truck or other piece of equipment, used for the transportation of solid waste.

(5) "Solid waste transfer facility" means a tract of land, a building and any appurtenances, or a container, or any combination of land, buildings, or containers that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but is not located at the site of generation or the site of disposal of the solid waste.

(6) "Source separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated at the source of generation for the purpose of conversion into raw materials or new products including, but not limited to, compost.

(7) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(8) "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost humus. Yard clippings do not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage.

Sec. 19608. (1) Money in the fund that is allocated under section 19607 shall be used for the following purposes:

(a) Money allocated under section 19607(1)(a) shall be used by the department to fund all of the following:

(*i*) Corrective actions undertaken by the department to address releases from leaking underground storage tanks pursuant to part 213.

(*ii*) Response activities undertaken by the department at facilities pursuant to part 201 to address public health and environmental problems or to promote redevelopment.

(*iii*) Assessment activities undertaken by the department to determine whether a property is a facility.

(*iv*) $75,000,000.00 shall be used to provide grants and loans to local units of government and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities at known or suspected facilities with redevelopment potential. Of the money provided for in this subparagraph, not more than $50,000,000.00 shall be used to provide grants and not more than $25,000,000.00 shall be used to provide loans pursuant to the clean Michigan initiative revolving loan program created in section 19608a. However, grants or loans provided for in this subparagraph shall not be made to a local unit of government or a brownfield redevelopment authority that is responsible for causing a release or threat of release under part 201 at the site proposed for grant or loan funding.

(b) Money allocated under section 19607(1)(b) shall be used for waterfront redevelopment grants pursuant to part 795.

(c) Money allocated under section 19607(1)(c) shall be used for response activities for the remediation of contaminated lake and river sediments pursuant to part 201.

(d) Money allocated under section 19607(1)(d) shall be used for nonpoint source pollution prevention and control grants or wellhead protection grants pursuant to part 88.

(e) Money allocated under section 19607(1)(e) shall be deposited into the clean water fund created in section 8807.

(f) Money allocated under section 19607(1)(f) shall be expended as follows:

(*i*) $10,000,000.00 shall be deposited into the retired engineers technical assistance program fund created in section 14512.

(*ii*) $5,000,000.00 shall be deposited into the small business pollution prevention assistance revolving loan fund created in section 14513.

(*iii*) $5,000,000.00 shall be used by the department to implement pollution prevention activities other than those funded under subparagraphs (*i*) and (*ii*).

(g) Money that is allocated under section 19607(1)(g) shall be used by the department of community health for remediation and physical improvements to structures to abate or minimize exposure of persons to lead hazards.

(h) Money allocated under section 19607(1)(h) shall be used for infrastructure improvements at Michigan state parks as determined by the department of natural resources. The installation or upgrade of drinking water systems or rest room facilities shall be the first priority.

(i) Money allocated under section 19607(1)(i) shall be used to provide grants to local units of government for local recreation projects pursuant to part 716.

(2) Of the money allocated under section 19607(1)(a), $93,000,000.00 shall be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. For purposes of this subsection, facilities that pose an imminent or substantial endangerment shall include, but are not limited to, those where public access poses hazards because of potential exposure to chemicals or safety risks and where drinking water supplies are threatened by contamination.

(3) Before expending any funds allocated under subsection (1)(c) at a site that is an area of concern as designated by the parties to the Great Lakes water quality agreement, the department shall notify the public advisory council established to oversee that area of concern regarding the development, implementation, and evaluation of response activities to be conducted with money in the fund at that area of concern.

(4) Money in the fund shall not be used to develop a municipal or commercial marina.

(5) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds and by the department and the department of natural resources to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in section 19607(1)(a) to (f) shall be available for appropriation to the department to pay its costs directly associated with the completion of a project authorized by section 19607(1)(a) to (f). Not more than 3% of the total amount specified in section 19607(1)(h) and (i) shall be available for appropriation to the department of natural resources to pay its costs directly associated with the completion of a project authorized by section 19607(1)(h) and (i). It is the intent of the legislature that general fund appropriations to the department and to the department of natural resources shall not be reduced as a result of costs funded pursuant to this subsection.

(6) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(7) The department, the department of natural resources, and the department of community health shall each submit annually a list of all projects that will be undertaken by that department that are recommended to be funded under this part. The list shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. The list shall be submitted to the legislative committees not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. For each eligible project, the list shall include the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the administering state department. A project that is funded by a grant or loan with money from the fund does not need to be included on the list submitted under this subsection. However, money in the fund that is appropriated for grants and loans shall not be encumbered or expended until the administering state department has reported those projects that have been approved for a grant or a loan to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment and to the appropriations subcommittees in the house of representatives and the senate on natural resources and environmental quality. Before submitting the first cycle of recommended projects under subsection (1)(a), the department shall publish and disseminate the criteria it will use in evaluating and recommending these projects for funding.

(8) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(9) Not later than December 31 of each year, the department, the department of natural resources, and the department of community health shall each submit a list of the projects financed under this part by that department to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations on natural resources and environmental quality. Each list shall include the name, address, and telephone number of the recipient or participant, if appropriate; the name and location of the project; the nature of the project; the amount of money allocated to the project; the county in which the project is located; a brief summary of what has been accomplished by the project; and other information considered pertinent by the administering state department.

Sec. 19612. (1) A recipient of a grant or a loan made with money from the fund shall do both of the following:

(a) Keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) Obtain authorization from the administering state department before implementing a change that significantly alters the proposed project.

(2) The administering state department may revoke a grant or a loan made with money from the fund or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan agreement or with the requirements of this part or the rules promulgated under this part, or with other applicable law or rules. If a grant or loan is revoked, the administering state department may recover all funds awarded.

(3) The administering state department may withhold a grant or a loan until the administering state department determines that the recipient is able to proceed with the proposed project.

(4) To assure timely completion of a project, the administering state department may withhold 10% of the grant or loan amount until the project is complete.

(5) If an approved applicant fails to sign a grant or loan agreement within 90 days after receipt of a written grant or loan offer by the administering state department, the administering state department may cancel the grant or loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(6) The administering state department may terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient uses grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The administering state department shall provide the recipient written notice of the termination 30 days prior to the termination.

(7) A loan made with money in the fund shall have the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the administering state department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement.

(c) A loan recipient shall enter into a loan agreement with the administering state department.

(d) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold state payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

(8) Loan payments and interest shall be deposited in the fund.

(9) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold from the loan recipient state payments in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

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

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

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

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

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

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

(*i*) The hazardous substance complies with the statewide default background levels under R 299.5746 of the Michigan administrative code.

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

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

(*iv*) A site-specific demonstration.

(f) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a facility. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property.

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

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

(i) "Cleanup criteria for unrestricted residential use" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*i*) Response activities have been completed under this part that satisfy the cleanup criteria for unrestricted residential use.

(*ii*) Corrective action has been completed under part 213 that satisfies the cleanup criteria for unrestricted residential use.

(*iii*) Site-specific criteria that have been approved by the department for application at the area, place, or property are met or satisfied and both of the following conditions are met:

(A) The site-specific criteria do not depend on any land use or resource use restriction to ensure protection of the public health, safety, or welfare or the environment.

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

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

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

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

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

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

(y) "Hazardous substance" means 1 or more of the following, but does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices developed pursuant to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474:

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

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

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

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

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

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

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

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

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

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

(*v*) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

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

(*vii*) A foreign bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*iii*) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, 42 USC 2011 to 2297h-13, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 USC 2210, or any release of source by-product or special nuclear material from any processing site designated under 42 USC 7912(a)(1) or 42 USC 7942(a).

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices developed pursuant to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.

(*v*) A release does not include fruits, vegetables, field crop processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices developed pursuant to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

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

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

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

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

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

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

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

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

(*ii*) A plan for evaluation activities.

(*iii*) A feasibility study.

(*iv*) A remedial action plan.

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

(uu) "Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified by the department on a list that it publishes not more than once a year. The department shall identify 1 or more analytical methods, when a method is available, that are judged to be capable of achieving the target detection limit for a hazardous substance in a given environmental medium. The target detection limit for a given hazardous substance is greater than or equal to the method detection limit for that hazardous substance. In establishing a target detection limit, the department shall consider the following factors:

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

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

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

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

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

(ww) "Venting groundwater" means groundwater that is entering a surface water of the state from a facility.

(2) As used in this part:

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

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

Sec. 20104. (1) The department shall coordinate all activities required under this part and may promulgate rules necessary to implement this part.

(2) A guideline, bulletin, interpretive statement, or operational memorandum under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or operational memorandum under this part is not legally binding on any person.

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

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

(5) The provisions in this section related to natural resource damages as added by 1995 PA 71 do not apply to any judicial or administrative action or claim in bankruptcy initiated on or before March 1, 1995.

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

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

(b) Make the following notifications:

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

(*ii*) If the owner or operator has reason to believe that 1 or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, notify the department and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated.

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

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

(d) Immediately implement source control or removal measures to remove or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, cost effective, and provide protection to the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and provide protection to the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Land use or resource use restrictions as provided in subsection (3).

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

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

(*ii*) Use of groundwater.

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

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

(3) Land use or resource use restrictions that assure the effectiveness and integrity of any containment, exposure barrier, or other land use or resource use restrictions necessary to assure the effectiveness and integrity of the remedy shall be described in a restrictive covenant. A restrictive covenant developed to comply with this part shall be in a format made available on the department's website, with modifications to reflect the facts applicable to the facility. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 21 days after the completion of the remedial actions or within 21 days after the completion of construction of the containment or barrier, as appropriate. The restrictive covenant shall only be recorded by the property owner or with the express written permission of the property owner. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictive covenant shall include a survey and property description that define the areas addressed by the remedial actions and the scope of any land use or resource use restrictions. At a minimum, the restrictive covenant shall do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) If the exposure to hazardous substances addressed in the no further action report may be reliably restricted by an institutional control in lieu of a restrictive covenant, and imposition of land use or resource use restrictions through restrictive covenants is impractical, the postclosure agreement may allow for a remedial action under section 20120a(1)(c) or (d) or (2) to rely on an institutional control in lieu of a restrictive covenant in a postclosure plan. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that restricts the use of groundwater or an aquifer in a manner and to a degree that protects against unacceptable exposures. An ordinance that serves as an exposure control pursuant to this subsection shall be published and maintained in the same manner as zoning ordinances and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance, or to the lapsing or revocation of the ordinance.

(b) A postclosure agreement may waive the requirement for permanent markers.

(6) The person submitting a no further action report shall include a signed affidavit attesting to the fact that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. The no further action report shall also include a signed affidavit from an environmental consultant who meets the professional qualifications described in section 20114e(2) and who prepared the no further action report, attesting to the

fact that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. In addition, the environmental consultant shall attach a certificate of insurance demonstrating that the environmental consultant has obtained at least all of the following from a carrier that is authorized to conduct business in this state:

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

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

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

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

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

(7) A person submitting a no further action report shall maintain all documents and data prepared, acquired, or relied upon in connection with the no further action report for not less than 10 years after the later of the date on which the department approves the no further action report under this section, or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the report. All documents and data required to be maintained under this section shall be made available to the department upon request.

(8) Upon receipt of a no further action report submitted under this subsection, the department shall approve or deny the no further action report or shall notify the submitter that the report does not contain sufficient information for the department to make a decision. If the no further action report requires a postclosure agreement, the department may negotiate alternative terms than those included within the proposed postclosure agreement. The department shall provide its determination within 150 days after the report was received by the department under this subsection unless the report requires public participation under section 20120d(2). If the report requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the report is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the department shall provide the person submitting the no further action report with a no further action letter. The department shall review and provide a written response within the time frames required by this subsection for at least 90% of the no further action reports submitted to the department under this section in each calendar year.

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

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

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

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

Sec. 20114e. (1) The director shall establish a response activity review panel to advise him or her on technical or scientific disputes, including disputes regarding assessment of risk, response activity plans, no further action reports, certificates of completion, and documentations of due care compliance under this part, and initial assessment reports, final assessment reports, closure reports, and documentations of due care compliance under part 213.

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

(a) Meet 1 or more of the following:

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

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

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

(b) Remain current in his or her field through participation in continuing education or other activities.

(3) An individual is not eligible to be a member of the panel if any 1 of the following is true:

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

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

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

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

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

(5) A vacancy on the panel shall be filled in the same manner as the original appointment.

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

(7) A person who submitted a response activity plan, a no further action report, a request for certificate of completion, or documentation of due care compliance under this part or an initial assessment report, final assessment report, closure report, or documentation of due care compliance under part 213 may appeal a decision made by the department regarding a technical or scientific dispute, including a dispute regarding assessment of risk, concerning the response activity plan, no further action report, request for certificate of completion, initial assessment report, final assessment report, closure report, or documentation of due care compliance by submitting a petition to the director. However, an issue that was addressed as part of the final decision of the director under section 21332 or that is the subject of a contested case hearing under section 21332 is not eligible for review by the panel. The petition shall include the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, opinion, and supporting documentation for the petitioner's position. The petitioner shall also submit a fee of $3,500.00. If the director believes that the dispute may be able to be resolved without convening the panel, the director may contact the petitioner regarding the issues in dispute and may negotiate a resolution of the dispute. This negotiation period shall not exceed 45 days. If the dispute is resolved without convening the panel, any fee that is submitted with the petition shall be returned.

(8) If a dispute is not resolved pursuant to subsection (7), the director shall schedule a meeting of 5 members of the panel, selected on the basis of their relevant expertise, within 45 days after receiving the original petition. If the dispute involves an underground storage tank system, at least 3 of the members selected shall have relevant experience in the American society for testing and materials risk-based corrective action processes described in part 213. A member selected for the dispute resolution process shall agree not to accept employment by the person bringing the dispute before the panel, or to undertake any employment concerning the facility in question for a period of 1 year after the decision has been rendered on the matter if that employment would represent more than 5% of the member's gross revenue in any of the preceding 3 years. The director shall provide a copy of all supporting documentation to members of the panel who will hear the dispute. An alternative member may be selected by the director to replace a member who is unable to participate in the dispute resolution process. Any action by the members selected to hear the dispute shall require a majority of the votes cast. The members selected for the dispute resolution process shall elect a chairperson of the dispute resolution process. At a meeting scheduled to hear the dispute, representatives of the petitioner and the department shall each be afforded an opportunity to present their positions to the panel. The fee that is received by the director along with the petition shall be forwarded to the state treasurer for deposit into the fund.

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

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

decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the final decision of the director. The final decision of the director under this subsection is subject to review pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(11) Upon request of the director, the panel shall make a recommendation to the department on whether a member should be removed from the panel. Prior to making this recommendation, the panel may convene a peer review panel to evaluate the conduct of the member with regard to compliance with this part.

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

(13) As used in this section, "relevant experience" means active participation in the preparation, design, implementation, and assessment of remedial investigations, feasibility studies, interim response activities, and remedial actions under this part or experience in the American society for testing and materials risk-based corrective action processes described in part 213. This experience must demonstrate the exercise of sound professional judgment and knowledge of the requirements of this part or part 213, or both.

Sec. 20114f. (1) Upon completion of a response activity a person may request a certificate of completion from the department.

(2) To obtain a certificate of completion from the department under this section, a person shall submit each of the following to the department:

(a) A certificate of completion request form. The department shall specify the required content of the request form and make the form available on the department's website.

(b) Documentation of the completed response activity.

(3) Upon receipt of a request for a certificate of completion submitted under this subsection, the department shall issue a certificate or deny the request, or shall notify the submitter that there is not sufficient information for the department to make a decision. If the department's response is that the request does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. The department shall make a decision under this subsection and shall provide the person submitting the request with a certificate of completion, as appropriate, within 1 of the following time frames, as applicable:

(a) 150 days after the request was received by the department if the response activity was undertaken without prior approval of the department and the department determines that the response activity complies with the applicable requirements of this part.

(b) 90 days after the request was received by the department if the response activity was undertaken pursuant to a response activity plan that was approved under section 20114b and the department determines that the response activity was completed in accordance with the approved plan.

(4) If the department fails to provide a written response within the time frame required by subsection (3), the response activity is considered approved.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a request for a certificate of completion or a person who has received a certificate of completion. An agreement extending a time frame shall be in writing.

(6) A person requesting a certificate of completion may appeal the department's decision in accordance with section 20114e, if applicable.

Sec. 20114g. (1) A person may submit to the department documentation of due care compliance regarding a facility. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 20107a, and other information required by the department.

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

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e.

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

(a) Residential.

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

(c) Limited residential.

(d) Limited nonresidential.

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

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

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

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c) if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States environmental protection agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion shall be the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted under provisions of a postclosure plan or a postclosure agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan administrative code.

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

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

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

(a) Use the algorithms for calculating generic criteria established by rule or propose and use different algorithms.

(b) Alter any value, parameter, or assumption used to calculate generic criteria.

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

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

(e) Use probabilistic methods of calculation.

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

Sec. 20120c. (1) An owner or operator may relocate contaminated soil off-site or allow contaminated soil to be relocated off-site if all of the following requirements are met:

(a) The person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare or the environment. In making the determination, the owner or operator shall consider whether the soil is subject to regulation under part 111. For the purposes of this subdivision, soil poses a threat to the public health, safety, or welfare or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the facility to which the soil will be relocated. Any land use or resource use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the facility before the soil is relocated. Contaminated soil shall not be relocated to a location that is not a facility.

(b) Prior department approval is obtained if the contaminated soil is being relocated off-site from or to either of the following:

(*i*) A facility where a remedial action plan that includes soil as an affected media has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(b), (c), or (d) or site-specific criteria under section 20120a(2).

(*ii*) A facility where a no further action report that includes soil as an affected medium has been approved by the department.

(c) If contaminated soil is being relocated off-site in a manner not addressed by subdivision (b), the owner or operator of the facility from which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was relocated.

(*iii*) The volume of soil relocated.

(*iv*) A summary of information or data on which the owner or operator based the determination required in subdivision (a) that the soil did not present a threat to the public health, safety, or welfare or the environment.

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, documentation that those restrictions are in place.

(2) An owner or operator may relocate contaminated soil, or allow contaminated soil to be relocated, on-site if all of the following requirements are met:

(a) If either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved for a facility, the person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) under the remedial action plan or no further action report is provided for the contaminated soil. This subdivision does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(b) If 500 cubic yards or more of contaminated soil are being relocated on-site at a facility where either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved by the department, the owner or operator of the facility at which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of information or data assuring that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil under subdivision (a).

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, documentation that those restrictions are in place.

(c) If subdivision (b) does not apply and an owner or operator relocates contaminated soil on-site without department approval or notice to the department, the owner of the facility within which contaminated soil is relocated includes the following information regarding the relocation as part of disclosing the general nature and extent of the release under section 20116 to a purchaser or other person to which the facility is transferred:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of the basis for the owner's or operator's determination that the relocation did not cause any exacerbation under section 20107a(1).

(d) Section 20107a(1) and (3) applies to the relocation of soil under this subsection even if an owner or operator is not otherwise subject to section 20107a.

(3) The determination required by subsections (1)(a) and (2)(a) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(4) This section does not apply to the following:

(a) Soil that is designated as an inert material pursuant to section 11507(3).

(b) Uncontaminated soil that is mixed with a beneficial use by-product under part 115.

(c) Soil that is relocated for treatment or disposal in conformance with applicable laws and regulations.

(d) The relocation of uncontaminated soil.

(5) As used in this section:

(a) "Contaminated soil" means soil that meets all of the following criteria:

(*i*) The soil is contaminated with 1 or more hazardous substances at levels that exceed the background concentration for that hazardous substance or those hazardous substances.

(*ii*) The soil is contaminated with 1 or more hazardous substances at levels that exceed any applicable cleanup criteria under section 20120a(1) or any applicable site-specific criteria under section 20120b.

(b) "Off-site" means property that is not on-site.

(c) "On-site" means within any contiguous or adjacent parcels owned by or under the control of an owner or operator.

(d) "Uncontaminated soil" means soil that is either of the following:

(*i*) Not contaminated with any hazardous substances due to human activity.

(*ii*) Contaminated with 1 or more hazardous substances as a result of human activity but the levels of those hazardous substances at the facility do not exceed any categorical cleanup criteria under section 20120a(1) or site-specific criteria under section 20120b.

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

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

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

(c) An owner or operator of a facility who becomes an owner or operator on or after June 5, 1995, unless the owner or operator complies with both of the following:

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

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

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

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

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

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

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

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

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

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

(a) The state or a local unit of government that acquired ownership or control of a facility involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender pursuant to subsection (5), or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part, a local unit of government to which ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under subsection (1), or the state or a local unit of government that acquired ownership or control of a facility by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

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

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

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

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

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

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

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

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

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

(k) A person who holds a license, easement, or lease, or who otherwise occupies or operates property, for the purpose of siting, constructing, operating, or removing a wind energy conversion system or any component of a wind energy conversion system. As used in this subdivision, "wind energy conversion system" means that term as defined in section 13 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1013.

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

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

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

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

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

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

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

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

(*i*) An act of God.

(*ii*) An act of war.

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

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

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

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

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

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

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

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

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

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

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

Sec. 21301b. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

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

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

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

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

(2) Notwithstanding subsection (1), upon request of a person who has not completed implementing corrective actions under this part, the department shall approve changes in corrective action to be consistent with sections 21304a, 21308a, 21309a, and 21311a.

(3) Notwithstanding any other provision of this part, a person that is not liable under this part may conduct corrective actions under this part in the same manner as a person that is liable under this part. Notwithstanding any other provision of this part, the department shall provide responses to nonliable parties conducting corrective actions for reports submitted under this part in the same manner that it provides responses to persons that are liable under this part.

Sec. 21302. As used in this part:

(a) "Air" means ambient or indoor air at the point of exposure.

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

(c) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a site. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property.

(d) "Biota" means the plant and animal life in an area affected by a corrective action plan.

(e) "Capillary fringe" means the portion of the aquifer above an unconfined saturated zone in which groundwater is drawn upward by capillary force and can include the presence of LNAPL.

(f) "Consultant" means a person that meets the requirements set forth in section 21325.

(g) "Contamination" or "contaminated" means the presence of a regulated substance in soil, surface water, or groundwater or air that has been released from an underground storage tank system at a concentration exceeding the level set forth in the RCBA tier I screening levels established under section 20120a(1)(a) and (b).

(h) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment from an underground storage tank system that is necessary under this part to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(i) "DNAPL" means a dense nonaqueous-phase liquid with a specific gravity greater than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. DNAPL encompasses all potential occurrences of DNAPL.

(j) "Grab sample" means a single sample or measurement taken at a specific time or over as short a period as feasible.

(k) "Groundwater" means water below the land surface in the zone of saturation and capillary fringe.

(*l*) "Groundwater not in an aquifer" means the saturated formation below the land surface that yields groundwater at an insignificant rate considering the local and regional hydrogeology and is not likely in hydraulic communication with groundwater in an aquifer. This includes water trapped or isolated in fill material in an underground storage tank or equivalent basin.

(m) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker c; and other fuels when used as substitutes for 1 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(n) "LNAPL" means a light nonaqueous-phase liquid having a specific gravity less than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water, and the term encompasses all potential occurrences of LNAPL.

(o) "Local unit of government" means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(p) "Low flow sampling" means minimal drawdown groundwater sampling procedures as described in the United States environmental protection agency, office of research and development, office of solid waste and emergency response, EPA/540/S-95/504, December, 1995, EPA groundwater issue.

(q) "Migrating NAPL" means NAPL that is observed to spread or expand laterally or vertically or otherwise result in an increased volume of the NAPL extent, usually indicated by time series data or observation. Migrating NAPL does not include NAPL that appears in a well within the historical extent of the NAPL due to a fluctuating water table.

(r) "Mobile NAPL" means NAPL that exceeds residual saturation, and includes migrating NAPL, but not all mobile NAPL is migrating NAPL.

Sec. 21303. As used in this part:

(a) "NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

(c) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is or was located including, but not limited to, a trust, vendor, vendee, lessor, or lessee.

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

(f) "RBCA" means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(g) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 USC 7412.

(h) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) "Residual NAPL saturation" means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(j) "Risk-based screening level" or "RBSL" means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(k) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(*l*) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(m) "Surface water" means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(n) "Site-specific target level" or "SSTL" means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

(o) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(p) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(q) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 USC Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 USC 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(r) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

Sec. 21304. (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator that is liable under section 21323a except as specifically provided for in this part.

(2) Notwithstanding any other provision in this part, if an owner or operator that is liable under section 21323a is a consultant or employs a consultant, this part does not require the owner or operator that is liable under section 21323a to retain an outside consultant to perform the responsibilities required under this part. Those responsibilities may be performed by an owner or operator that is liable under section 21323a who is a consultant or by a consultant employed by the owner or operator that is liable under section 21323a.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment. Corrective action activities that involve a discharge into air or groundwater as defined in section 21302 or surface water as defined in section 21303 shall be consistent with parts 31 and 55.

(2) The tier I risk-based screening levels for regulated substances are the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201 and shall be utilized in accordance with the process outlined in RBCA as screening levels only.

(3) If a regulated substance poses a carcinogenic risk to humans, the tier I RBSLs derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If the applicable RBSL or SSTL for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the SSTL shall be the more stringent of (a) or (b) unless the person that undertakes corrective actions under this part determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank system is regulated exclusively under this part. Notwithstanding any other provision of this part, an owner or operator that is liable under section 21323a may choose, in its sole discretion, to fulfill its corrective action obligations pursuant to part 201 in lieu of corrective actions pursuant to this part in either of the following situations:

(a) If a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

(b) If a release from an underground storage tank system involves venting groundwater, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to follow the procedures set forth in section 20120e in performing corrective action under this part related to venting groundwater to address the venting groundwater pursuant to part 201 in lieu of corrective actions addressing the venting groundwater pursuant to this part.

Sec. 21304b. (1) A person shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation under parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the tier I RBSLs established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) A person shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

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

(5) If soil is being relocated in a manner not addressed by this section, the person that owns or operates the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

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

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

(c) The volume of soil to be removed.

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

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

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

(7) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

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

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

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

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

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

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 21323a(3)(a), (b), (c), or (e) or to the state or local unit of government that acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if the state or local unit of government, other than those exempt from liability under section 21323a(4)(b), acting as the operator of a parcel of property that the state or local unit of government has knowledge is contaminated by a release from an underground storage tank system, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the general public for that express purpose, and not the entire property. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

Sec. 21304d. (1) If a person owns a parcel of real property and has knowledge or information or is on notice through a recorded instrument that the real property is a site, the person shall not transfer an interest in that real property unless the person provides written notice to the transferee that the real property is a site and of the general nature and extent of the release.

(2) A person that owns real property for which a notice required in subsection (1) has been recorded may, upon completion of all corrective action activities for the site as approved by the department, record with the register of deeds for the appropriate county a certification that all corrective action activity required in an approved final assessment report has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of corrective action that has been or is being implemented in compliance with section 21304a.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator that is liable under section 21323a shall report the release to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator that is liable under section 21323a from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator that is liable under section 21323a shall immediately begin and expeditiously perform all of the following initial actions:

(a) Identify and mitigate immediate fire, explosion hazards, and acute vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Using the process outlined by RBCA regarding NAPL, take steps necessary and feasible under this part to address unacceptable immediate risks.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(3) Immediately following initiation of initial response actions under this section, the owner or operator that is liable under section 21323a shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional immediate fire and safety hazards posed by vapors or NAPL that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

Sec. 21307a. (1) Following initiation of initial actions under section 21307, the owner or operator that is liable under section 21323a shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, the owner or operator that is liable under section 21323a shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, the owner or operator that is liable under section 21323a shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

Sec. 21308a. (1) Within 180 days after a release has been discovered, the owner or operator that is liable under section 21323a shall complete an initial assessment report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) Results of initial actions taken under section 21307(2).

(b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:

(*i*) The property address.

(*ii*) The name of the business, if applicable.

(*iii*) The name, address, and telephone number of a contact person for the owner or operator that is liable under section 21323a.

(*iv*) The time and date of release discovery.

(*v*) The time and date the release was reported to the department.

(*vi*) A site map that includes all of the following:

(A) The location of each underground storage tank in the leaking underground storage tank system.

(B) The location of any other known current or former underground storage tank system on the site.

(C) The location of fill ports, dispensers, and other pertinent system components for known current or former underground storage tank systems on the site.

(D) Soil and groundwater sample locations, if applicable.

(E) The locations of nearby buildings, roadways, paved areas, or other structures.

(*vii*) A description of how the release was discovered.

(*viii*) A list of regulated substances the underground storage tank system contained when the release occurred.

(*ix*) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (*viii*).

(*x*) The location of nearby surface waters and wetlands.

(*xi*) The location of nearby underground sewers and utility lines.

(*xii*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(*xiii*) Whether the underground storage tank system was emptied to prevent further release.

(*xiv*) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(*xv*) Whether toxic or explosive vapors or migrating or mobile NAPL was found and what steps were taken to evaluate those conditions and the current levels of toxic or explosive vapors or migrating or mobile NAPL in nearby structures.

(*xvi*) The extent to which all or part of the underground storage tank system or soil, or both, was removed.

(*xvii*) Data from analytical testing of soil and groundwater samples.

(*xviii*) A description of the mobile or migrating NAPL investigation and evaluation conducted pursuant to section 21307(2)(c) and, if the evaluation of NAPL concludes that NAPL is recoverable and removal is necessary under this part to abate an unacceptable risk pursuant to the provisions outlined in RBCA, a description of the removal, including all of the following:

(A) A description of the actions taken to remove any NAPL.

(B) The name of the person or persons responsible for implementing the NAPL removal measures.

(C) The estimated quantity, type, and thickness of NAPL observed or measured in wells, boreholes, and excavations.

(D) The type of NAPL recovery system used.

(E) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located.

(F) The type of treatment applied to, and the effluent quality expected from, any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

(H) The quantity and disposition of the recovered NAPL.

(*xix*) Identification of any other contamination on the site not resulting from the release and the source, if known.

(*xx*) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination exceeding the applicable RBSL for tier I sites or the applicable SSTL for tier II or tier III sites.

(*xxi*) The depth to groundwater.

(*xxii*) An identification of potential migration and exposure pathways and receptors.

(*xxiii*) An estimate of the amount of soil in the vadose zone that is contaminated.

(*xxiv*) If the on-site assessment indicates that off-site soil or groundwater may be affected, report the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release if the contamination exceeds the applicable RBSL or the applicable SSTL.

(*xxv*) Groundwater flow rate and direction.

(*xxvi*) Laboratory analytical data collected. The owner or operator may elect to obtain groundwater samples utilizing a grab sample technique for initial assessment and monitoring purposes that do not represent initial delineation of the limit of contamination or closure verification sampling.

(*xxvii*) The vertical distribution of contaminants that exceed the applicable RBSL or applicable SSTL.

(c) Site classification under section 21314a.

(d) Tier I or tier II evaluation according to the RBCA process.

(e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination that exceeds the applicable RBSL or applicable SSTL as necessary for preparation of the corrective action plan.

(2) If migrating or mobile NAPL is discovered at a site after the submittal of an initial assessment report pursuant to subsection (1), the owner or operator that is liable under section 21323a shall do both of the following:

(a) Perform initial actions identified in section 21307(2)(c).

(b) Submit to the department an amendment to the initial assessment report within 30 days of discovery of the migrating or mobile NAPL that describes response actions taken as a result of the migrating or mobile NAPL discovery.

(3) The department shall not require any additional information beyond that required under this section to be included in an initial assessment report. The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the initial assessment report upon request by the department.

Sec. 21309a. (1) If initial actions under section 21307 have not resulted in completion of corrective action, an owner or operator that is liable under section 21323a shall prepare a corrective action plan to address contamination at the site. Corrective action plans submitted as part of a final assessment report shall use the process described in RBCA and shall be based upon the site information and characterization results of the initial assessment report.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the tier I, II, or III evaluation in the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include an analysis of the recoverability of the NAPL and whether the NAPL is mobile or migrating, and a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include information that describes the proposed operation and maintenance actions.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures such as grab sampling procedures for monitoring groundwater, among other procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*x*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*ix*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a, including how those restrictions will be effective in preventing or controlling unacceptable exposures.

(e) A schedule for implementation of the corrective action.

(f) If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation until the lapse or violation is corrected.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property, the owner or operator that is liable under section 21323a shall provide notice to the public by means designed to reach those members of the public directly impacted by the release above a residential RBSL and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

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

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including but not limited to the right to take samples, inspect the operation of the corrective action measures, and inspect records.

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

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated substances may be reliably restricted by a means other than a restrictive covenant and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the RBSLs or SSTLs identified in the corrective action plan. An ordinance that serves as an exposure control under this subsection shall include both of the following:

(a) A requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties.

(4) Notwithstanding subsections (1), (2), and (3), if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested by an owner or operator that is liable under section 21323a and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.

(5) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

Sec. 21311a. (1) Within 365 days after a release has been discovered, an owner or operator that is liable under section 21323a shall complete a final assessment report that includes a corrective action plan developed under section 21309a and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A site assessment under the RBCA process, as necessary for determining site classification, and the extent of contamination relative to the applicable RBSLs or applicable SSTLs set forth in the corrective action plan.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions and the applicable RBSL or applicable SSTL:

(*i*) On-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type above the applicable RBSL or applicable SSTL, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances if above the applicable RBSL or applicable SSTL.

(*ii*) An analysis of the recoverability and whether the NAPL is mobile or migrating.

(*iii*) The costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances that are above the applicable RBSL or applicable SSTL.

(*iv*) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria that are above the applicable RBSL or applicable SSTL.

(*v*) The time necessary to implement and complete each corrective action alternative.

(*vi*) The preferred corrective action alternative based upon subparagraphs (*i*) through (*v*) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the final assessment report upon request by the department. The department shall not require any additional information beyond that required under this section to be included in its final assessment report.

Sec. 21312a. (1) Upon completion of the corrective action, the owner or operator that is liable under section 21323a shall complete a closure report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A summary of corrective action activities and documentation of the basis for concluding that corrective actions have been completed.

(b) Closure verification sampling results. Groundwater samples shall be collected utilizing a low-flow technique for closure verification or other method approved by the department.

(c) The person submitting a closure report shall include a signed affidavit attesting to the fact that the information upon which the closure report is based is complete and true to the best of that person's knowledge. The closure report shall also include a signed affidavit from the consultant who prepared the closure report attesting to the fact that the corrective actions detailed in the closure report comply with all applicable requirements under the applicable RBCA standard and that the information upon which the closure report is based is true and accurate to the best of that consultant's knowledge. In addition, the consultant shall attach a certificate of insurance demonstrating that the consultant has obtained at least all of the insurance required under section 21325.

(d) A person submitting a closure report shall maintain all documents and data prepared, acquired, or relied upon in connection with the closure report for not less than 6 years after the date on which the closure report was submitted. All documents and data required to be maintained under this section shall be made available to the department upon request.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the owner or operator that is liable under section 21323a who submitted the closure report with a confirmation of the department's receipt of the report.

(3) The department shall not require any additional information beyond that required under this section to be included in a closure report.

Sec. 21313a. (1) Beginning on May 1, 2012, except as provided in subsection (6), and except for the confirmation provided in section 21312a(2), if a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than $100.00 per day for the first 7 days that the report is late.

(b) Not more than $500.00 per day for days 8 through 14 that the report is late.

(c) Not more than $1,000.00 per day for each day beyond day 14 that the report is late.

(2) Subject to subsection (6), for purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(4) The owner or operator that is liable under section 21323a may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator that is liable under section 21323a.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507.

(6) A penalty shall not begin to accrue under this section unless the department has first notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

Sec. 21315. (1) The department shall design and implement a program to selectively audit final assessment reports and closure reports submitted under this part. Upon receipt of a final assessment report or closure report, the department shall have 90 days to determine whether it will audit the report and inform the owner or operator that is liable under section 21323a of its intention to audit the submitted report within 7 days of the determination. If the department does not inform the owner or operator that is liable under section 21323a of its intention to audit the report within the required time limits, the department shall not audit the report. If the department determines that it will conduct an audit, the audit shall be completed within 180 days of the submission. The department shall inform the owner or operator that is liable under section 21323a in writing of the results of the audit within 14 days of the completion of the audit. All audits shall be conducted based on the standards, criteria, and procedures in effect at the time the final assessment report or closure report was submitted.

(2) The department shall have until January 27, 2013 to selectively audit final assessment reports or closure reports that were submitted on or after November 1, 2011 but not later than July 1, 2012.

(3) If the department conducts an audit, the results of the audit shall approve, approve with conditions, or deny the final assessment report or closure report or shall notify the owner or operator that is liable under section 21323a that the report does not contain sufficient information for the department to make a decision. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a report is approved with conditions, the department's approval shall state with specificity the conditions of the approval.

(4) If the department does not perform an audit and provide a written response in accordance with subsection (1) to a final assessment report or closure report submitted after June 15, 2012, the report is considered approved. An owner or operator that is liable under section 21323a may request written confirmation from the department that the report is considered approved under this section, and the department shall provide written confirmation within 14 days of the request.

(5) Any time frame required by this section may be extended by mutual agreement of the department and an owner or operator that is liable under section 21323a submitting a final assessment or closure report. An agreement extending a time frame shall be in writing.

(6) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or does not confirm that applicable RBSLs or SSTLs have been met, the department shall include both of the following in the written response as required in subsection (1):

(a) The specific deficiencies and the section or sections of this part or rules applicable to this part or applicable RBCA standard that support the department's conclusion of noncompliance or that applicable RBSLs or SSTLs have not been met.

(b) Recommendations about corrective actions or documentation that may address the deficiencies identified under subsection (6)(a).

(7) If the department denies a final assessment report or closure report under this section, an owner or operator that is liable under section 21323a shall either revise and resubmit the report for approval, submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e and pay a fee in the amount of $300.00 in lieu of the $3,500.00 fee set forth in section 20114e(7), or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

(8) Notwithstanding section 21312a, after conducting an audit under this section, the department may issue a closure letter for any site that meets the applicable RBSL or SSTL pursuant to section 21304a.

(9) The department shall only audit a report required under this part 1 time. If the report does not contain sufficient information for the department to make a decision or the department's audit identifies deficiencies as described in subsection (6), the department may audit a revised report if sufficient information is provided for the department to make a decision or, to evaluate whether the identified deficiencies have been corrected, which shall be completed within 90 days of the revised report's submission to the department.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2). A person that knowingly delivers a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. A person is considered to have knowledge if placards have been affixed to the underground storage tank system at the property and are visible at the time of the delivery.

(2) The department, upon discovery of the operation of an underground storage tank system in violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211, shall provide notification prohibiting delivery of regulated substances to the underground storage tank system by affixing a placard providing notice of the violation in plain view to the underground storage tank system. The department shall provide a minimum of 15 days' notice to the owner or operator that is liable under section 21323a prior to affixing a placard for violations of this part or rules promulgated under this part, unless the violation causes an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person that knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator that is liable under section 21323a to take action as may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator that is liable under section 21323a requiring that person to perform corrective actions relating to a site, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

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

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

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

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

(5) A person to whom an administrative order was issued under this section may appeal the administrative order pursuant to section 21333.

Sec. 21323a. (1) Notwithstanding any other provision of this act, and except as otherwise provided in this section and section 21323c, the following persons are liable under this part:

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

(b) An owner or operator who became an owner or operator on or after March 6, 1996, unless the owner or operator complies with both of the following:

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

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

(c) The estate or trust of a person described in subdivisions (a) and (b).

(2) Subject to section 21304c, an owner or operator who complies with subsection (1)(b) is not liable for contamination existing at the property on which an underground storage tank system is located at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination. Subsection (1)(b) does not alter a person's liability with regard to a subsequent release or threat of release from an underground storage tank system if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at property on which an underground storage tank system is located resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

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

(b) A state or local unit of government that holds or acquires an easement interest in property, holds or acquires an interest in property by dedication in a plat, or by dedication pursuant to the public highways and private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in property for a transportation or utility corridor, including sewers, pipes, and pipelines, or public rights-of-way.

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

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

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

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

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

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

(i) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's regulated substance use unless the lessee is otherwise liable under this section.

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

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

(b) A person that owns or operates property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(c) A person that owns or operates property on which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

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

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21315(4). Notwithstanding this subdivision, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the closure report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the closure report and for which the person is otherwise liable under this part.

(*iii*) If the closure report relies on land use or resource use restrictions, a person who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

(*v*) If the corrective actions that were the basis for the closure report fail to meet performance objectives that are identified in the closure report or section 21304a, an owner or operator that is liable under section 21323a for environmental contamination addressed in the closure report is liable under this part for corrective action necessary to satisfy the performance objectives or otherwise comply with this part.

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

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

(7) An owner or operator who was in compliance with subsection (1)(b) prior to May 1, 2012 is considered to be in compliance with subsection (1)(b).

Sec. 21323j. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from an underground storage tank system or threat of release from an underground storage tank system, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 21323a for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare or the environment from a release or threatened release in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(b) A person that is liable under section 21323a for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that underground storage tank system on the property on which the underground storage tank system is located.

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

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

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

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

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the underground storage tank system or the property on which the underground storage tank system is located or to require compliance with this part or a rule or an order under this part.

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

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

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

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

(8) All unpaid costs and damages for which a person is liable under this part constitute a lien in favor of the state upon a property that has been the subject of corrective action by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for corrective action at the property for which the person is responsible.

(9) If the attorney general determines that the lien provided in subsection (8) is insufficient to protect the interest of the state in recovering corrective action costs at a property, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the property owned by the person described in subsection (8), subject to corrective action that takes priority over all other liens and encumbrances that are or have been recorded on the property.

(b) A lien upon real or personal property or rights to real or personal property, other than the property which was the subject of corrective action, owned by the person described in subsection (8), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subsection:

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

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

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

(10) A petition submitted pursuant to subsection (9) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (3), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interest in the real property subject to corrective action. A lien shall not be granted under subsection (9) against the owner of the property if the owner is not liable under section 21323a.

(11) In addition to the lien provided in subsections (8) and (9), if the state incurs costs for corrective action that increases the market value of real property that is the location of a release or threatened release, the increase in the value caused by the state-funded corrective action, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(12) A lien provided in subsection (8), (9), or (11) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (9) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

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

(14) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (12).

(15) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (14), has made a determination that the person liable under section 21323a has completed all of the corrective action, the department shall execute and file with the notice of release of lien a document stating that all corrective action has been completed.

Sec. 21323m. (1) Except as provided in section 21323b(5), a person that has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of corrective action under part 17, part 31, or common law.

(2) A person who is exempt from liability under section 21323a is not liable for a claim for corrective action costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination existing on the site or migrating from the site on the earlier of the date of purchase, occupancy, foreclosure or transfer of ownership, or control of the site to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for violation of section 21304c.

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

(a) Tort claims unrelated to performance of corrective action.

(b) Tort claims for damages which result from corrective action.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 21304c.

Sec. 21323n. (1) A person may submit to the department documentation of due care compliance regarding a site. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 21304c prepared by a qualified underground storage tank consultant, and other information required by the department.

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

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

Sec. 21326. (1) Upon request of the department for the purpose of conducting an investigation, taking corrective action, or enforcing this part, a person shall furnish the department with all available information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department has the right to enter at all reasonable times in or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

(b) Obtaining samples of any substance from an underground storage tank system.

(c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system, its associated equipment, or contents.

(d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party.

(e) Conducting monitoring or testing, or taking samples of soils, air, surface water, or groundwater.

(f) Taking corrective action.

(g) Inspecting and copying any records related to an underground storage tank system.

(3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness.

(4) The attorney general, on behalf of the department, may do either of the following:

(a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to implement this part.

(b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part.

Sec. 21332. (1) Subject to subsection (2), an owner or operator that is liable under section 21323a may petition the department for a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding any of the following:

(a) Corrective action proposed, commenced, or completed.

(b) The SSTLs proposed for a site.

(c) The imposition of penalties pursuant to section 21313a.

(d) The results of any audit performed under section 21315.

(e) A decision regarding the documentation of due care compliance under section 21323n.

(2) Upon receipt of a petition from an owner or operator that is liable under section 21323a pursuant to this section, the department shall conduct the hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. However, an issue that was addressed as part of the final decision of the director under section 20114e or that is being considered by the response activity review panel under section 20114e is not eligible for review as part of a contested case hearing under this section.

Sec. 21333. An owner or operator that is liable under section 21323a may appeal a final agency decision to affix a placard under section 21316a(2) or issue an administrative order under section 21319a(2) to the circuit court for the county where the underground storage tank system is located or the Ingham county circuit court in the same manner

as and according to the same procedures provided for appeals to the circuit court under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The court shall set aside the final agency decision if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

Enacting section 1. (1) Subpart 1 of part 147 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.14701 to 324.14705, is repealed.

(2) R 299.3301 to R 299.3319 of the Michigan administrative code are rescinded.

Enacting section 2. (1) R 299.5105, R 299.5107, R 299.5109, R 299.5111, R 299.5113, R 299.5117, R 299.5401 to R 299.5415, R 299.5530, R 299.5532, R 299.5534, R 299.5536, R 299.5538, R 299.5540, R 299.5732, R 299.5742, and R 299.5901 to R 299.5919 of the Michigan administrative code are rescinded.

(2) R 299.5101, R 299.5103, R 299.5115, R 299.5520, R 299.5522, R 299.5524, R 299.5526, R 299.5528, R 299.5542, R 299.5701, R 299.5703, R 299.5705, R 299.5706, R 299.5706a, R 299.5707, R 299.5708 to R 299.5726, R 299.5728, R 299.5730, R 299.5734, R 299.5736, R 299.5738, R 299.5740, and R 299.5744 to R 299.5752 of the Michigan administrative code are rescinded effective December 31, 2013.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Clerk of the House of Representatives

Approved .....

.....

Governor