

**SUBSTITUTE FOR
SENATE BILL NO. 1328**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
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:

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

7 (a) Human body waste.

8 (b) Medical waste.

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

1 (d) Liquid waste.

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

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

6 (g) Sludges and ashes managed as recycled or nondetrimental
7 materials appropriate for agricultural or silvicultural use
8 pursuant to a plan approved by the department. Food processing
9 residuals, precipitated calcium carbonate from sugar beet
10 processing, wood ashes resulting solely from a source that burns
11 only wood that is untreated and inert, lime from kraft pulping
12 processes generated prior to bleaching, or aquatic plants may be
13 applied on, or composted and applied on, farmland or forestland for
14 an agricultural or silvicultural purpose, or used as animal feed,
15 as appropriate, and such an application or use does not require a
16 plan described in this subdivision or a permit or license under
17 this part. In addition, source separated materials approved by the
18 department for land application for agricultural and silvicultural
19 purposes and compost produced from those materials may be applied
20 to the land for agricultural and silvicultural purposes and such an
21 application does not require a plan described in this subdivision
22 or permit or license under this part. Land application authorized
23 under this subdivision for an agricultural or silvicultural
24 purpose, or use as animal feed as provided for in this subdivision
25 shall be performed in a manner that prevents losses from runoff and
26 leaching. Land application under this subdivision shall be at an
27 agronomic rate consistent with generally accepted agricultural and

1 management practices under the Michigan right to farm act, 1981 PA
2 93, MCL 286.471 to 286.474.

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

5 (i) Source separated materials.

6 (j) Site separated material.

7 (k) Fly ash or any other ash produced from the combustion of
8 coal, when used in the following instances:

9 (i) With a maximum of 6% of unburned carbon, if used as a
10 component of concrete, grout, mortar, or casting molds.

11 (ii) With a maximum of 12% unburned carbon passing M.D.O.T.
12 test method MTM 101, if used as a raw material in asphalt for road
13 construction.

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

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

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

1 percolation through the material.

2 (I) **SOIL THAT IS RELOCATED UNDER SECTION 20120C.**

3 (M) ~~(I)~~ Other wastes regulated by statute.

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

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

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

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

24 (6) "Source separated material" means glass, metal, wood,
25 paper products, plastics, rubber, textiles, garbage, or any other
26 material approved by the department that is separated at the source
27 of generation for the purpose of conversion into raw materials or

1 new products including, but not limited to, compost.

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

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

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

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

16 (i) Corrective actions undertaken by the department to address
17 releases from leaking underground storage tanks pursuant to part
18 213.

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

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

24 (iv) \$75,000,000.00 shall be used to provide grants and loans
25 to local units of government and brownfield redevelopment
26 authorities created under the brownfield redevelopment financing
27 act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities

1 at known or suspected facilities with redevelopment potential. Of
2 the money provided for in this subparagraph, not more than
3 ~~\$37,500,000.00~~ **\$50,000,000.00** shall be used to provide grants and
4 not more than ~~\$37,500,000.00~~ **\$25,000,000.00** shall be used to
5 provide loans pursuant to the clean Michigan initiative revolving
6 loan program created in section 19608a. However, grants or loans
7 provided for in this subparagraph shall not be made to a local unit
8 of government or a brownfield redevelopment authority that is
9 responsible for causing a release or threat of release under part
10 201 at the site proposed for grant or loan funding.

11 ~~—— (v) Not more than \$12,000,000.00 shall be used for grants~~
12 ~~pursuant to the municipal landfill grant program under section~~
13 ~~20109a.~~

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

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

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

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

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

26 (i) \$10,000,000.00 shall be deposited into the retired
27 engineers technical assistance program fund created in section

1 14512.

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

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

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

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

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

20 (2) Of the money allocated under section 19607(1)(a),
21 \$93,000,000.00 shall be used for facilities that pose an imminent
22 or substantial endangerment to the public health, safety, or
23 welfare, or to the environment. For purposes of this subsection,
24 facilities that pose an imminent or substantial endangerment shall
25 include, but are not limited to, those where public access poses
26 hazards because of potential exposure to chemicals or safety risks
27 and where drinking water supplies are threatened by contamination.

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

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

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

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

27 (a) Land sited for use as a gaming facility or as a stadium or

1 arena for use by a professional sports team.

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

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

8 (7) The department, the department of natural resources, and
9 the department of community health shall each submit annually a
10 list of all projects that will be undertaken by that department
11 that are recommended to be funded under this part. The list shall
12 be submitted to the governor, the standing committees of the house
13 of representatives and the senate that primarily address issues
14 pertaining to the protection of natural resources and the
15 environment, and the appropriations committees in the house of
16 representatives and the senate. The list shall be submitted to the
17 legislative committees not later than February 15 of each year.
18 This list shall also be submitted before any request for
19 supplemental appropriation of bond funds. For each eligible
20 project, the list shall include the nature of the eligible project;
21 the county in which the eligible project is located; an estimate of
22 the total cost of the eligible project; and other information
23 considered pertinent by the administering state department. A
24 project that is funded by a grant or loan with money from the fund
25 does not need to be included on the list submitted under this
26 subsection. However, money in the fund that is appropriated for
27 grants and loans shall not be encumbered or expended until the

1 administering state department has reported those projects that
2 have been approved for a grant or a loan to the standing committees
3 of the house of representatives and the senate that primarily
4 address issues pertaining to the protection of natural resources
5 and the environment and to the appropriations subcommittees in the
6 house of representatives and the senate on natural resources and
7 environmental quality. Before submitting the first cycle of
8 recommended projects under subsection (1)(a), the department shall
9 publish and disseminate the criteria it will use in evaluating and
10 recommending these projects for funding.

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

15 (9) Not later than December 31 of each year, the department,
16 the department of natural resources, and the department of
17 community health shall each submit a list of the projects financed
18 under this part by that department to the governor, the standing
19 committees of the house of representatives and the senate that
20 primarily address issues pertaining to the protection of natural
21 resources and the environment, and the subcommittees of the house
22 of representatives and the senate on appropriations on natural
23 resources and environmental quality. Each list shall include the
24 name, address, and telephone number of the recipient or
25 participant, if appropriate; the name and location of the project;
26 the nature of the project; the amount of money allocated to the
27 project; the county in which the project is located; a brief

1 summary of what has been accomplished by the project; and other
2 information considered pertinent by the administering state
3 department.

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

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

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

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

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

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

25 (5) If an approved applicant fails to sign a grant or loan
26 agreement within 90 days after receipt of a written grant or loan
27 offer by the administering state department, the administering

1 state department may cancel the grant or loan offer. The applicant
2 may not appeal or contest a cancellation pursuant to this
3 subsection.

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

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

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

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

20 (c) A loan recipient shall enter into a loan agreement with
21 the administering state department. ~~At a minimum, the loan~~
22 ~~agreement shall contain a commitment that the loan is secured by a~~
23 ~~full faith and credit pledge of the applicant, or if the applicant~~
24 ~~is an authority established pursuant to the brownfield~~
25 ~~redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,~~
26 ~~the commitment shall be from the municipality that created the~~
27 ~~authority pursuant to that act.~~

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

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

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

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

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

21 (b) "Agricultural property" means real property used for
22 farming in any of its branches, including cultivating of soil;
23 growing and harvesting of any agricultural, horticultural, or
24 floricultural commodity; dairying; raising of livestock, bees,
25 fish, fur-bearing animals, or poultry; turf and tree farming; and
26 performing any practices on a farm as an incident to, or in
27 conjunction with, these farming operations. Agricultural property

1 does not include property used for commercial storage, processing,
2 distribution, marketing, or shipping operations.

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

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

10 (e) "Background concentration" means the concentration or
11 level of a hazardous substance that exists in the environment at or
12 regionally proximate to a facility that is not attributable to any
13 release at or regionally proximate to the facility. **A PERSON MAY**
14 **DEMONSTRATE A BACKGROUND CONCENTRATION FOR A HAZARDOUS SUBSTANCE BY**
15 **ANY OF THE FOLLOWING METHODS:**

16 (i) **THE HAZARDOUS SUBSTANCE COMPLIES WITH THE STATEWIDE DEFAULT**
17 **BACKGROUND LEVELS UNDER R 299.5746 OF THE MICHIGAN ADMINISTRATIVE**
18 **CODE.**

19 (ii) **THE HAZARDOUS SUBSTANCE IS LISTED IN THE DEPARTMENT'S 2005**
20 **MICHIGAN BACKGROUND SOIL SURVEY AND FALLS WITHIN THE TYPICAL RANGES**
21 **PUBLISHED IN THAT DOCUMENT.**

22 (iii) **THE HAZARDOUS SUBSTANCE IS LISTED IN ANY OTHER STUDY OR**
23 **SURVEY CONDUCTED OR APPROVED BY THE DEPARTMENT AND IS WITHIN THE**
24 **CONCENTRATIONS OR FALLS WITHIN THE TYPICAL RANGES PUBLISHED IN THAT**
25 **STUDY OR SURVEY.**

26 (iv) **A SITE-SPECIFIC DEMONSTRATION.**

27 (f) "Baseline environmental assessment" means a written

1 document that describes the results of an all appropriate inquiry
2 and the sampling and analysis that confirm that the property is a
3 facility. However, for purposes of a baseline environmental
4 assessment, the all appropriate inquiry under 40 CFR 312.20(a) may
5 be conducted within 45 days after the date of acquisition of a
6 property and the components of an all appropriate inquiry under 40
7 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated
8 within 45 days after the date of acquisition of a property.

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

11 (H) "CERTIFICATE OF COMPLETION" MEANS A WRITTEN RESPONSE
12 PROVIDED BY THE DEPARTMENT CONFIRMING THAT A RESPONSE ACTIVITY HAS
13 BEEN COMPLETED IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS OF
14 THIS PART AND IS APPROVED BY THE DEPARTMENT.

15 (I) ~~(h)~~—"Cleanup criteria for unrestricted residential use"
16 means either of the following:

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

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

21 (J) ~~(i)~~—"Department" means the director of the department of
22 ~~natural resources and environment~~ ENVIRONMENTAL QUALITY or his or
23 her designee to whom the director delegates a power or duty by
24 written instrument.

25 (K) ~~(j)~~—"Director" means the director of the department of
26 ~~natural resources and environment~~ ENVIRONMENTAL QUALITY.

27 (L) ~~(k)~~—"Directors" means the directors or their designees of

1 the departments of ~~natural resources and environment~~, **ENVIRONMENTAL**
2 **QUALITY**, community health, agriculture **AND RURAL DEVELOPMENT**, and
3 state police.

4 (M) ~~(H)~~ "Disposal" means the discharge, deposit, injection,
5 dumping, spilling, leaking, or placing of any hazardous substance
6 into or on any land or water so that the hazardous substance or any
7 constituent of the hazardous substance may enter the environment or
8 be emitted into the air or discharged into any groundwater or
9 surface water.

10 (N) ~~(m)~~ "Enforcement costs" means court expenses, reasonable
11 attorney fees of the attorney general, and other reasonable
12 expenses of an executive department that are incurred in relation
13 to enforcement under this part.

14 (O) ~~(n)~~ "Environment" or "natural resources" means land,
15 surface water, groundwater, subsurface ~~—~~strata, air, fish,
16 wildlife, or biota within the state.

17 (P) ~~(e)~~ "Environmental contamination" means the release of a
18 hazardous substance, or the potential release of a discarded
19 hazardous substance, in a quantity which is or may become injurious
20 to the environment or to the public health, safety, or welfare.

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

26 (R) ~~(q)~~ "Exacerbation" means the occurrence of either of the
27 following caused by an activity undertaken by the person who owns

1 or operates the property, with respect to contamination for which
2 the person is not liable:

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

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

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

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

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

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

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

26 (B) Hazardous substances at the area, place, or property that
27 are not addressed by site-specific criteria satisfy the cleanup

1 criteria for unrestricted residential use.

2 (T) ~~(s)~~—"Feasibility study" means a process for developing,
3 evaluating, and selecting appropriate response activities.

4 (U) ~~(t)~~—"Financial assurance" means a performance bond,
5 escrow, cash, certificate of deposit, irrevocable letter of credit,
6 corporate guarantee, or other equivalent security, or any
7 combination thereof.

8 (V) ~~(u)~~—"Foreclosure" means possession of a property by a
9 lender on which it has foreclosed on a security interest or the
10 expiration of a lawful redemption period, whichever occurs first.

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

15 (X) ~~(w)~~—"Fund" means the cleanup and redevelopment fund
16 established in section 20108.

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

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

1 resources.

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

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

6 (iv) Petroleum as described in part 213.

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

18 **(AA)** ~~(z)~~—"Lender" means any of the following:

19 (i) A state or nationally chartered bank.

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

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

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

26 (v) An insurance company authorized to do business in this
27 state pursuant to the insurance code of 1956, 1956 PA 218, MCL

1 500.100 to 500.8302.

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

5 (vii) A foreign bank.

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

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

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

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

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

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

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

27 **(DD)** ~~(ee)~~—"Method detection limit" means the minimum

1 concentration of a hazardous substance which can be measured and
2 reported with 99% confidence that the analyte concentration is
3 greater than zero and is determined from analysis of a sample in a
4 given matrix that contains the analyte.

5 **(EE)** ~~(dd)~~—"No further action letter" means a written response
6 provided by the department under section 20114d confirming that a
7 no further action report has been approved after review by the
8 department.

9 **(FF)** ~~(ee)~~—"No further action report" means a report under
10 section 20114d detailing the completion of remedial actions and
11 including a postclosure plan and a postclosure agreement, if
12 appropriate.

13 **(GG)** ~~(ff)~~—"Operator" means a person who is in control of or
14 responsible for the operation of a facility. Operator does not
15 include either of the following:

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

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

22 **(HH)** ~~(gg)~~—"Owner" means a person who owns a facility. Owner
23 does not include either of the following:

24 (i) A person who holds indicia of ownership primarily to
25 protect the person's security interest in the facility, including,
26 but not limited to, a vendor's interest under a recorded land
27 contract, unless that person participates in the management of the

1 facility as described in section 20101a.

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

4 **(II)** ~~(hh)~~ "Panel" means the response activity review panel
5 created in section 20114e.

6 **(JJ)** ~~(ii)~~ "Permitted release" means 1 or more of the
7 following:

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

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

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

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

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

23 **(MM)** ~~(ll)~~ "Release" includes, but is not limited to, any
24 spilling, leaking, pumping, pouring, emitting, emptying,
25 discharging, injecting, escaping, leaching, dumping, or disposing
26 of a hazardous substance into the environment, or the abandonment
27 or discarding of barrels, containers, and other closed receptacles

1 containing a hazardous substance. Release does not include any of
2 the following:

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

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

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

16 (iv) If applied according to label directions and according to
17 generally accepted agricultural and management practices **DEVELOPED**
18 **PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471**
19 **TO 286.474**, the application of a fertilizer, soil conditioner,
20 agronomically applied manure, or pesticide, or fruit, vegetable, or
21 field crop residuals or processing by-products, aquatic plants, or
22 a combination of these substances. As used in this subparagraph,
23 fertilizer and soil conditioner have the meaning given to these
24 terms in part 85, and pesticide has the meaning given to that term
25 in part 83.

26 (v) A release does not include fruits, vegetables, field crop
27 processing by-products, or aquatic plants, that are applied to the

1 land for an agricultural use or for use as an animal feed, if the
 2 use is consistent with generally accepted agricultural and
 3 management practices developed pursuant to the Michigan right to
 4 farm act, 1981 PA 93, MCL 286.471 to 286.474.

5 **(vi) THE RELOCATION OF SOIL UNDER SECTION 20120C.**

6 **(NN)** ~~(mm)~~—"Remedial action" includes, but is not limited to,
 7 cleanup, removal, containment, isolation, destruction, or treatment
 8 of a hazardous substance released or threatened to be released into
 9 the environment, monitoring, maintenance, or the taking of other
 10 actions that may be necessary to prevent, minimize, or mitigate
 11 injury to the public health, safety, or welfare, or to the
 12 environment.

13 **(OO)** ~~(nn)~~—"Remedial action plan" means a work plan for
 14 performing remedial action under this part.

15 **(PP)** ~~(oo)~~—"Residential closure" means a ~~facility~~**PROPERTY** at
 16 which the contamination has been addressed in a no further action
 17 report that satisfies the limited residential cleanup criteria
 18 under section 20120a(1)(c) or the site-specific residential cleanup
 19 criteria under sections 20120a(2) and 20120b, that contains land
 20 use or resource use restrictions, and that is approved by the
 21 department or is considered approved by the department under
 22 section 20120d.

23 **(QQ)** ~~(pp)~~—"Response activity" means evaluation, interim
 24 response activity, remedial action, demolition, **PROVIDING AN**
 25 **ALTERNATIVE WATER SUPPLY**, or the taking of other actions necessary
 26 to protect the public health, safety, or welfare, or the
 27 environment or the natural resources. Response activity also

1 includes health assessments or health effect studies carried out
 2 under the supervision, or with the approval of, the department of
 3 community health and enforcement actions related to any response
 4 activity.

5 **(RR)** ~~(qq)~~—"Response activity costs" or "costs of response
 6 activity" means all costs incurred in taking or conducting a
 7 response activity, including enforcement costs.

8 **(SS)** ~~(rr)~~—"Response activity plan" means a plan for
 9 undertaking response activities. A response activity plan may
 10 include 1 or more of the following:

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

12 (ii) A plan for evaluation activities.

13 (iii) A feasibility study.

14 (iv) A remedial action plan.

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

27 **(UU)** ~~(tt)~~—"Target detection limit" means the detection limit

1 for a hazardous substance in a given environmental medium that is
2 specified by the department on a list that it publishes not more
3 than once a year. The department shall identify 1 or more
4 analytical methods, when a method is available, that are judged to
5 be capable of achieving the target detection limit for a hazardous
6 substance in a given environmental medium. The target detection
7 limit for a given hazardous substance is greater than or equal to
8 the method detection limit for that hazardous substance. In
9 establishing a target detection limit, the department shall
10 consider the following factors:

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

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

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

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

19 (VV) ~~(uu)~~ "Threatened release" or "threat of release" means
20 any circumstance that may reasonably be anticipated to cause a
21 release.

22 (WW) ~~(vv)~~ "Venting groundwater" means groundwater that is
23 entering a surface water of the state from a facility.

24 (2) As used in this part:

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

1 been adjudicated.

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

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

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

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

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

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

1 March 1, 1995.

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

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

8 (b) Make the following notifications:

9 (i) If the release is of a reportable quantity of a hazardous
10 substance under 40 CFR 302.4 and 302.6 ~~(1989)~~, **(JULY 1, 2012**
11 **EDITION)**, report the release to the department within 24 hours
12 after obtaining knowledge of the release.

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

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

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

27 (d) Immediately implement source control or removal measures

1 to remove or contain hazardous substances that are released after
2 June 5, 1995 if those measures are technically practical, cost
3 effective, and provide protection to the environment. At a facility
4 where hazardous substances are released after June 5, 1995, and
5 those hazardous substances have not affected groundwater but are
6 likely to, groundwater contamination shall be prevented if it can
7 be prevented by measures that are technically practical, cost
8 effective, and provide protection to the environment.

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

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

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

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

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

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

26 (i) Provide a response activity plan containing a plan for
27 undertaking interim response activities and undertake interim

1 response activities consistent with that plan.

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

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

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

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

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

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

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

25 (3) Except as provided in subsection (4), a person who holds
26 an easement interest in a portion of a property who has knowledge
27 that there may be a release within that easement shall report the

1 release to the department within 24 hours after obtaining knowledge
2 of the release. This subsection applies to reportable quantities of
3 hazardous substances established pursuant to 40 CFR 302.4 and 302.6
4 ~~(1989)~~. **(JULY 1, 2012 EDITION)**.

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

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

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

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

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

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

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

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

27 (i) A facility at which remedial action satisfies the cleanup

1 criteria for the nonresidential category under section
2 20120a(1)(b).

3 (ii) Use of groundwater.

4 (iii) Protection of the integrity of exposure controls that
5 prevent contact with soil, and those controls are composed solely
6 of asphalt, concrete, or landscaping materials. This subparagraph
7 does not apply if the hazardous substances that are addressed by
8 the barrier exceed a cleanup criterion based on acute toxic
9 effects, reactivity, corrosivity, ignitability, explosivity, or
10 flammability. ~~7 or if any hazardous substance addressed by the~~
11 ~~exposure control is present at a concentration of more than 10~~
12 ~~times an applicable soil direct contact cleanup criterion.~~

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 20114d. (1) Upon completion of remedial actions that
16 satisfy ~~applicable cleanup criteria established under THE~~
17 **REQUIREMENTS OF** this part, ~~and all other requirements of this part~~
18 ~~that are applicable to remedial action,~~ a person may submit a no
19 further action report to the department. ~~The~~ **A PERSON MAY SUBMIT A**
20 **NO FURTHER ACTION REPORT UNDER THIS SUBSECTION FOR REMEDIAL ACTIONS**
21 **ADDRESSING CONTAMINATION FOR WHICH THE PERSON IS OR IS NOT LIABLE.**
22 **REMEDIAL ACTIONS INCLUDED IN A NO FURTHER ACTION REPORT MAY ADDRESS**
23 **ALL OR A PORTION OF CONTAMINATION AT A FACILITY AS FOLLOWS:**

24 **(A) THE REMEDIAL ACTIONS MAY ADDRESS 1 OR MORE RELEASES AT A**
25 **FACILITY.**

26 **(B) THE REMEDIAL ACTIONS MAY ADDRESS 1 OR MORE HAZARDOUS**
27 **SUBSTANCES AT A FACILITY.**

1 (C) THE REMEDIAL ACTIONS MAY ADDRESS CONTAMINATION IN 1 OR
2 MORE ENVIRONMENTAL MEDIA AT A FACILITY.

3 (D) THE REMEDIAL ACTIONS MAY ADDRESS CONTAMINATION WITHIN THE
4 ENTIRE FACILITY OR ONLY A PORTION OF A FACILITY.

5 (E) THE REMEDIAL ACTIONS MAY ADDRESS CONTAMINATION AT A
6 FACILITY THROUGH ANY COMBINATION OF SUBDIVISIONS (A) THROUGH (D).

7 (2) A no further action report SUBMITTED UNDER SUBSECTION (1)
8 shall document the basis for concluding that the remedial actions
9 have been completed. A no further action report may include a
10 request that, upon approval, the ~~facility~~ **RELEASE OR CONDITIONS**
11 **ADDRESSED BY THE NO FURTHER ACTION REPORT** be designated as a
12 residential closure. A no further action report shall be submitted
13 with a form developed by the department. The department shall make
14 this form available on its website.

15 (3) ~~(2)~~ A no further action report submitted under subsection
16 (1) shall be submitted with the following, as applicable:

17 (a) If the remedial action at the facility satisfies the
18 cleanup criteria for unrestricted residential use **FOR THE HAZARDOUS**
19 **SUBSTANCES AND PORTION OF THE FACILITY ADDRESSED IN THE NO FURTHER**
20 **ACTION REPORT**, neither a postclosure plan or a proposed postclosure
21 agreement is required to be submitted.

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

27 (c) For ~~facilities~~ **CIRCUMSTANCES** other than those described in

1 subdivision (a) or (b), a postclosure plan and a proposed
2 postclosure agreement are required to be submitted.

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

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

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

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

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

25 (5) ~~(4)~~—A postclosure agreement may modify the terms of a
26 postclosure plan as follows:

27 (a) If the exposure to hazardous substances **ADDRESSED IN THE**

1 **NO FURTHER ACTION REPORT** may be reliably restricted by an
2 institutional control in lieu of a restrictive covenant, and
3 imposition of land use or resource use restrictions through
4 restrictive covenants is impractical, the postclosure agreement may
5 allow for a remedial action under section 20120a(1)(c) or (d) or
6 (2) to rely on an institutional control in lieu of a restrictive
7 covenant in a postclosure plan. Mechanisms that may be considered
8 under this subsection include, but are not limited to, an ordinance
9 that restricts the use of groundwater or an aquifer in a manner and
10 to a degree that protects against unacceptable exposures. An
11 ordinance that serves as an exposure control pursuant to this
12 subsection shall be published and maintained in the same manner as
13 zoning ordinances and shall include a requirement that the local
14 unit of government notify the department at least 30 days prior to
15 adopting a modification to the ordinance, or to the lapsing or
16 revocation of the ordinance.

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

19 (6) ~~(5)~~—The person submitting a no further action report shall
20 include a signed affidavit attesting to the fact that the
21 information upon which the no further action report is based is
22 complete and true to the best of that person's knowledge. The no
23 further action report shall also include a signed affidavit from an
24 environmental consultant who meets the professional qualifications
25 described in section 20114e(2) and who prepared the no further
26 action report, attesting to the fact that the remedial actions
27 detailed in the no further action report comply with all applicable

1 requirements and that the information upon which the no further
2 action report is based is complete and true to the best of that
3 person's knowledge. In addition, the environmental consultant shall
4 attach a certificate of insurance demonstrating that the
5 environmental consultant has obtained at least all of the following
6 from a carrier that is authorized to conduct business in this
7 state:

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

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

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

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

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

24 (7) ~~(6)~~—A person submitting a no further action report shall
25 maintain all documents and data prepared, acquired, or relied upon
26 in connection with the no further action report for not less than
27 10 years after the later of the date on which the department

1 approves the no further action report under this section, or the
2 date on which no further monitoring, operation, or maintenance is
3 required to be undertaken as part of the remedial action covered by
4 the report. All documents and data required to be maintained under
5 this section shall be made available to the department upon
6 request.

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

1 review and provide a written response within the time frames
2 required by this subsection for at least 90% of the no further
3 action reports submitted to the department under this section in
4 each calendar year.

5 (9) ~~(8)~~—If the department fails to provide a written response
6 within the time frames required by subsection ~~(7)~~, ~~(8)~~, the no
7 further action report is considered approved.

8 (10) ~~(9)~~—A person requesting approval of a no further action
9 report under subsection ~~(7)~~—~~(8)~~ may appeal the department's
10 decision in accordance with section 20114e.

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

15 (12) ~~(11)~~—Following approval of a no further action report
16 under this section, the owner or operator of the facility addressed
17 by the no further action report may submit to the department an
18 amended no further action report. The amended no further action
19 report shall include the proposed changes to the original no
20 further action report and an accompanying rationale for the
21 proposed change. The process for review and approval of an amended
22 no further action report is the same as the process for no further
23 action reports.

24 Sec. 20114e. (1) The director shall establish a response
25 activity review panel to advise him or her on technical or
26 scientific disputes, including disputes regarding assessment of
27 risk, ~~concerning~~ response activity plans, ~~and~~ no further action

1 reports, **CERTIFICATES OF COMPLETION, AND DOCUMENTATIONS OF DUE CARE**
2 **COMPLIANCE** under this part, and initial assessment reports, final
3 assessment reports, ~~and~~-closure reports, **AND DOCUMENTATIONS OF DUE**
4 **CARE COMPLIANCE** under part 213.

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

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

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

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

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

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

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

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

25 (b) The individual is a party to 1 or more contracts with the
26 department and the compensation paid under those contracts
27 represented more than 5% of the individual's annual gross revenue

1 in any of the preceding 3 years.

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

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

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

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

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

25 (7) A person who submitted a response activity plan, ~~or~~ a no
26 further action report, **A REQUEST FOR CERTIFICATE OF COMPLETION, OR**
27 **DOCUMENTATION OF DUE CARE COMPLIANCE** under this part or an initial

1 assessment report, final assessment report, ~~or~~ closure report, OR
2 **DOCUMENTATION OF DUE CARE COMPLIANCE** under part 213 may appeal a
3 decision made by the department regarding a technical or scientific
4 dispute, including a dispute regarding assessment of risk,
5 concerning the response activity plan, no further action report,
6 **REQUEST FOR CERTIFICATE OF COMPLETION**, initial assessment report,
7 final assessment report, ~~or~~ closure report, OR **DOCUMENTATION OF DUE**
8 **CARE COMPLIANCE** by submitting a petition to the director. However,
9 an issue that was addressed as part of the final decision of the
10 director under section 21332 or that is the subject of a contested
11 case hearing under section 21332 is not eligible for review by the
12 panel. The petition shall include the issues in dispute, the
13 relevant facts upon which the dispute is based, factual data,
14 analysis, opinion, and supporting documentation for the
15 petitioner's position. The petitioner shall also submit a fee of
16 \$3,500.00. If the director believes that the dispute may be able to
17 be resolved without convening the panel, the director may contact
18 the petitioner regarding the issues in dispute and may negotiate a
19 resolution of the dispute. This negotiation period shall not exceed
20 45 days. If the dispute is resolved without convening the panel,
21 any fee that is submitted with the petition shall be returned.

22 (8) If a dispute is not resolved pursuant to subsection (7),
23 the director shall schedule a meeting of 5 members of the panel,
24 selected on the basis of their relevant expertise, within 45 days
25 after receiving the original petition. If the dispute involves an
26 underground storage tank system, at least 3 of the members selected
27 shall have relevant experience in the American society for testing

1 and materials risk-based corrective action processes described in
2 part 213. A member selected for the dispute resolution process
3 shall agree not to accept employment by the person bringing the
4 dispute before the panel, or to undertake any employment concerning
5 the facility in question for a period of 1 year after the decision
6 has been rendered on the matter if that employment would represent
7 more than 5% of the member's gross revenue in any of the preceding
8 3 years. The director shall provide a copy of all supporting
9 documentation to members of the panel who will hear the dispute. An
10 alternative member may be selected by the director to replace a
11 member who is unable to participate in the dispute resolution
12 process. Any action by the members selected to hear the dispute
13 shall require a majority of the votes cast. The members selected
14 for the dispute resolution process shall elect a chairperson of the
15 dispute resolution process. At a meeting scheduled to hear the
16 dispute, representatives of the petitioner and the department shall
17 each be afforded an opportunity to present their positions to the
18 panel. The fee that is received by the director along with the
19 petition shall be forwarded to the state treasurer for deposit into
20 the fund.

21 (9) Within 45 days after hearing the dispute, the members of
22 the panel who were selected for and participated in the dispute
23 resolution process shall make a recommendation regarding the
24 petition and provide written notice of the recommendation to the
25 director of the department and the petitioner. The written
26 recommendation shall include the specific scientific or technical
27 rationale for the recommendation. The panel's recommendation

1 regarding the petition may be to adopt, modify, or reverse, in
2 whole or in part, the department's decision that is the subject of
3 the petition. If the panel does not make its recommendation within
4 this 45-day time period, the decision of the department is the
5 final decision of the director.

6 (10) Within 60 days after receiving written notice of the
7 panel's recommendation, the director shall issue a final decision,
8 in writing, regarding the petition. However, this time period may
9 be extended by written agreement between the director and the
10 petitioner. If the director agrees with the recommendation of the
11 panel, the department shall incorporate the recommendation into its
12 response to the response activity plan, no further action report,
13 **REQUEST FOR CERTIFICATE OF COMPLETION**, initial assessment report,
14 final assessment report, ~~or~~-closure report, **OR DOCUMENTATION OF DUE**
15 **CARE COMPLIANCE**. If the director rejects the recommendation of the
16 panel, the director shall issue a written decision to the
17 petitioner with a specific rationale for rejecting the
18 recommendation of the panel. If the director fails to issue a final
19 decision within the time period provided for in this subsection,
20 the recommendation of the panel shall be considered the final
21 decision of the director. The final decision of the director under
22 this subsection is subject to review pursuant to section 631 of the
23 revised judicature act of 1961, 1961 PA 236, MCL 600.631.

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

1 the member with regard to compliance with this part.

2 (12) A member of the panel shall not participate in the
3 dispute resolution process for any appeal in which that member has
4 a conflict of interest. The director shall select a member of the
5 panel to replace a member who has a conflict of interest under this
6 subsection. For purposes of this subsection, a member has a
7 conflict of interest if a petitioner has hired that member or the
8 member's employer on any environmental matter within the preceding
9 3 years.

10 (13) As used in this section, "relevant experience" means
11 active participation in the preparation, design, implementation,
12 and assessment of remedial investigations, feasibility studies,
13 interim response activities, and remedial actions under this part
14 or experience in the American society for testing and materials
15 risk-based corrective action processes described in part 213. This
16 experience must demonstrate the exercise of sound professional
17 judgment and knowledge of the requirements of this part or part
18 213, or both.

19 **SEC. 20114F. (1) UPON COMPLETION OF A RESPONSE ACTIVITY A**
20 **PERSON MAY REQUEST A CERTIFICATE OF COMPLETION FROM THE DEPARTMENT.**

21 **(2) TO OBTAIN A CERTIFICATE OF COMPLETION FROM THE DEPARTMENT**
22 **UNDER THIS SECTION, A PERSON SHALL SUBMIT EACH OF THE FOLLOWING TO**
23 **THE DEPARTMENT:**

24 **(A) A CERTIFICATE OF COMPLETION REQUEST FORM. THE DEPARTMENT**
25 **SHALL SPECIFY THE REQUIRED CONTENT OF THE REQUEST FORM AND MAKE THE**
26 **FORM AVAILABLE ON THE DEPARTMENT'S WEBSITE.**

27 **(B) DOCUMENTATION OF THE COMPLETED RESPONSE ACTIVITY.**

1 (3) UPON RECEIPT OF A REQUEST FOR A CERTIFICATE OF COMPLETION
2 SUBMITTED UNDER THIS SUBSECTION, THE DEPARTMENT SHALL ISSUE A
3 CERTIFICATE OR DENY THE REQUEST, OR SHALL NOTIFY THE SUBMITTER THAT
4 THERE IS NOT SUFFICIENT INFORMATION FOR THE DEPARTMENT TO MAKE A
5 DECISION. IF THE DEPARTMENT'S RESPONSE IS THAT THE REQUEST DOES NOT
6 INCLUDE SUFFICIENT INFORMATION, THE DEPARTMENT SHALL IDENTIFY THE
7 INFORMATION THAT IS REQUIRED FOR THE DEPARTMENT TO MAKE A DECISION.
8 IF THE REQUEST IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE
9 EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR
10 DENIAL. THE DEPARTMENT SHALL MAKE A DECISION UNDER THIS SUBSECTION
11 AND SHALL PROVIDE THE PERSON SUBMITTING THE REQUEST WITH A
12 CERTIFICATE OF COMPLETION, AS APPROPRIATE, WITHIN 1 OF THE
13 FOLLOWING TIME FRAMES, AS APPLICABLE:

14 (A) 150 DAYS AFTER THE REQUEST WAS RECEIVED BY THE DEPARTMENT
15 IF THE RESPONSE ACTIVITY WAS UNDERTAKEN WITHOUT PRIOR APPROVAL OF
16 THE DEPARTMENT AND THE DEPARTMENT DETERMINES THAT THE RESPONSE
17 ACTIVITY COMPLIES WITH THE APPLICABLE REQUIREMENTS OF THIS PART.

18 (B) 90 DAYS AFTER THE REQUEST WAS RECEIVED BY THE DEPARTMENT
19 IF THE RESPONSE ACTIVITY WAS UNDERTAKEN PURSUANT TO A RESPONSE
20 ACTIVITY PLAN THAT WAS APPROVED UNDER SECTION 20114B AND THE
21 DEPARTMENT DETERMINES THAT THE RESPONSE ACTIVITY WAS COMPLETED IN
22 ACCORDANCE WITH THE APPROVED PLAN.

23 (4) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE
24 WITHIN THE TIME FRAME REQUIRED BY SUBSECTION (3), THE RESPONSE
25 ACTIVITY IS CONSIDERED APPROVED.

26 (5) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY
27 MUTUAL AGREEMENT OF THE DEPARTMENT AND A PERSON SUBMITTING A

1 REQUEST FOR A CERTIFICATE OF COMPLETION OR A PERSON WHO HAS
2 RECEIVED A CERTIFICATE OF COMPLETION. AN AGREEMENT EXTENDING A TIME
3 FRAME SHALL BE IN WRITING.

4 (6) A PERSON REQUESTING A CERTIFICATE OF COMPLETION MAY APPEAL
5 THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SECTION 20114E, IF
6 APPLICABLE.

7 SEC. 20114G. (1) A PERSON MAY SUBMIT TO THE DEPARTMENT
8 DOCUMENTATION OF DUE CARE COMPLIANCE REGARDING A FACILITY. THE
9 DOCUMENTATION OF DUE CARE COMPLIANCE SHALL BE SUBMITTED ON A FORM
10 PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN DOCUMENTATION OF
11 COMPLIANCE WITH SECTION 20107A, AND OTHER INFORMATION REQUIRED BY
12 THE DEPARTMENT.

13 (2) WITHIN 45 BUSINESS DAYS AFTER RECEIPT OF THE DOCUMENTATION
14 OF DUE CARE COMPLIANCE UNDER SUBSECTION (1) CONTAINING SUFFICIENT
15 INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION, THE DEPARTMENT
16 SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY THE DOCUMENTATION
17 OF DUE CARE COMPLIANCE. IF THE DEPARTMENT DOES NOT APPROVE THE
18 DOCUMENTATION OF DUE CARE COMPLIANCE, THE DEPARTMENT SHALL PROVIDE
19 THE PERSON THAT SUBMITTED THE DOCUMENTATION THE REASONS WHY THE
20 DOCUMENTATION OF DUE CARE COMPLIANCE WAS NOT APPROVED.

21 (3) A PERSON THAT DISAGREES WITH A DECISION OF THE DEPARTMENT
22 UNDER THIS SECTION MAY SUBMIT A PETITION FOR REVIEW OF SCIENTIFIC
23 OR TECHNICAL DISPUTES TO THE RESPONSE ACTIVITY REVIEW PANEL
24 PURSUANT TO SECTION 20114E.

25 Sec. 20120a. (1) The department may establish cleanup criteria
26 and approve of remedial actions in the categories listed in this
27 subsection. The cleanup category proposed shall be the option of

1 the person proposing the remedial action, subject to department
2 approval if required, considering the appropriateness of the
3 categorical criteria to the facility. The categories are as
4 follows:

5 (a) Residential.

6 (b) Nonresidential. ~~Beginning on the effective date of the~~
7 ~~2010 amendatory act that amended this section, the~~ **THE**
8 nonresidential cleanup criteria shall be the former industrial
9 categorical cleanup criteria developed by the department pursuant
10 to this section until new nonresidential cleanup criteria are
11 developed and published by the department pursuant to subsection
12 (17).

13 (c) Limited residential.

14 (d) Limited nonresidential.

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

25 (3) The department shall develop cleanup criteria pursuant to
26 subsection (1) based on generic human health risk assessment
27 assumptions determined by the department to appropriately

1 characterize patterns of human exposure associated with certain
2 land uses. The department shall utilize only reasonable and
3 relevant exposure pathways in determining these assumptions. The
4 department may prescribe more than 1 generic set of exposure
5 assumptions within each category described in subsection (1). If
6 the department prescribes more than 1 generic set of exposure
7 assumptions within a category, each set of exposure assumptions
8 creates a subcategory within a category described in subsection
9 (1). The department shall specify facility characteristics that
10 determine the applicability of criteria derived for these
11 categories or subcategories.

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

1 contribution is appropriate. If a hazardous substance poses a risk
2 of both cancer and 1 or more adverse health effects other than
3 cancer, cleanup criteria shall be derived under this section for
4 the most sensitive effect.

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

20 (6) The department shall not approve a remedial action plan or
21 no further action report in categories set forth in subsection
22 (1)(b) to (d), unless the person documents that the current zoning
23 of the property is consistent with the categorical criteria being
24 proposed, or that the governing zoning authority intends to change
25 the zoning designation so that the proposed criteria are consistent
26 with the new zoning designation, or the current property use is a
27 legal nonconforming use. The department shall not grant final

1 approval for a remedial action plan or no further action report
2 that relies on a change in zoning designation until a final
3 determination of that zoning change has been made by the local unit
4 of government. The department may approve of a remedial action plan
5 or no further action report that achieves categorical criteria that
6 are based on greater exposure potential than the criteria
7 applicable to current zoning. In addition, the remedial action plan
8 or no further action report shall include documentation that the
9 current property use is consistent with the current zoning or is a
10 legal nonconforming use. Abandoned or inactive property shall be
11 considered on the basis of zoning classifications as described
12 above.

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

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

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

27 (a) That application of the model results in a criterion that

1 more accurately reflects the risk posed.

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

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

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

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

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

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

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

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

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

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

1 the facility based on the requirements of this part.

2 (18) Not later than ~~2 years after the effective date of the~~
3 ~~2010 amendatory act that amended this section,~~ **DECEMBER 31, 2013,**
4 the department shall evaluate and revise the cleanup criteria
5 derived under this section. The evaluation **AND ANY REVISIONS** shall
6 incorporate knowledge gained through research and studies in the
7 areas of fate and transport and risk assessment **AND SHALL TAKE INTO**
8 **ACCOUNT BEST PRACTICES FROM OTHER STATES, REASONABLE AND REALISTIC**
9 **CONDITIONS, AND SOUND SCIENCE.** Following this revision, the
10 department shall periodically evaluate whether new information is
11 available regarding the cleanup criteria and shall make revisions
12 as appropriate. The department shall prepare and submit to the
13 legislature a report detailing any revisions made to cleanup
14 criteria under this section.

15 (19) **A PERSON DEMONSTRATES COMPLIANCE WITH INDOOR AIR**
16 **INHALATION CRITERIA FOR A HAZARDOUS SUBSTANCE AT A FACILITY UNDER**
17 **THIS PART IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

18 (A) **THE FACILITY IS AN ESTABLISHMENT COVERED BY THE**
19 **CLASSIFICATIONS PROVIDED BY SECTOR 31-33 - MANUFACTURING, OF THE**
20 **NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM, UNITED STATES, 2012,**
21 **PUBLISHED BY THE OFFICE OF MANAGEMENT AND BUDGET.**

22 (B) **THE PERSON COMPLIES WITH THE MICHIGAN OCCUPATIONAL SAFETY**
23 **AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO 408.1094, AND THE**
24 **RULES PROMULGATED UNDER THAT ACT APPLICABLE TO THE EXPOSURE TO THE**
25 **HAZARDOUS SUBSTANCE, INCLUDING, BUT NOT LIMITED TO, THE**
26 **OCCUPATIONAL HEALTH STANDARDS FOR AIR CONTAMINANTS, R 325.51101 TO**
27 **R 325.51108 OF THE MICHIGAN ADMINISTRATIVE CODE.**

1 (C) THE HAZARDOUS SUBSTANCE IS INCLUDED IN THE FACILITY'S
2 HAZARD COMMUNICATION PROGRAM UNDER SECTION 14A OF THE MICHIGAN
3 OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL 408.1014A, AND
4 THE HAZARD COMMUNICATION RULES, R 325.77001 TO R 325.77003 OF THE
5 MICHIGAN ADMINISTRATIVE CODE, EXCEPT THAT UNLESS THE HAZARDOUS
6 SUBSTANCE IS IN USE IN THE FACILITY, THE REQUIREMENT TO HAVE A
7 MATERIAL SAFETY DATA SHEET IN THE WORKPLACE REQUIRES ONLY A GENERIC
8 MATERIAL SAFETY DATA SHEET FOR THE HAZARDOUS SUBSTANCE AND THE
9 LABELING REQUIREMENTS DO NOT APPLY.

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

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

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

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

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

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

27 (e) Use probabilistic methods of calculation.

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

3 Sec. 20120c. ~~(1) An owner or operator shall not remove soil,~~
4 ~~or allow soil to be removed, from a facility to an off site~~
5 ~~location unless that person determines that the soil can be~~
6 ~~lawfully relocated without posing a threat to the public health,~~
7 ~~safety, or welfare, or the environment. The determination shall~~
8 ~~consider whether the soil is subject to regulation pursuant to part~~
9 ~~111.~~

10 ~~—— (2) For the purposes of subsection (1), soil poses a threat to~~
11 ~~the public health, safety, or welfare, or the environment if~~
12 ~~concentrations of hazardous substances in the soil exceed the~~
13 ~~cleanup criterion determined pursuant to section 20120a(1) or (2)~~
14 ~~that apply to the location to which the soil will be moved or~~
15 ~~relocated, except that if the soil is to be removed from the~~
16 ~~facility for disposal or treatment, the soil shall satisfy the~~
17 ~~appropriate regulatory criteria for disposal or treatment. Any land~~
18 ~~use or resource use restrictions that would be required for the~~
19 ~~application of a criterion pursuant to section 20120a(1) or (2)~~
20 ~~shall be in place at the location to which the soil will be moved.~~
21 ~~Soil may be relocated only to another location that is similarly~~
22 ~~contaminated, considering the general nature, concentration, and~~
23 ~~mobility of hazardous substances present at the location to which~~
24 ~~contaminated soil will be moved. Contaminated soil shall not be~~
25 ~~moved to a location that is not a facility unless it is taken there~~
26 ~~for treatment or disposal in conformance with applicable laws and~~
27 ~~regulations.~~

~~1 (3) An owner or operator shall not relocate soil, or allow
2 soil to be relocated, within a facility where a remedial action
3 plan has been approved unless that person assures that the same
4 degree of control required for application of the criteria of
5 section 20120a(1) or (2) is provided for the contaminated soil.~~

~~6 (4) The prohibition in subsection (3) against relocation of
7 contaminated soil within a facility does not apply to soils that
8 are temporarily relocated for the purpose of implementing response
9 activity or utility construction if the response activity or
10 utility construction is completed in a timely fashion and the
11 short term hazards are appropriately controlled.~~

~~12 (5) If soil is being moved off site from, moved to, or
13 relocated on site at a facility where a remedial action plan has
14 been approved by the department based on a categorical cleanup
15 criterion in section 20120a(1)(c) or (d) or (2), the soil shall not
16 be moved without prior department approval.~~

~~17 (6) If soil is being relocated in a manner not addressed by
18 subsection (5), the owner or operator of the facility from which
19 soil is being moved must provide notice to the department within 14
20 days after the soil is moved. The notice shall include all of the
21 following:~~

~~22 (a) The location from which soil will be removed.~~

~~23 (b) The location to which the soil will be taken.~~

~~24 (c) The volume of soil to be moved.~~

~~25 (d) A summary of information or data on which the owner or
26 operator is basing the determination required in subsection (2)
27 that the soil does not present a threat to the public health,~~

1 ~~safety, or welfare, or the environment.~~

2 ~~—— (e) If land use or resource use restrictions in a postclosure~~
3 ~~plan or a postclosure agreement would apply to the soil when it is~~
4 ~~relocated, the notice shall include documentation that those~~
5 ~~restrictions are in place.~~

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

10 ~~—— (8) This section does not apply to soil that is designated as~~
11 ~~an inert material pursuant to section 11507(3).~~

12 (1) AN OWNER OR OPERATOR MAY RELOCATE CONTAMINATED SOIL OFF-
13 SITE OR ALLOW CONTAMINATED SOIL TO BE RELOCATED OFF-SITE IF ALL OF
14 THE FOLLOWING REQUIREMENTS ARE MET:

15 (A) THE PERSON DETERMINES THAT THE SOIL CAN BE LAWFULLY
16 RELOCATED WITHOUT POSING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR
17 WELFARE OR THE ENVIRONMENT. IN MAKING THE DETERMINATION, THE OWNER
18 OR OPERATOR SHALL CONSIDER WHETHER THE SOIL IS SUBJECT TO
19 REGULATION UNDER PART 111. FOR THE PURPOSES OF THIS SUBDIVISION,
20 SOIL POSES A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
21 ENVIRONMENT IF CONCENTRATIONS OF HAZARDOUS SUBSTANCES IN THE SOIL
22 EXCEED THE CLEANUP CRITERION DETERMINED PURSUANT TO SECTION
23 20120A(1) OR (2) THAT APPLY TO THE FACILITY TO WHICH THE SOIL WILL
24 BE RELOCATED. ANY LAND USE OR RESOURCE USE RESTRICTIONS THAT WOULD
25 BE REQUIRED FOR THE APPLICATION OF A CRITERION PURSUANT TO SECTION
26 20120A(1) OR (2) SHALL BE IN PLACE AT THE FACILITY BEFORE THE SOIL
27 IS RELOCATED. CONTAMINATED SOIL SHALL NOT BE RELOCATED TO A

1 LOCATION THAT IS NOT A FACILITY.

2 (B) PRIOR DEPARTMENT APPROVAL IS OBTAINED IF THE CONTAMINATED
3 SOIL IS BEING RELOCATED OFF-SITE FROM OR TO EITHER OF THE
4 FOLLOWING:

5 (i) A FACILITY WHERE A REMEDIAL ACTION PLAN THAT INCLUDES SOIL
6 AS AN AFFECTED MEDIA HAS BEEN APPROVED BY THE DEPARTMENT BASED ON A
7 CATEGORICAL CLEANUP CRITERION IN SECTION 20120A(1)(B), (C), OR (D)
8 OR SITE-SPECIFIC CRITERIA UNDER SECTION 20120A(2).

9 (ii) A FACILITY WHERE A NO FURTHER ACTION REPORT THAT INCLUDES
10 SOIL AS AN AFFECTED MEDIUM HAS BEEN APPROVED BY THE DEPARTMENT.

11 (C) IF CONTAMINATED SOIL IS BEING RELOCATED OFF-SITE IN A
12 MANNER NOT ADDRESSED BY SUBDIVISION (B), THE OWNER OR OPERATOR OF
13 THE FACILITY FROM WHICH SOIL IS BEING RELOCATED PROVIDES NOTICE TO
14 THE DEPARTMENT WITHIN 14 DAYS AFTER THE SOIL IS RELOCATED. THE
15 NOTICE SHALL INCLUDE ALL OF THE FOLLOWING:

16 (i) THE FACILITY FROM WHICH SOIL WAS RELOCATED.

17 (ii) THE FACILITY TO WHICH THE SOIL WAS RELOCATED.

18 (iii) THE VOLUME OF SOIL RELOCATED.

19 (iv) A SUMMARY OF INFORMATION OR DATA ON WHICH THE OWNER OR
20 OPERATOR BASED THE DETERMINATION REQUIRED IN SUBDIVISION (A) THAT
21 THE SOIL DID NOT PRESENT A THREAT TO THE PUBLIC HEALTH, SAFETY, OR
22 WELFARE OR THE ENVIRONMENT.

23 (v) IF LAND USE OR RESOURCE USE RESTRICTIONS IN A POSTCLOSURE
24 PLAN OR A POSTCLOSURE AGREEMENT WOULD APPLY TO THE SOIL WHEN IT IS
25 RELOCATED, DOCUMENTATION THAT THOSE RESTRICTIONS ARE IN PLACE.

26 (2) AN OWNER OR OPERATOR MAY RELOCATE CONTAMINATED SOIL, OR
27 ALLOW CONTAMINATED SOIL TO BE RELOCATED, ON-SITE IF ALL OF THE

1 FOLLOWING REQUIREMENTS ARE MET:

2 (A) IF EITHER A REMEDIAL ACTION PLAN THAT INCLUDES SOIL AS AN
3 AFFECTED MEDIUM OR A NO FURTHER ACTION REPORT THAT INCLUDES SOIL AS
4 AN AFFECTED MEDIUM HAS BEEN APPROVED FOR A FACILITY, THE PERSON
5 ASSURES THAT THE SAME DEGREE OF CONTROL REQUIRED FOR APPLICATION OF
6 THE CRITERIA OF SECTION 20120A(1) OR (2) UNDER THE REMEDIAL ACTION
7 PLAN OR NO FURTHER ACTION REPORT IS PROVIDED FOR THE CONTAMINATED
8 SOIL. THIS SUBDIVISION DOES NOT APPLY TO SOILS THAT ARE TEMPORARILY
9 RELOCATED FOR THE PURPOSE OF IMPLEMENTING RESPONSE ACTIVITY OR
10 UTILITY CONSTRUCTION IF THE RESPONSE ACTIVITY OR UTILITY
11 CONSTRUCTION IS COMPLETED IN A TIMELY FASHION AND THE SHORT-TERM
12 HAZARDS ARE APPROPRIATELY CONTROLLED.

13 (B) IF 500 CUBIC YARDS OR MORE OF CONTAMINATED SOIL ARE BEING
14 RELOCATED ON-SITE AT A FACILITY WHERE EITHER A REMEDIAL ACTION PLAN
15 THAT INCLUDES SOIL AS AN AFFECTED MEDIUM OR A NO FURTHER ACTION
16 REPORT THAT INCLUDES SOIL AS AN AFFECTED MEDIUM HAS BEEN APPROVED
17 BY THE DEPARTMENT, THE OWNER OR OPERATOR OF THE FACILITY AT WHICH
18 SOIL IS BEING RELOCATED PROVIDES NOTICE TO THE DEPARTMENT WITHIN 14
19 DAYS AFTER THE SOIL IS RELOCATED. THE NOTICE SHALL INCLUDE ALL OF
20 THE FOLLOWING:

21 (i) THE FACILITY FROM WHICH SOIL WAS RELOCATED.

22 (ii) THE FACILITY TO WHICH THE SOIL WAS TAKEN.

23 (iii) THE VOLUME OF SOIL RELOCATED.

24 (iv) A SUMMARY OF INFORMATION OR DATA ASSURING THAT THE SAME
25 DEGREE OF CONTROL REQUIRED FOR APPLICATION OF THE CRITERIA OF
26 SECTION 20120A(1) OR (2) IS PROVIDED FOR THE CONTAMINATED SOIL
27 UNDER SUBDIVISION (A).

1 (v) IF LAND USE OR RESOURCE USE RESTRICTIONS IN A POSTCLOSURE
2 PLAN OR A POSTCLOSURE AGREEMENT WOULD APPLY TO THE SOIL WHEN IT IS
3 RELOCATED, DOCUMENTATION THAT THOSE RESTRICTIONS ARE IN PLACE.

4 (C) IF SUBDIVISION (B) DOES NOT APPLY AND AN OWNER OR OPERATOR
5 RELOCATES CONTAMINATED SOIL ON-SITE WITHOUT DEPARTMENT APPROVAL OR
6 NOTICE TO THE DEPARTMENT, THE OWNER OF THE FACILITY WITHIN WHICH
7 CONTAMINATED SOIL IS RELOCATED INCLUDES THE FOLLOWING INFORMATION
8 REGARDING THE RELOCATION AS PART OF DISCLOSING THE GENERAL NATURE
9 AND EXTENT OF THE RELEASE UNDER SECTION 20116 TO A PURCHASER OR
10 OTHER PERSON TO WHICH THE FACILITY IS TRANSFERRED:

11 (i) THE FACILITY FROM WHICH SOIL WAS RELOCATED.

12 (ii) THE FACILITY TO WHICH THE SOIL WAS TAKEN.

13 (iii) THE VOLUME OF SOIL RELOCATED.

14 (iv) A SUMMARY OF THE BASIS FOR THE OWNER'S OR OPERATOR'S
15 DETERMINATION THAT THE RELOCATION DID NOT CAUSE ANY EXACERBATION
16 UNDER SECTION 20107A(1).

17 (D) SECTION 20107A(1) AND (3) APPLIES TO THE RELOCATION OF
18 SOIL UNDER THIS SUBSECTION EVEN IF AN OWNER OR OPERATOR IS NOT
19 OTHERWISE SUBJECT TO SECTION 20107A.

20 (3) THE DETERMINATION REQUIRED BY SUBSECTIONS (1)(A) AND
21 (2)(A) SHALL BE BASED ON KNOWLEDGE OF THE PERSON UNDERTAKING OR
22 APPROVING OF THE REMOVAL OR RELOCATION OF SOIL, OR ON
23 CHARACTERIZATION OF THE SOIL FOR THE PURPOSE OF COMPLIANCE WITH
24 THIS SECTION.

25 (4) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

26 (A) SOIL THAT IS DESIGNATED AS AN INERT MATERIAL PURSUANT TO
27 SECTION 11507(3).

1 (B) UNCONTAMINATED SOIL THAT IS MIXED WITH A BENEFICIAL USE
2 BY-PRODUCT UNDER PART 115.

3 (C) SOIL THAT IS RELOCATED FOR TREATMENT OR DISPOSAL IN
4 CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS.

5 (D) THE RELOCATION OF UNCONTAMINATED SOIL.

6 (5) AS USED IN THIS SECTION:

7 (A) "CONTAMINATED SOIL" MEANS SOIL THAT MEETS ALL OF THE
8 FOLLOWING CRITERIA:

9 (i) THE SOIL IS CONTAMINATED WITH 1 OR MORE HAZARDOUS
10 SUBSTANCES AT LEVELS THAT EXCEED THE BACKGROUND CONCENTRATION FOR
11 THAT HAZARDOUS SUBSTANCE OR THOSE HAZARDOUS SUBSTANCES.

12 (ii) THE SOIL IS CONTAMINATED WITH 1 OR MORE HAZARDOUS
13 SUBSTANCES AT LEVELS THAT EXCEED ANY APPLICABLE CLEANUP CRITERIA
14 UNDER SECTION 20120A(1) OR ANY APPLICABLE SITE-SPECIFIC CRITERIA
15 UNDER SECTION 20120B.

16 (B) "OFF-SITE" MEANS PROPERTY THAT IS NOT ON-SITE.

17 (C) "ON-SITE" MEANS WITHIN ANY CONTIGUOUS OR ADJACENT PARCELS
18 OWNED BY OR UNDER THE CONTROL OF AN OWNER OR OPERATOR.

19 (D) "UNCONTAMINATED SOIL" MEANS SOIL THAT IS EITHER OF THE
20 FOLLOWING:

21 (i) NOT CONTAMINATED WITH ANY HAZARDOUS SUBSTANCES DUE TO HUMAN
22 ACTIVITY.

23 (ii) CONTAMINATED WITH 1 OR MORE HAZARDOUS SUBSTANCES AS A
24 RESULT OF HUMAN ACTIVITY BUT THE LEVELS OF THOSE HAZARDOUS
25 SUBSTANCES AT THE FACILITY DO NOT EXCEED ANY CATEGORICAL CLEANUP
26 CRITERIA UNDER SECTION 20120A(1) OR SITE-SPECIFIC CRITERIA UNDER
27 SECTION 20120B.

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

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

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

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

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

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

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

1 substance. This subdivision does not include any of the following:

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

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

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

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

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

5 (2) Subject to section 20107a, an owner or operator who
6 complies with subsection (1)(c) is not liable for contamination
7 existing at the facility at the earlier of the date of purchase,
8 occupancy, or foreclosure, unless the person is responsible for an
9 activity causing the contamination existing at the facility.

10 Subsection (1)(c) does not alter a person's liability with regard
11 to a subsequent release or threat of release at a facility if the
12 person is responsible for an activity causing the subsequent
13 release or threat of release.

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

19 (a) The state or a local unit of government that acquired
20 ownership or control of a facility involuntarily through
21 bankruptcy, tax delinquency, abandonment, a transfer from a lender
22 pursuant to subsection ~~(7)~~, (5), or other circumstances in which
23 the government involuntarily acquires title or control by virtue of
24 its governmental function or as provided in this part, a local unit
25 of government to which ownership or control of a facility is
26 transferred by the state or by another local unit of government
27 that is not liable under subsection (1), or the state or a local

1 unit of government that acquired ownership or control of a facility
2 by seizure, receivership, or forfeiture pursuant to the operation
3 of law or by court order.

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

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

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

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

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

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

1 testamentary trust.

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

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

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

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

1 term as defined in section 13 of the clean, renewable, and
2 efficient energy act, 2008 PA 295, MCL 460.1013.

3 (I) A PERSON WHO OWNS OR OCCUPIES A RESIDENTIAL CONDOMINIUM
4 UNIT FOR BOTH OF THE FOLLOWING:

5 (i) CONTAMINATION OF THE UNIT IF HAZARDOUS SUBSTANCE USE WITHIN
6 THE UNIT IS CONSISTENT WITH RESIDENTIAL USE.

7 (ii) CONTAMINATION OF ANY GENERAL COMMON ELEMENT, LIMITED
8 COMMON ELEMENT, OR COMMON AREA IN WHICH THE PERSON HAS AN OWNERSHIP
9 INTEREST OR RIGHT OF OCCUPATION BY REASON OF OWNING OR OCCUPYING
10 THE RESIDENTIAL CONDOMINIUM UNIT.

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

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

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

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

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

1 following:

2 (i) An act of God.

3 (ii) An act of war.

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

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

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

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

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

25 (iv) If the no further action report relies on monitoring
26 necessary to assure the effectiveness and integrity of the remedial
27 action, an owner or operator who is otherwise liable for

1 environmental contamination addressed in a no further action report
2 is liable under this part for additional response activities
3 necessary to address any potential exposure to the environmental
4 contamination demonstrated by the monitoring in excess of the
5 levels relied on in the no further action report.

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

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

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

25 ~~—— (7) Beginning on the effective date of the 2010 amendatory act~~
26 ~~that amended this section, the department shall not implement or~~
27 ~~enforce R 299.5901 to R 299.5919 of the Michigan administrative~~

~~code, except the department may implement and enforce the following rules:~~

~~—— (a) Subrules (2), (6), (8), and (9) of rule 903, R 299.5903 of the Michigan administrative code.~~

~~—— (b) Subrules (2) through (6) of rule 905, R 299.5905 of the Michigan administrative code.~~

~~—— (c) Rule 919, R 299.5919 of the Michigan administrative code.~~

(7) ~~(8)~~ 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) ~~(9)~~ An owner or operator who was in compliance with subsection (1)(c) prior to ~~the effective date of the amendatory act that added this subsection,~~ **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.

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

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

8 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, A PERSON
9 THAT IS NOT LIABLE UNDER THIS PART MAY CONDUCT CORRECTIVE ACTIONS
10 UNDER THIS PART IN THE SAME MANNER AS A PERSON THAT IS LIABLE UNDER
11 THIS PART. NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE
12 DEPARTMENT SHALL PROVIDE RESPONSES TO NONLIABLE PARTIES CONDUCTING
13 CORRECTIVE ACTIONS FOR REPORTS SUBMITTED UNDER THIS PART IN THE
14 SAME MANNER THAT IT PROVIDES RESPONSES TO PERSONS THAT ARE LIABLE
15 UNDER THIS PART.

16 Sec. 21302. As used in this part:

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

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

24 (c) "Baseline environmental assessment" means a written
25 document that describes the results of an all appropriate inquiry
26 and the sampling and analysis that confirm that the property is a
27 site. However, for purposes of a baseline environmental assessment,

1 the all appropriate inquiry under 40 CFR 312.20(a) may be conducted
2 within 45 days after the date of acquisition of a property and the
3 components of an all appropriate inquiry under 40 CFR 312.20(b) and
4 40 CFR 312.20(c)(3) may be conducted or updated within 45 days
5 after the date of acquisition of a property.

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

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

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

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

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

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

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

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

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

11 (m) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-
12 light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical
13 grades of fuel oil; other residual fuel oils including navy special
14 fuel oil and bunker c; and other fuels when used as substitutes for
15 1 of these fuel oils. Heating oil is typically used in the
16 operation of heating equipment, boilers, or furnaces.

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

21 (o) "Local unit of government" means a city, village,
22 township, county, fire department, or local health department as
23 defined in section 1105 of the public health code, 1978 PA 368, MCL
24 333.1105.

25 (p) "Low flow sampling" means minimal drawdown groundwater
26 sampling procedures as described in the United States environmental
27 protection agency, office of research and development, office of

1 solid waste and emergency response, EPA/540/S-95/504, December,
2 1995, EPA groundwater issue.

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

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

12 Sec. 21303. As used in this part:

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

17 (b) "Operator" means a person who is presently, or was at the
18 time of a release, in control of, or responsible for, the operation
19 of an underground storage tank system. ~~and who is liable under part~~
20 ~~213.~~

21 (c) "Owner" means a person who holds, or at the time of a
22 release who held, a legal, equitable, or possessory interest of any
23 kind in an underground storage tank system or in the property on
24 which an underground storage tank system is **OR WAS** located
25 including, but not limited to, a trust, vendor, vendee, lessor, or
26 lessee. ~~and who is liable under part 213.~~

27 (d) "Property" means real estate that ~~has been impacted~~ **IS**

1 **CONTAMINATED** by a release from an underground storage tank system.

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

4 (f) "RBCA" means the American society for testing and
5 materials (ASTM) document entitled standard guide for risk-based
6 corrective action applied at petroleum release sites, designation E
7 1739-95 (reapproved 2010) E1; standard guide for risk-based
8 corrective action designation E 2081-00 (reapproved 2010) E1; and
9 standard guide for development of conceptual site models and
10 remediation strategies for light nonaqueous-phase liquids released
11 to the subsurface designation E 2531-06 E1, all of which are hereby
12 incorporated by reference.

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

14 (i) A substance defined in section 101(14) of title I of the
15 comprehensive environmental response, compensation, and liability
16 act of 1980, Public Law 96-510, 42 USC 9601, but not including a
17 substance regulated as a hazardous waste under subtitle C of the
18 solid waste disposal act, title II of Public Law 89-272, 42 USC
19 6921 to 6939e.

20 (ii) Petroleum, including crude oil or any fraction of crude
21 oil that is liquid at standard conditions of temperature and
22 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
23 absolute). Petroleum includes but is not limited to mixtures of
24 petroleum with de minimis quantities of other regulated substances
25 and petroleum-based substances composed of a complex blend of
26 hydrocarbons derived from crude oil through processes of
27 separation, conversion, upgrading, or finishing such as motor

1 fuels, jet fuels, distillate fuel oils, residual fuel oils,
2 lubricants, and petroleum solvents.

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

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

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

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

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

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

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

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

26 (ii) All inland lakes.

27 (iii) Rivers.

1 (iv) Streams.

2 (v) Impoundments.

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

6 (o) "Threat of release" or "threatened release" means any
7 circumstance that may reasonably be anticipated to cause a release.
8 Threat of release or threatened release does not include the
9 ownership or operation of an underground storage tank system if the
10 underground storage tank system is operated in accordance with part
11 211 and rules promulgated under that part.

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

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

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

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

26 (iii) A septic tank.

27 (iv) A pipeline facility, including gathering lines regulated

1 under either of the following:

2 (A) The natural gas pipeline safety act of 1968, Public Law
3 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

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

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

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

9 (vii) A flow-through process tank.

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

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

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

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

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

26 (xiii) Equipment or machinery that contains regulated substances
27 for operational purposes such as hydraulic lift tanks and

1 electrical equipment tanks.

2 (xiv) An underground storage tank system that has a capacity of
3 110 gallons or less.

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

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

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

11 Sec. 21304. (1) Actions taken by a consultant pursuant to this
12 part do not limit or remove the liability of an owner or operator
13 **THAT IS LIABLE UNDER SECTION 21323A** except as specifically provided
14 for in this part.

15 (2) Notwithstanding any other provision in this part, if an
16 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** is a
17 consultant or employs a consultant, this part does not require the
18 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** to retain an
19 outside consultant to perform the responsibilities required under
20 this part. Those responsibilities may be performed by an owner or
21 operator **THAT IS LIABLE UNDER SECTION 21323A** who is a consultant or
22 by a consultant employed by the owner or operator **THAT IS LIABLE**
23 **UNDER SECTION 21323A.**

24 Sec. 21304a. (1) Corrective action activities undertaken
25 pursuant to this part shall be conducted in accordance with the
26 process outlined in RBCA in a manner that is protective of the
27 public health, safety, and welfare, and the environment. Corrective

1 action activities that involve a discharge into air or groundwater
2 as defined in section 21302 or surface water as defined in section
3 21303 shall be consistent with parts 31 and 55.

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

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

17 (4) If the applicable RBSL or SSTL for groundwater differs
18 from either (a) the state drinking water standard established
19 pursuant to section 5 of the safe drinking water act, 1976 PA 399,
20 MCL 325.1005, or (b) criteria for adverse aesthetic characteristics
21 derived pursuant to R 299.5709 of the Michigan administrative code,
22 the SSTL shall be the more stringent of (a) or (b) unless the ~~owner~~
23 ~~or operator~~ **PERSON THAT UNDERTAKES CORRECTIVE ACTIONS UNDER THIS**
24 **PART** determines that compliance with (a) or (b) is not necessary
25 because the use of the groundwater is reliably restricted pursuant
26 to section 21310a.

27 (5) Corrective action at sites where a release has occurred or

1 a threat of release exists from an underground storage tank system
2 is regulated exclusively under this part. Notwithstanding any other
3 provision of this part, ~~if~~**AN OWNER OR OPERATOR THAT IS LIABLE**
4 **UNDER SECTION 21323A MAY CHOOSE, IN ITS SOLE DISCRETION, TO FULFILL**
5 **ITS CORRECTIVE ACTION OBLIGATIONS PURSUANT TO PART 201 IN LIEU OF**
6 **CORRECTIVE ACTIONS PURSUANT TO THIS PART IN EITHER OF THE FOLLOWING**
7 **SITUATIONS:**

8 (A) IF a release or threat of release at a site is not solely
9 the result of a release or threat of release from an underground
10 storage tank system, the owner or operator ~~of the underground~~
11 ~~storage tank system~~**THAT IS LIABLE UNDER SECTION 21323A** may choose,
12 **IN ITS SOLE DISCRETION,** to perform response activities pursuant to
13 part 201 in lieu of corrective actions pursuant to this part.

14 (B) IF A RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM
15 INVOLVES VENTING GROUNDWATER, THE OWNER OR OPERATOR THAT IS LIABLE
16 UNDER SECTION 21323A MAY CHOOSE, IN ITS SOLE DISCRETION, TO FOLLOW
17 THE PROCEDURES SET FORTH IN SECTION 20120E IN PERFORMING CORRECTIVE
18 ACTION UNDER THIS PART RELATED TO VENTING GROUNDWATER TO ADDRESS
19 THE VENTING GROUNDWATER PURSUANT TO PART 201 IN LIEU OF CORRECTIVE
20 ACTIONS ADDRESSING THE VENTING GROUNDWATER PURSUANT TO THIS PART.

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

27 (2) For the purposes of subsection (1), soil poses a threat to

1 the public health, safety, or welfare, or the environment if
2 concentrations of regulated substances in the soil exceed the tier
3 I RBSLs established pursuant to section 21304a that apply to the
4 location to which the soil will be moved or relocated, except if
5 the soil is to be removed from the site for disposal or treatment,
6 the soil shall satisfy the appropriate regulatory criteria for
7 disposal or treatment. Any land use restriction that would be
8 required for the application of a criterion pursuant to section
9 21304a shall be in place at the location to which the soil will be
10 moved. Soil may be relocated only to another location that is
11 similarly contaminated, considering the general nature,
12 concentration, and mobility of regulated substances present at the
13 location to which the contaminated soil will be removed.
14 Contaminated soil shall not be moved to a location that is not a
15 site unless it is taken there for treatment or disposal in
16 conformance with applicable laws and regulations.

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

23 (4) The prohibition in subsection (3) against relocation of
24 contaminated soil within a site of environmental contamination does
25 not apply to soils that are temporarily relocated for the purpose
26 of implementing corrective actions or utility construction if the
27 corrective actions or utility construction is completed in a timely

1 fashion and the short-term hazards are appropriately controlled.

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

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

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

9 (c) The volume of soil to be removed.

10 (d) A summary of information or data on which the ~~owner or~~
11 ~~operator~~ **PERSON** is basing the determination required in subsection
12 (2) that the soil does not present a threat to the public health,
13 safety, or welfare, or the environment.

14 (e) If land use restrictions would apply pursuant to section
15 21310a, to the soil when it is relocated, the notice shall include
16 documentation that those restrictions are in place.

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

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

23 Sec. 21304c. (1) A person that owns or operates property that
24 the person has knowledge is ~~or was a site~~ **CONTAMINATED** shall do all
25 of the following with respect to regulated substances at the
26 property:

27 (a) Undertake measures as are necessary to prevent

1 exacerbation.

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

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

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

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

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

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

27 (3) A person that violates subsection (1) that is not

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

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

13 (5) Subsection (1)(a) to (c) does not apply to the state or to
14 a local unit of government that is not liable under section
15 21323a(3)(a), (b), (c), or (e) or to the state or local unit of
16 government that acquired property by purchase, gift, transfer, or
17 condemnation or to a person that is exempt from liability under
18 section ~~21323a(4)(e)~~. **21323A(4)(B)**. However, if the state or local
19 unit of government, other than those exempt from liability under
20 section 21323a(4)(b), acting as the operator of a parcel of
21 property that the state or local unit of government has knowledge
22 ~~is or was a site,~~ **CONTAMINATED BY A RELEASE FROM AN UNDERGROUND**
23 **STORAGE TANK SYSTEM**, offers access to that parcel on a regular or
24 continuous basis pursuant to an express public purpose and invites
25 the general public to use that property for the express public
26 purpose, the state or local unit of government is subject to this
27 section but only with respect to that portion of the property that

1 is opened to and used by the general public for that express
2 purpose, and not the entire property. Express public purpose
3 includes, but is not limited to, activities such as a public park,
4 municipal office building, or municipal public works operation.
5 Express public purpose does not include activities surrounding the
6 acquisition or compilation of parcels for the purpose of future
7 development.

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

11 Sec. 21304d. (1) If ~~the owner of~~ **A PERSON OWNS** a parcel of
12 real property **AND** has knowledge or information or is on notice
13 through a recorded instrument that the real property is a site, the
14 ~~owner~~ **PERSON** shall not transfer an interest in that real property
15 unless the ~~owner~~ **PERSON** provides written notice to the transferee
16 that the real property is a site and of the general nature and
17 extent of the release.

18 (2) ~~The owner of~~ **A PERSON THAT OWNS** real property for which a
19 notice required in subsection (1) has been recorded may, upon
20 completion of all corrective action activities for the site as
21 approved by the department, record with the register of deeds for
22 the appropriate county a certification that all corrective action
23 activity required in an approved final assessment report has been
24 completed.

25 (3) A person shall not transfer an interest in real property
26 unless the person fully discloses any land or resource use
27 restrictions that apply to that real property as a part of

1 corrective action that has been or is being implemented in
2 compliance with section 21304a.

3 Sec. 21307. (1) Upon confirmation of a release from an
4 underground storage tank system, the owner or operator **THAT IS**
5 **LIABLE UNDER SECTION 21323A** shall report the release to the
6 department within 24 hours after discovery. The department may
7 investigate the release. However, an investigation by the
8 department does not relieve the owner or operator **THAT IS LIABLE**
9 **UNDER SECTION 21323A** from any responsibilities related to the
10 release provided for in this part.

11 (2) After a release has been reported under subsection (1),
12 the owner or operator **THAT IS LIABLE UNDER SECTION 21323A** shall
13 immediately begin and expeditiously perform all of the following
14 initial actions:

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

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

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

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

27 (e) Take any other action necessary to abate an immediate

1 threat to public health, safety, or welfare, or the environment.

2 (3) Immediately following initiation of initial response
3 actions under this section, the owner or operator **THAT IS LIABLE**
4 **UNDER SECTION 21323A** shall do all of the following:

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

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

13 Sec. 21307a. (1) Following initiation of initial actions under
14 section 21307, the owner or operator **THAT IS LIABLE UNDER SECTION**
15 **21323A** shall complete the requirements of this part and submit
16 related reports or executive summaries detailed in this part to
17 address the contamination at the site. At any time that sufficient
18 corrective action has been undertaken to address contamination, the
19 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** shall
20 complete and submit a site closure report pursuant to section
21 21312a and omit the remaining interim steps.

22 (2) In addition to the reporting requirements specified in
23 this part, the owner or operator **THAT IS LIABLE UNDER SECTION**
24 **21323A** shall provide 48-hour notification to the department prior
25 to initiating any of the following activities:

26 (a) Soil excavation.

27 (b) Well drilling, including monitoring well installation.

1 (c) Sampling of soil or groundwater.

2 (d) Construction of treatment systems.

3 Sec. 21308a. (1) Within 180 days after a release has been
4 discovered, the owner or operator **THAT IS LIABLE UNDER SECTION**
5 **21323A** shall complete an initial assessment report and submit the
6 report to the department on a form created pursuant to section
7 21316. The report shall include the following information:

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

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

12 (i) The property address.

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

14 (iii) The name, address, and telephone number of a contact
15 person for the owner or operator **THAT IS LIABLE UNDER SECTION**
16 **21323A**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (xvii) Data from analytical testing of soil and groundwater

1 samples.

2 (xviii) A description of the mobile or migrating NAPL
3 investigation and evaluation conducted pursuant to section
4 21307(2)(c) and, if the evaluation of NAPL concludes that NAPL is
5 recoverable and removal is necessary under this part to abate an
6 unacceptable risk pursuant to the provisions outlined in RBCA, a
7 description of the removal, including all of the following:

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

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

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

13 (D) The type of NAPL recovery system used.

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

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

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

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

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

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

1 (xxi) The depth to groundwater.

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

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

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

12 (xxv) Groundwater flow rate and direction.

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

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

20 (c) Site classification under section 21314a.

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

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

1 (2) If migrating or mobile NAPL is discovered at a site after
2 the submittal of an initial assessment report pursuant to
3 subsection (1), the owner or operator **THAT IS LIABLE UNDER SECTION**
4 **21323A** shall do both of the following:

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

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

10 (3) The department shall not require any additional
11 information beyond that required under this section to be included
12 in an initial assessment report. The owner or operator **THAT IS**
13 **LIABLE UNDER SECTION 21323A** shall provide supporting documentation
14 to the data and conclusions of the initial assessment report upon
15 request by the department.

16 Sec. 21309a. (1) If initial actions under section 21307 have
17 not resulted in completion of corrective action, an owner or
18 operator **THAT IS LIABLE UNDER SECTION 21323A** shall prepare a
19 corrective action plan to address contamination at the site.
20 Corrective action plans submitted as part of a final assessment
21 report shall use the process described in RBCA and shall be based
22 upon the site information and characterization results of the
23 initial assessment report.

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

26 (a) A description of the corrective action to be implemented,
27 including an explanation of how that action will meet the

1 requirements of the tier I, II, or III evaluation in the RBCA
2 process. The corrective action plan shall also include an analysis
3 of the selection of indicator parameters to be used in evaluating
4 the implementation of the corrective action plan, if indicator
5 parameters are to be used. The corrective action plan shall include
6 an analysis of the recoverability of the NAPL and whether the NAPL
7 is mobile or migrating, and a description of ambient air quality
8 monitoring activities to be undertaken during the corrective action
9 if such activities are appropriate.

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

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

18 (i) Location of monitoring points.

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

21 (iii) Monitoring schedule.

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

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

27 (vi) Laboratory methodology, including the name of the

1 laboratory responsible for analysis of monitoring samples, method
2 detection limits, and practical quantitation levels. Raw data used
3 to determine method detection limits shall be made available to the
4 department on request.

5 (vii) Quality control/quality assurance plan.

6 (viii) Data presentation and evaluation plan.

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

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

15 (d) An explanation of any land use or resource use
16 restrictions, if the restrictions are required pursuant to section
17 21310a, including how those restrictions will be effective in
18 preventing or controlling unacceptable exposures.

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

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

25 (g) If provisions for operation and maintenance, monitoring,
26 or financial assurance are included in the corrective action plan,
27 and those provisions are not complied with, the corrective action

1 plan is void from the time of lapse or violation until the lapse or
2 violation is corrected.

3 (3) If a corrective action plan prepared under this section
4 does not result in an unrestricted use of the property, the owner
5 or operator **THAT IS LIABLE UNDER SECTION 21323A** shall provide
6 notice to the public by means designed to reach those members of
7 the public directly impacted by the release above a residential
8 RBSL and the proposed corrective action. The notice shall include
9 the name, address, and telephone number of a contact person. A copy
10 of the notice and proof of providing the notice shall be submitted
11 to the department. The department shall ensure that site release
12 information and corrective action plans that do not result in an
13 unrestricted use of property are made available to the public for
14 inspection upon request.

15 Sec. 21310a. (1) If the corrective action activities at a site
16 result in a final remedy that relies on a nonresidential RBSL or an
17 SSTL, institutional controls shall be implemented as provided in
18 this subsection. A notice of corrective action shall be recorded
19 with the register of deeds for the county in which the site is
20 located prior to submittal of a closure report under section
21 21312a. A notice shall be filed under this subsection only by the
22 **PERSON THAT OWNS THE** property ~~owner~~ or with the express written
23 permission of the **PERSON THAT OWNS THE** property. ~~owner~~.—A notice of
24 corrective action recorded under this subsection shall state the
25 land use that was the basis of the corrective action. The notice
26 shall state that if there is a proposed change in the land use at
27 any time in the future, that change may necessitate further

1 evaluation of potential risks to the public health, safety, and
2 welfare and to the environment and that the department shall be
3 contacted regarding any proposed change in the land use. Additional
4 requirements for monitoring or operation and maintenance shall not
5 apply if contamination levels do not exceed the levels established
6 in the tier I evaluation.

7 (2) If corrective action activities at a site rely on
8 institutional controls other than as provided in subsection (1),
9 the institutional controls shall be implemented as provided in this
10 subsection. The restrictive covenant shall be recorded with the
11 register of deeds for the county in which the property is located
12 within 30 days from submittal of the final assessment report
13 pursuant to section 21311a, unless otherwise agreed to by the
14 department. The restrictive covenant shall be filed only by the
15 **PERSON THAT OWNS THE** property ~~owner~~ or with the express written
16 permission of the **PERSON THAT OWNS THE** property. ~~owner~~. The
17 restrictions shall run with the land and be binding on the owner's
18 successors, assigns, and lessees. The restrictions shall apply
19 until regulated substances no longer present an unacceptable risk
20 to the public health, safety, or welfare or to the environment. The
21 restrictive covenant shall include a survey and property
22 description which define the areas addressed by the corrective
23 action plan and the scope of any land use or resource use
24 limitations. The form and content of the restrictive covenant shall
25 include provisions to accomplish all of the following:

26 (a) Restrict activities at the site that may interfere with
27 corrective action, operation and maintenance, monitoring, or other

1 measures necessary to assure the effectiveness and integrity of the
2 corrective action.

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

6 (c) Prevent a conveyance of title, an easement, or other
7 interest in the property from being consummated by the **PERSON THAT**
8 **OWNS THE** property ~~owner~~—without adequate and complete provision for
9 compliance with the corrective action plan and prevention of
10 exposure to regulated substances described in subdivision (b).

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

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

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

21 (3) If the owner or operator **THAT IS LIABLE UNDER SECTION**
22 **21323A** determines that exposure to regulated substances may be
23 reliably restricted by a means other than a restrictive covenant
24 and that imposition of land use or resource use restrictions
25 through restrictive covenants is impractical, the owner or operator
26 **THAT IS LIABLE UNDER SECTION 21323A** may select a corrective action
27 plan that relies on alternative mechanisms. Mechanisms that may be

1 considered under this subsection include, but are not limited to,
2 an ordinance that prohibits the use of groundwater in a manner and
3 to a degree that protects against unacceptable exposure to a
4 regulated substance as defined by the RBSLs or SSTLs identified in
5 the corrective action plan. An ordinance that serves as an exposure
6 control under this subsection shall include both of the following:

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

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

12 (4) Notwithstanding subsections (1), (2), and (3), if a
13 mechanism other than a notice of corrective action, an ordinance,
14 or a restrictive covenant is requested by an owner or operator **THAT**
15 **IS LIABLE UNDER SECTION 21323A** and the department determines that
16 the alternative mechanism is appropriate, the department may
17 approve of the alternate mechanism.

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

24 Sec. 21311a. (1) Within 365 days after a release has been
25 discovered, an owner or operator **THAT IS LIABLE UNDER SECTION**
26 **21323A** shall complete a final assessment report that includes a
27 corrective action plan developed under section 21309a and submit

1 the report to the department on a form created pursuant to section
2 21316. The report shall include the following information:

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

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

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

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

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

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

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

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

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

6 (d) A corrective action plan.

7 (e) A schedule for corrective action plan implementation.

8 (2) The owner or operator **THAT IS LIABLE UNDER SECTION 21323A**
9 shall provide supporting documentation to the data and conclusions
10 of the final assessment report upon request by the department. The
11 department shall not require any additional information beyond that
12 required under this section to be included in its final assessment
13 report.

14 Sec. 21312a. (1) Upon completion of the corrective action, the
15 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** shall
16 complete a closure report and submit the report to the department
17 on a form created pursuant to section 21316. The report shall
18 include the following information:

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

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

25 (c) The person submitting a closure report shall include a
26 signed affidavit attesting to the fact that the information upon
27 which the closure report is based is complete and true to the best

1 of that person's knowledge. The closure report shall also include a
2 signed affidavit from the consultant who prepared the closure
3 report attesting to the fact that the corrective actions detailed
4 in the closure report comply with all applicable requirements under
5 the applicable RBCA standard and that the information upon which
6 the closure report is based is true and accurate to the best of
7 that consultant's knowledge. In addition, the consultant shall
8 attach a certificate of insurance demonstrating that the consultant
9 has obtained at least all of the insurance required under section
10 21325.

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

17 (2) Within 60 days after receipt of a closure report under
18 subsection (1), the department shall provide the owner or operator
19 **THAT IS LIABLE UNDER SECTION 21323A** who submitted the closure
20 report with a confirmation of the department's receipt of the
21 report.

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

25 Sec. 21313a. (1) Beginning on ~~the effective date of the 2012~~
26 ~~amendatory act that amended this section, MAY 1, 2012,~~ except as
27 provided in subsection (6), and except for the confirmation

1 provided in section 21312a(2), if a required submittal under
2 section 21308a, 21311a, or 21312a(1) is not provided during the
3 time required, the department may impose a penalty according to the
4 following schedule:

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

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

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

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

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

21 (4) The owner or operator **THAT IS LIABLE UNDER SECTION 21323A**
22 may by contract transfer the responsibility for paying fines under
23 this section to a consultant retained by the owner or operator **THAT**
24 **IS LIABLE UNDER SECTION 21323A.**

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

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

5 Sec. 21315. (1) The department shall design and implement a
6 program to selectively audit final assessment reports and closure
7 reports submitted under this part. Upon receipt of a final
8 assessment report or closure report, the department shall have 90
9 days to determine whether it will audit the report and inform the
10 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** of its
11 intention to audit the submitted report within 7 days of the
12 determination. If the department does not inform the owner or
13 operator **THAT IS LIABLE UNDER SECTION 21323A** of its intention to
14 audit the report within the required time limits, the department
15 shall not audit the report. If the department determines that it
16 will conduct an audit, the audit shall be completed within 180 days
17 of the submission. The department shall inform the owner or
18 operator **THAT IS LIABLE UNDER SECTION 21323A** in writing of the
19 results of the audit within 14 days of the completion of the audit.
20 All audits shall be conducted based on the standards, criteria, and
21 procedures in effect at the time the final assessment report or
22 closure report was submitted.

23 (2) The department shall have ~~270 days from the effective date~~
24 ~~of the 2012 amendatory act that amended this section~~ **UNTIL JANUARY**
25 **27, 2013** to selectively audit final assessment reports or closure
26 reports that were submitted ~~within the time period beginning 6~~
27 ~~months prior to and ending 60 days after the effective date of the~~

~~2012 amendatory act that amended this section.~~ **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

1 part or does not confirm that applicable RBSLs or SSTLs have been
2 met, the department shall include both of the following in the
3 written response as required in subsection (1):

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

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

11 (7) If the department denies a final assessment report or
12 closure report under this section, an owner or operator **THAT IS**
13 **LIABLE UNDER SECTION 21323A** shall either revise and resubmit the
14 report for approval, submit a petition for review of scientific or
15 technical disputes to the response activity review panel pursuant
16 to section 20114e and pay a fee in the amount of \$300.00 in lieu of
17 the \$3,500.00 fee set forth in section 20114e(7), or submit a
18 petition to the department's office of administrative hearings for
19 a contested case hearing pursuant to section 21332.

20 (8) Notwithstanding section 21312a, after conducting an audit
21 under this section, the department may issue a closure letter for
22 any site that meets the applicable RBSL or SSTL pursuant to section
23 21304a.

24 (9) The department shall only audit a report required under
25 this part 1 time. If the **REPORT DOES NOT CONTAIN SUFFICIENT**
26 **INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION OR THE**
27 department's audit identifies deficiencies as described in

1 subsection (6), the department may audit a revised report **IF**
2 **SUFFICIENT INFORMATION IS PROVIDED FOR THE DEPARTMENT TO MAKE A**
3 **DECISION OR**, to evaluate whether the identified deficiencies have
4 been corrected, which shall be completed within 90 days of the
5 revised report's submission to the department.

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

16 (2) The department, upon discovery of the operation of an
17 underground storage tank system in violation of this part, rules
18 promulgated under this part, part 211, or rules promulgated under
19 part 211, shall provide notification prohibiting delivery of
20 regulated substances to the underground storage tank system by
21 affixing a placard providing notice of the violation in plain view
22 to the underground storage tank system. The department shall
23 provide a minimum of 15 days' notice to the ~~liable~~ owner or
24 operator **THAT IS LIABLE UNDER SECTION 21323A** prior to affixing a
25 placard for violations of this part or rules promulgated under this
26 part, unless the violation causes an imminent and substantial
27 endangerment to the public health, safety, or welfare or the

1 environment.

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

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

14 Sec. 21319a. (1) In accordance with this section, if the
15 department determines that there may be an imminent risk to the
16 public health, safety, or welfare, or the environment, because of a
17 release or threatened release, the department may require an owner
18 or operator **THAT IS LIABLE UNDER SECTION 21323A** to take action as
19 may be necessary to abate the danger or threat.

20 (2) The department may issue an administrative order to an
21 owner or operator **THAT IS LIABLE UNDER SECTION 21323A** requiring
22 that person to perform corrective actions relating to a site, or to
23 take any other action required by this part. An order issued under
24 this section shall state with reasonable specificity the basis for
25 issuance of the order and specify a reasonable time for compliance.

26 (3) Within 30 days after issuance of an administrative order
27 under this section, a person to whom the order was issued shall

1 indicate in writing whether the person intends to comply with the
2 order.

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

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

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

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

18 Sec. 21323a. (1) Notwithstanding any other provision of this
19 act, and except as otherwise provided in this section and section
20 21323c, the following persons are liable under this part:

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

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

26 (i) A baseline environmental assessment is conducted prior to
27 or within 45 days after the earlier of the date of purchase,

1 occupancy, or foreclosure. For purposes of this section, assessing
2 property to conduct a baseline environmental assessment does not
3 constitute occupancy.

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

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

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

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

26 (a) The state or a local unit of government that acquired
27 ownership or control of the property involuntarily through

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

10 (b) A state or local unit of government that holds or acquires
11 an easement interest in property, holds or acquires an interest in
12 property by dedication in a plat, or by dedication pursuant to the
13 public highways and private roads act, 1909 PA 283, MCL 220.1 to
14 239.6, or otherwise holds or acquires an interest in property for a
15 transportation or utility corridor, including sewers, pipes, and
16 pipelines, or public rights-of-way.

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

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

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

1 the property.

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

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

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

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

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

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

7 (b) ~~The owner or operator of~~ **A PERSON THAT OWNS OR OPERATES**
8 property onto which contamination has migrated unless that person
9 is responsible for an activity causing the release that is the
10 source of the contamination.

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

14 (i) An act of God.

15 (ii) An act of war.

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

20 (d) Any person for environmental contamination addressed in a
21 closure report that is approved by the department or is considered
22 approved under section ~~21312a.~~ **21315(4)**. Notwithstanding this
23 subdivision, a person may be liable under this part for the
24 following:

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

27 (ii) Environmental contamination that is not addressed in the

1 closure report and for which the person is otherwise liable under
2 this part.

3 (iii) If the closure report relies on land use or resource use
4 restrictions, ~~an owner or operator~~ **A PERSON** who desires to change
5 those restrictions is responsible for any corrective action
6 necessary to comply with this part for any land use or resource use
7 other than the land use or resource use that was the basis for the
8 closure report.

9 (iv) If the closure report relies on monitoring necessary to
10 assure the effectiveness and integrity of the corrective action, an
11 owner or operator ~~who is otherwise liable~~ **THAT IS LIABLE UNDER**
12 **SECTION 21323A** for environmental contamination addressed in a
13 closure report is liable under this part for additional corrective
14 action activities necessary to address any potential exposure to
15 the environmental contamination demonstrated by the monitoring in
16 excess of the levels relied on in the closure report.

17 (v) If the corrective actions that were the basis for the
18 closure report fail to meet performance objectives that are
19 identified in the closure report or section 21304a, an owner or
20 operator ~~who is otherwise liable~~ **THAT IS LIABLE UNDER SECTION**
21 **21323A** for environmental contamination addressed in the closure
22 report is liable under this part for corrective action necessary to
23 satisfy the performance objectives or otherwise comply with this
24 part.

25 (5) Notwithstanding any other provision of this part, the
26 state or a local unit of government or a lender who has not
27 participated in the management of the property is not liable under

1 this part for costs or damages as a result of corrective action
2 taken in response to a release or threat of release. For a lender,
3 this subsection applies only to corrective action undertaken prior
4 to foreclosure. This subsection does not preclude liability for
5 costs or damages as a result of gross negligence, including
6 reckless, willful, or wanton misconduct, or intentional misconduct
7 by the state or local unit of government.

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

10 (7) An owner or operator who was in compliance with subsection
11 (1)(b) prior to ~~the effective date of the amendatory act that added~~
12 ~~this subsection~~ **MAY 1, 2012** is considered to be in compliance with
13 subsection (1)(b).

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

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

1 is located.

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

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

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

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

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

1 (i) The department.

2 (ii) The attorney general.

3 (iii) The proposed defendants.

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

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

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

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

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

25 (8) All unpaid costs and damages for which a person is liable
26 under this ~~section~~-**PART** constitute a lien in favor of the state
27 upon a property that has been the subject of corrective action by

1 the state and is owned by that person. A lien under this subsection
2 has priority over all other liens and encumbrances except liens and
3 encumbrances recorded before the date the lien under this
4 subsection is recorded. A lien under this subsection arises when
5 the state first incurs costs for corrective action at the property
6 for which the person is responsible.

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

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

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

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

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

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

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

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

23 (12) A lien provided in subsection (8), (9), or (11) is
24 perfected against real property when a notice of lien is filed by
25 the department with the register of deeds in the county in which
26 the real property is located. A lien upon personal property
27 provided in subsection (9) is perfected when a notice of lien is

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

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

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

13 (15) If the department, at the time or prior to the time of
14 filing the notice of release of lien pursuant to subsection (14),
15 has made a determination that the person liable under section
16 21323a has completed all of the corrective action, the department
17 shall execute and file with the notice of release of lien a
18 document stating that all corrective action has been completed.

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

24 (2) A PERSON WHO IS EXEMPT FROM LIABILITY UNDER SECTION 21323A
25 IS NOT LIABLE FOR A CLAIM FOR CORRECTIVE ACTION COSTS, FINES OR
26 PENALTIES, NATURAL RESOURCES DAMAGES, OR EQUITABLE RELIEF UNDER
27 PART 17, PART 31, OR COMMON LAW RESULTING FROM THE CONTAMINATION

1 EXISTING ON THE SITE OR MIGRATING FROM THE SITE ON THE EARLIER OF
2 THE DATE OF PURCHASE, OCCUPANCY, FORECLOSURE OR TRANSFER OF
3 OWNERSHIP, OR CONTROL OF THE SITE TO THE PERSON. THE LIABILITY
4 PROTECTION AFFORDED IN THIS SUBSECTION DOES NOT EXTEND TO A
5 VIOLATION OF ANY PERMIT ISSUED UNDER STATE LAW. THIS SUBSECTION
6 DOES NOT ALTER A PERSON'S LIABILITY FOR VIOLATION OF SECTION
7 21304C.

8 (3) ~~(2)~~—This section does not bar any of the following:

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

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

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

14 SEC. 21323N. (1) A PERSON MAY SUBMIT TO THE DEPARTMENT
15 DOCUMENTATION OF DUE CARE COMPLIANCE REGARDING A SITE. THE
16 DOCUMENTATION OF DUE CARE COMPLIANCE SHALL BE SUBMITTED ON A FORM
17 PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN DOCUMENTATION OF
18 COMPLIANCE WITH SECTION 21304C PREPARED BY A QUALIFIED UNDERGROUND
19 STORAGE TANK CONSULTANT, AND OTHER INFORMATION REQUIRED BY THE
20 DEPARTMENT.

21 (2) WITHIN 45 BUSINESS DAYS AFTER RECEIPT OF DOCUMENTATION OF
22 DUE CARE COMPLIANCE UNDER SUBSECTION (1) CONTAINING SUFFICIENT
23 INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION, THE DEPARTMENT
24 SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY THE DOCUMENTATION
25 OF DUE CARE COMPLIANCE. IF THE DEPARTMENT DOES NOT APPROVE THE
26 DOCUMENTATION OF DUE CARE COMPLIANCE, THE DEPARTMENT SHALL PROVIDE
27 THE PERSON THAT SUBMITTED THE DOCUMENTATION THE REASONS WHY THE

1 DOCUMENTATION OF DUE CARE COMPLIANCE WAS NOT APPROVED.

2 (3) A PERSON THAT DISAGREES WITH A DECISION OF THE DEPARTMENT
3 UNDER THIS SECTION MAY SUBMIT A PETITION FOR REVIEW OF SCIENTIFIC
4 OR TECHNICAL DISPUTES TO THE RESPONSE ACTIVITY REVIEW PANEL
5 PURSUANT TO SECTION 20114E OR SUBMIT A PETITION TO THE DEPARTMENT'S
6 OFFICE OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING
7 PURSUANT TO SECTION 21332.

8 Sec. 21326. (1) Upon request of the department for the purpose
9 of conducting an investigation, taking corrective action, or
10 enforcing this part, ~~the owner or operator~~ **A PERSON** shall furnish
11 the department with all available information about all of the
12 following:

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

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

17 (c) Any releases and investigations of releases.

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

21 (a) Inspecting an underground storage tank system.

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

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

27 (d) Conducting monitoring or testing of an underground storage

1 tank system in cases where there is no identified responsible
2 party.

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

5 (f) Taking corrective action.

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

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

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

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

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

19 Sec. 21332. (1) Subject to subsection (2), an owner or
20 operator **THAT IS LIABLE UNDER SECTION 21323A** may petition the
21 department for a contested case hearing pursuant to the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
23 24.328, regarding any of the following:

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

25 (b) The SSTLs proposed for a site.

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

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

1 **(E) A DECISION REGARDING THE DOCUMENTATION OF DUE CARE**
2 **COMPLIANCE UNDER SECTION 21323N.**

3 (2) Upon receipt of a petition from an owner or operator **THAT**
4 **IS LIABLE UNDER SECTION 21323A** pursuant to this section, the
5 department shall conduct the hearing pursuant to chapter 4 of the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
7 24.287. However, an issue that was addressed as part of the final
8 decision of the director under section 20114e or that is being
9 considered by the response activity review panel under section
10 20114e is not eligible for review as part of a contested case
11 hearing under this section.

12 Sec. 21333. An owner or operator **THAT IS LIABLE UNDER SECTION**
13 **21323A** may appeal a final agency decision to affix a placard under
14 section 21316a(2) or issue an administrative order under section
15 21319a(2) to the circuit court for the county where the underground
16 storage tank system is located or the Ingham county circuit court
17 in the same manner as and according to the same procedures provided
18 for appeals to the circuit court under section 631 of the revised
19 judicature act of 1961, 1961 PA 236, MCL 600.631. The court shall
20 set aside the final agency decision if substantial rights of the
21 petitioner have been prejudiced because the decision or order is
22 any of the following:

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

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

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

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

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

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

6 Enacting section 1. (1) Subpart 1 of part 147 of the natural
7 resources and environmental protection act, 1994 PA 451, MCL
8 324.14701 to 324.14705, is repealed.

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

11 Enacting section 2. (1) R 299.5105, R 299.5107, R 299.5109, R
12 299.5111, R 299.5113, R 299.5117, R 299.5401 to R 299.5415, R
13 299.5530, R 299.5532, R 299.5534, R 299.5536, R 299.5538, R
14 299.5540, R 299.5732, R 299.5742, and R 299.5901 to R 299.5919 of
15 the Michigan administrative code are rescinded.

16 (2) R 299.5101, R 299.5103, R 299.5115, R 299.5520, R
17 299.5522, R 299.5524, R 299.5526, R 299.5528, R 299.5542, R
18 299.5701, R 299.5703, R 299.5705, R 299.5706, R 299.5706a, R
19 299.5707, R 299.5708 to R 299.5726, R 299.5728, R 299.5730, R
20 299.5734, R 299.5736, R 299.5738, R 299.5740, and R 299.5744 to R
21 299.5752 of the Michigan administrative code are rescinded
22 effective December 31, 2013.