

SENATE BILL No. 1328

September 25, 2012, Introduced by Senator CASPERSON and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 19608, 19612, 20101, 20104, 20114, 20114c,
20114e, 20120a, 20120b, 20126, and 21304a (MCL 324.19608,
324.19612, 324.20101, 324.20104, 324.20114, 324.20114c, 324.20114e,
324.20120a, 324.20120b, 324.20126, and 324.21304a), 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, section 20114e as amended by 2012 PA
109, sections 20120a and 20120b as amended and section 20114c as
added by 2010 PA 228, section 20126 as amended by 2010 PA 227, and
section 21304a as amended by 2012 PA 108, and by adding section
20114f; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (i) Corrective actions undertaken by the department to address
6 releases from leaking underground storage tanks pursuant to part
7 213.

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

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

13 (iv) \$75,000,000.00 shall be used to provide grants and loans
14 to local units of government and brownfield redevelopment
15 authorities created under the brownfield redevelopment financing
16 act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities
17 at known or suspected facilities with redevelopment potential. Of
18 the money provided for in this subparagraph, not more than
19 ~~\$37,500,000.00~~ **\$50,000,000.00** shall be used to provide grants and
20 not more than ~~\$37,500,000.00~~ **\$25,000,000.00** shall be used to
21 provide loans pursuant to the clean Michigan initiative revolving
22 loan program created in section 19608a. However, grants or loans
23 provided for in this subparagraph shall not be made to a local unit
24 of government or a brownfield redevelopment authority that is
25 responsible for causing a release or threat of release under part
26 201 at the site proposed for grant or loan funding.

1 ~~(v) Not more than \$12,000,000.00 shall be used for grants~~
2 ~~pursuant to the municipal landfill grant program under section~~
3 ~~20109a.~~

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

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

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

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

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

16 (i) \$10,000,000.00 shall be deposited into the retired
17 engineers technical assistance program fund created in section
18 14512.

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

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

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

1 of persons to lead hazards.

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

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

10 (2) Of the money allocated under section 19607(1)(a),
11 \$93,000,000.00 shall be used for facilities that pose an imminent
12 or substantial endangerment to the public health, safety, or
13 welfare, or to the environment. For purposes of this subsection,
14 facilities that pose an imminent or substantial endangerment shall
15 include, but are not limited to, those where public access poses
16 hazards because of potential exposure to chemicals or safety risks
17 and where drinking water supplies are threatened by contamination.

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

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

27 (5) Money provided in the fund may be used by the department

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

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

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

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

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

25 (7) The department, the department of natural resources, and
26 the department of community health shall each submit annually a
27 list of all projects that will be undertaken by that department

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

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

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

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

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

26 (b) Obtain authorization from the administering state
27 department before implementing a change that significantly alters

1 the proposed project.

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

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

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

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

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

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

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

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

10 (c) A loan recipient shall enter into a loan agreement with
11 the administering state department. ~~At a minimum, the loan~~
12 ~~agreement shall contain a commitment that the loan is secured by a~~
13 ~~full faith and credit pledge of the applicant, or if the applicant~~
14 ~~is an authority established pursuant to the brownfield~~
15 ~~redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,~~
16 ~~the commitment shall be from the municipality that created the~~
17 ~~authority pursuant to that act.~~

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

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

26 (9) Upon default of a loan, as determined by the administering
27 state department, or upon the request of the loan recipient as a

1 method to repay the loan, the department of treasury shall withhold
2 from the loan recipient state payments in amounts consistent with
3 the repayment schedule in the loan agreement until the loan is
4 repaid. The department of treasury shall deposit these withheld
5 funds into the fund until the loan is repaid.

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

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

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

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

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

27 (e) "Background concentration" means the concentration or

1 level of a hazardous substance that exists in the environment at or
2 regionally proximate to a facility that is not attributable to any
3 release at or regionally proximate to the facility.

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

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

15 (H) **"CERTIFICATE OF COMPLETION" MEANS A WRITTEN RESPONSE**
16 **PROVIDED BY THE DEPARTMENT CONFIRMING THAT A RESPONSE ACTIVITY HAS**
17 **BEEN COMPLETED IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS OF**
18 **THIS PART AND IS APPROVED BY THE DEPARTMENT.**

19 (I) ~~(h)~~ "Cleanup criteria for unrestricted residential use"
20 means either of the following:

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

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

25 (J) ~~(i)~~ "Department" means the director of the department of
26 ~~natural resources and environment~~ **ENVIRONMENTAL QUALITY** or his or
27 her designee to whom the director delegates a power or duty by

1 written instrument.

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

4 (I) ~~(k)~~—"Directors" means the directors or their designees of
5 the departments of ~~natural resources and environment,~~ **ENVIRONMENTAL**
6 **QUALITY**, community health, agriculture **AND RURAL DEVELOPMENT**, and
7 state police.

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

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

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

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

25 (Q) ~~(p)~~—"Evaluation" means those activities including, but not
26 limited to, investigation, studies, sampling, analysis, development
27 of feasibility studies, and administrative efforts that are needed

1 to determine the nature, extent, and impact of a release or threat
2 of release and necessary response activities.

3 (R) ~~(q)~~—"Exacerbation" means the occurrence of either of the
4 following caused by an activity undertaken by the person who owns
5 or operates the property, with respect to contamination for which
6 the person is not liable:

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

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

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

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

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

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

27 (A) The site-specific criteria do not depend on any land use

1 or resource use restriction to ensure protection of the public
2 health, safety, or welfare or the environment.

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

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

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

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

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

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

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

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

6 (ii) Hazardous substance as defined in the comprehensive
7 environmental response, compensation, and liability act, 42 USC
8 9601 to 9675.

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

10 (iv) Petroleum as described in part 213.

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

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

23 (i) A state or nationally chartered bank.

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

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

27 (iv) Any other state or federally chartered lending institution

1 or regulated affiliate or regulated subsidiary of any entity listed
2 in this subparagraph or subparagraphs (i) to (iii).

3 (v) An insurance company authorized to do business in this
4 state pursuant to the insurance code of 1956, 1956 PA 218, MCL
5 500.100 to 500.8302.

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

9 (vii) A foreign bank.

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

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

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

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

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

23 **(BB)** ~~(aa)~~ "Local health department" means that term as defined
24 in section 1105 of the public health code, 1978 PA 368, MCL
25 333.1105.

26 **(CC)** ~~(bb)~~ "Local unit of government" means a county, city,
27 township, or village, an agency of a local unit of government, an

1 authority or any other public body or entity created by or pursuant
2 to state law. Local unit of government does not include the state
3 or federal government or a state or federal agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **(MM)** ~~(ll)~~ "Release" includes, but is not limited to, any

1 spilling, leaking, pumping, pouring, emitting, emptying,
2 discharging, injecting, escaping, leaching, dumping, or disposing
3 of a hazardous substance into the environment, or the abandonment
4 or discarding of barrels, containers, and other closed receptacles
5 containing a hazardous substance. Release does not include any of
6 the following:

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

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

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

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

1 terms in part 85, and pesticide has the meaning given to that term
2 in part 83.

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

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

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

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

25 **(QQ)** ~~(pp)~~—"Response activity" means evaluation, interim
26 response activity, remedial action, demolition, **PROVIDING AN**
27 **ALTERNATIVE WATER SUPPLY**, or the taking of other actions necessary

1 to protect the public health, safety, or welfare, or the
2 environment or the natural resources. Response activity also
3 includes health assessments or health effect studies carried out
4 under the supervision, or with the approval of, the department of
5 community health and enforcement actions related to any response
6 activity.

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

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

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

14 (ii) A plan for evaluation activities.

15 (iii) A feasibility study.

16 (iv) A remedial action plan.

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

1 the purpose of securing a loan or other obligation.

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

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

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

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

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

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

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

26 (2) As used in this part:

27 (a) The phrase "a person who is liable" includes a person who

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

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

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

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

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

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

27 (5) The provisions in this section related to natural resource

1 damages as added by 1995 PA 71 do not apply to any judicial or
2 administrative action or claim in bankruptcy initiated on or before
3 March 1, 1995.

4 (6) A PERSON, INCLUDING THE DEPARTMENT, CONDUCTING A RESPONSE
5 ACTIVITY AT A FACILITY, OR OTHER AREA NECESSARY FOR IMPLEMENTATION
6 OF THAT RESPONSE ACTIVITY, IS NOT REQUIRED TO OBTAIN A STATE OR
7 LOCAL PERMIT FOR THE RESPONSE ACTIVITY IF EACH OF THE FOLLOWING
8 REQUIREMENTS IS MET TO THE GREATEST EXTENT PRACTICABLE CONSIDERING
9 THE EXIGENCIES OF THE SITUATION WHEN CARRYING OUT THE RESPONSE
10 ACTIVITY:

11 (A) THE PERSON CONDUCTS THE RESPONSE ACTIVITY IN ACCORDANCE
12 WITH A RESPONSE ACTIVITY PLAN OR A REMEDIAL ACTION PLAN APPROVED BY
13 THE DEPARTMENT.

14 (B) THE PERSON SATISFIES THE STANDARDS OR REQUIREMENTS OF AN
15 OTHERWISE APPLICABLE STATE OR LOCAL PERMIT.

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

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

22 (b) Make the following notifications:

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

27 (ii) If the owner or operator has reason to believe that 1 or

1 more hazardous substances are emanating from or have emanated from
2 and are present beyond the boundary of his or her property at a
3 concentration in excess of cleanup criteria for unrestricted
4 residential use, notify the department and the owners of property
5 where the hazardous substances are present within 30 days after
6 obtaining knowledge that the release has migrated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (vi) Implement an approved response activity plan in accordance

1 with a schedule approved by the department pursuant to this part.

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

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

12 (3) Except as provided in subsection (4), a person who holds
13 an easement interest in a portion of a property who has knowledge
14 that there may be a release within that easement shall report the
15 release to the department within 24 hours after obtaining knowledge
16 of the release. This subsection applies to reportable quantities of
17 hazardous substances established pursuant to 40 CFR 302.4 and 302.6
18 ~~(1989)~~. **(JULY 1, 2012 EDITION)**.

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

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

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

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

27 Sec. 20114c. (1) If remedial actions at a facility satisfy

1 cleanup criteria for unrestricted residential use, land use or
2 resource use restrictions or monitoring is not required.

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

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

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

14 (i) A facility at which remedial action satisfies the cleanup
15 criteria for the nonresidential category under section
16 20120a(1)(b).

17 (ii) Use of groundwater.

18 (iii) Protection of the integrity of exposure controls that
19 prevent contact with soil, and those controls are composed solely
20 of asphalt, concrete, or landscaping materials. This subparagraph
21 does not apply if the hazardous substances that are addressed by
22 the barrier exceed a cleanup criterion based on acute toxic
23 effects, reactivity, corrosivity, ignitability, explosivity, or
24 flammability. ~~or if any hazardous substance addressed by the~~
25 ~~exposure control is present at a concentration of more than 10~~
26 ~~times an applicable soil direct contact cleanup criterion.~~

27 (iv) Construction requirements or limitations for structures

1 that may be built in the future.

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

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

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

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

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

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

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

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

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

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

1 20126.

2 Sec. 20114e. (1) The director shall establish a response
3 activity review panel to advise him or her on technical or
4 scientific disputes, including disputes regarding assessment of
5 risk, concerning response activity plans and no further action
6 reports under this part, and initial assessment reports, final
7 assessment reports, and closure reports under part 213.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (10) Within 60 days after receiving written notice of the
8 panel's recommendation, the director shall issue a final decision,
9 in writing, regarding the petition. However, this time period may
10 be extended by written agreement between the director and the
11 petitioner. If the director agrees with the recommendation of the
12 panel, the department shall incorporate the recommendation into its
13 response to the response activity plan, no further action report,
14 initial assessment report, final assessment report, or closure
15 report. If the director rejects the recommendation of the panel,
16 the director shall issue a written decision to the petitioner with
17 a specific rationale for rejecting the recommendation of the panel.
18 If the director fails to issue a final decision within the time
19 period provided for in this subsection, the recommendation of the
20 panel shall be considered the final decision of the director. The
21 final decision of the director under this subsection is subject to
22 review pursuant to section 631 of the revised judicature act of
23 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. 20120a. (1) The department may establish cleanup criteria
8 and approve of remedial actions in the categories listed in this
9 subsection. The cleanup category proposed shall be the option of
10 the person proposing the remedial action, subject to department
11 approval if required, considering the appropriateness of the
12 categorical criteria to the facility. The categories are as
13 follows:

14 (a) Residential.

15 (b) Nonresidential. ~~Beginning on the effective date of the~~
16 ~~2010 amendatory act that amended this section, the~~ **THE**
17 nonresidential cleanup criteria shall be the former industrial
18 categorical cleanup criteria developed by the department pursuant
19 to this section until new nonresidential cleanup criteria are
20 developed and published by the department pursuant to subsection
21 (17).

22 (c) Limited residential.

23 (d) Limited nonresidential.

24 (2) As an alternative to the categorical criteria under
25 subsection (1), the department may approve a response activity plan
26 or a no further action report containing site-specific criteria
27 that satisfy the requirements of section 20120b and other

1 applicable requirements of this part. The department shall utilize
2 only reasonable and relevant exposure pathways in determining the
3 adequacy of a site-specific criterion. Additionally, the department
4 may approve a remedial action plan for a designated area-wide zone
5 encompassing more than 1 facility, and may consolidate remedial
6 actions for more than 1 facility.

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

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

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

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

1 postclosure plan or a postclosure agreement.

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

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

25 (8) The need for soil remediation to protect an aquifer from
26 hazardous substances in soil shall consider the vulnerability of
27 the aquifer or aquifers potentially affected if the soil remains at

1 the facility. Migration of hazardous substances in soil to an
2 aquifer is a pertinent pathway if appropriate based on
3 consideration of site specific factors.

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

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

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

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

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

23 (11) The department may also approve cleanup criteria if
24 necessary to address conditions that prevent a hazardous substance
25 from being reliably measured at levels that are consistently
26 achievable in samples from the facility in order to allow for
27 comparison with generic cleanup criteria. A person seeking approval

1 of a criterion under this subsection shall document the basis for
2 determining that the relevant published target detection limit
3 cannot be achieved in samples from the facility.

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

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

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

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

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

1 postclosure agreement.

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

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

24 (19) **A PERSON MAY DEMONSTRATE COMPLIANCE WITH INDOOR AIR**
25 **INHALATION CRITERIA FOR A HAZARDOUS SUBSTANCE AT A FACILITY UNDER**
26 **THIS PART IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

27 (A) **THE USE OF THE FACILITY IS SUBJECT TO THE MICHIGAN**

1 OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO
2 MCL 408.1094.

3 (B) THE HAZARDOUS SUBSTANCE IS INCLUDED IN A HAZARD
4 COMMUNICATION PROGRAM.

5 (C) THE PERSON COMPLIES WITH THE MICHIGAN OCCUPATIONAL SAFETY
6 AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO MCL 408.1094, AND THE
7 RULES PROMULGATED UNDER THAT ACT APPLICABLE TO THE EXPOSURE TO THE
8 HAZARDOUS SUBSTANCE.

9 (20) RESPONSE ACTIVITY SCREENING LEVELS ESTABLISHED BY THE
10 DEPARTMENT UNDER THIS PART MAY BE USED AS ANY OF THE FOLLOWING:

11 (A) SCREENING LEVELS TO DETERMINE WHETHER CONDITIONS AT A
12 PROPERTY REQUIRE FURTHER EVALUATION.

13 (B) A BASIS FOR MAKING A DETERMINATION THAT A PROPERTY IS A
14 FACILITY.

15 (C) A BASIS FOR DETERMINING THAT A RESPONSE ACTIVITY SATISFIES
16 THE REQUIREMENTS OF THIS PART IF RESPONSE ACTIVITY SCREENING LEVELS
17 ARE MET OR SATISFIED.

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

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

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

27 (b) Alter any value, parameter, or assumption used to

1 calculate generic criteria.

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

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

8 (e) Use probabilistic methods of calculation.

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

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

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

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

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

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

1 constitute occupancy.

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

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

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

22 (ii) A person who, prior to June 5, 1995, arranges for the sale
23 or transport of a secondary material for use in producing a new
24 product unless the state has incurred response activity costs
25 associated with these secondary materials prior to December 17,
26 1999. As used in this subparagraph, secondary material means scrap
27 metal, paper, plastic, glass, textiles, or rubber, which has

1 demonstrated reuse or recycling potential and has been separated or
2 removed from the solid waste stream for reuse or recycling, whether
3 or not subsequent separation and processing is required, if
4 substantial amounts of the material are consistently used in the
5 manufacture of products which may otherwise be produced from a raw
6 or virgin material.

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

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

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

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

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

1 threat of release:

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

14 (b) A state or local unit of government that holds or acquires
15 an easement interest in a facility, holds or acquires an interest
16 in a facility by dedication in a plat, or by dedication pursuant to
17 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an
18 interest in a facility for a transportation or utility corridor,
19 including sewers, pipes, and pipelines, or public right of way.

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

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

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

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

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

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

26 (i) A utility performing normal construction, maintenance, and
27 repair activities in the normal course of its utility service

1 business. This subsection does not apply to property owned by the
2 utility.

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

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

13 **(l) A PERSON WHO OWNS OR OCCUPIES A RESIDENTIAL CONDOMINIUM**
14 **UNIT FOR BOTH OF THE FOLLOWING:**

15 **(i) CONTAMINATION OF THE UNIT IF HAZARDOUS SUBSTANCE USE WITHIN**
16 **THE UNIT IS CONSISTENT WITH RESIDENTIAL USE.**

17 **(ii) CONTAMINATION OF ANY GENERAL COMMON ELEMENT, LIMITED**
18 **COMMON ELEMENT, OR COMMON AREA IN WHICH THE PERSON HAS AN OWNERSHIP**
19 **INTEREST OR RIGHT OF OCCUPATION BY REASON OF OWNING OR OCCUPYING**
20 **THE RESIDENTIAL CONDOMINIUM UNIT.**

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

23 (a) The owner or operator of a hazardous waste treatment,
24 storage, or disposal facility regulated pursuant to part 111 from
25 which there is a release or threat of release solely from the
26 treatment, storage, or disposal facility, or a waste management
27 unit at the facility and the release or threat of release is

1 subject to corrective action under part 111.

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

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

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

12 (i) An act of God.

13 (ii) An act of war.

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

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

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

26 (ii) Environmental contamination that is not addressed in the
27 no further action report and for which the person is otherwise

1 liable under this part.

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

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

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

23 (5) Notwithstanding any other provision of this part, the
24 state or a local unit of government or a lender who has not
25 participated in the management of the facility is not liable under
26 this part for costs or damages as a result of response activity
27 taken in response to a release or threat of release. For a lender,

1 this subsection applies only to response activity undertaken prior
2 to foreclosure. This subsection does not preclude liability for
3 costs or damages as a result of gross negligence, including
4 reckless, willful, or wanton misconduct, or intentional misconduct
5 by the state or local unit of government.

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

8 ~~—— (7) Beginning on the effective date of the 2010 amendatory act~~
9 ~~that amended this section, the department shall not implement or~~
10 ~~enforce R 299.5901 to R 299.5919 of the Michigan administrative~~
11 ~~code, except the department may implement and enforce the following~~
12 ~~rules:~~

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

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

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

18 (7) ~~(8)~~ Notwithstanding subsection (1)(c), if the owner or
19 operator of the facility became the owner or operator of the
20 facility on or after June 5, 1995 and prior to March 6, 1996, and
21 the facility contains an underground storage tank system as defined
22 in part 213, that owner or operator is liable under this part only
23 if the owner or operator is responsible for an activity causing a
24 release or threat of release.

25 (8) ~~(9)~~ An owner or operator who was in compliance with
26 subsection (1)(c) prior to ~~the effective date of the amendatory act~~
27 ~~that added this subsection, DECEMBER 14, 2010~~ is considered to be

1 in compliance with subsection (1)(c).

2 Sec. 21304a. (1) Corrective action activities undertaken
3 pursuant to this part shall be conducted in accordance with the
4 process outlined in RBCA in a manner that is protective of the
5 public health, safety, and welfare, and the environment. Corrective
6 action activities that involve a discharge into air or groundwater
7 ~~as defined in section 21302~~ or surface water ~~as defined in section~~
8 ~~21303~~ shall be consistent with parts 31 and 55.

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

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

22 (4) If the applicable RBSL or SSTL for groundwater differs
23 from either (a) the state drinking water standard established
24 pursuant to section 5 of the safe drinking water act, 1976 PA 399,
25 MCL 325.1005, or (b) criteria for adverse aesthetic characteristics
26 derived pursuant to R 299.5709 of the Michigan administrative code,
27 the SSTL shall be the more stringent of (a) or (b) unless the owner

1 or operator determines that compliance with (a) or (b) is not
2 necessary because the use of the groundwater is reliably restricted
3 pursuant to section 21310a.

4 (5) Corrective action at sites where a release has occurred or
5 a threat of release exists from an underground storage tank system
6 is regulated exclusively under this part. Notwithstanding any other
7 provision of this part, ~~if~~ **AN OWNER OR OPERATOR OF AN UNDERGROUND**
8 **STORAGE TANK SYSTEM MAY CHOOSE TO PERFORM RESPONSE ACTIVITIES OR**
9 **OTHERWISE ADDRESS A RELEASE OR THREAT OF A RELEASE PURSUANT TO PART**
10 **201 IN LIEU OF CORRECTIVE ACTIONS PURSUANT TO THIS PART IN EITHER**
11 **OF THE FOLLOWING SITUATIONS:**

12 (A) IF a release or threat of release at a site is not solely
13 the result of a release or threat of release from an underground
14 storage tank system, the owner or operator of the underground
15 storage tank system may choose to perform response activities
16 pursuant to part 201 in lieu of corrective actions pursuant to this
17 part.

18 (B) IF A RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM
19 INVOLVES VENTING GROUNDWATER, THE OWNER OR OPERATOR OF THE
20 UNDERGROUND STORAGE TANK SYSTEM MAY CHOOSE TO ADDRESS THE VENTING
21 GROUNDWATER PURSUANT TO PART 201 IN LIEU OF CORRECTIVE ACTIONS
22 ADDRESSING THE VENTING GROUNDWATER PURSUANT TO THIS PART.

23 Enacting section 1. (1) Subpart 1 of part 147 of the natural
24 resources and environmental protection act, 1994 PA 451, MCL
25 324.14701 to 324.14705, is repealed.

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

1 Enacting section 2. (1) R 299.5105, R 299.5107, R 299.5109, R
2 299.5111, R 299.5113, R 299.5117, R 299.5401 to R 299.5415, R
3 299.5530, R 299.5532, R 299.5534, R 299.5536, R 299.5538, R
4 299.5540, R 299.5732, R 299.5742, and R 299.5901 to R 299.5919 of
5 the Michigan administrative code are rescinded.

6 (2) R 299.5101, R 299.5103, R 299.5115, R 299.5520, R
7 299.5522, R 299.5524, R 299.5526, R 299.5528, R 299.5542, R
8 299.5701, R 299.5703, R 299.5705, R 299.5706, R 299.5706a, R
9 299.5707, R 299.5708 to R 299.5726, R 299.5728, R 299.5730, R
10 299.5734, R 299.5736, R 299.5738, R 299.5740, and R 299.5744 to R
11 299.5752 of the Michigan administrative code are rescinded
12 effective December 31, 2013.