A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101, 20102, 20105, 20112a, 20114, 20116, 20118, 20119, 20120a, 20126, 20126a, and 20137 (MCL 324.20101, 324.20102, 324.20105, 324.20112a, 324.20114, 324.20116, 324.20118, 324.20119, 324.20120a, 324.20126, 324.20126a, and 324.20137), section 20101 as amended by 1996 PA 383, sections 20102, 20105, 20114, 20116, 20118, 20119, and 20137 as amended and sections 20112a, 20120a, and 20126a as added by 1995 PA 71, and section 20126 as amended by 1999 PA 196, and by adding sections 20114b, 20114c, 20114d, and 20114e; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

(d) "Baseline environmental assessment" means an evaluation of
environmental conditions which exist at a facility at the time of
purchase, occupancy, or foreclosure that reasonably defines the
existing conditions and circumstance at the facility so that, in
the event of a subsequent release, there is a means of
distinguishing the new release from existing contamination. A
BASELINE ENVIRONMENTAL ASSESSMENT, REGARDLESS OF WHETHER AN OWNER
OR OPERATOR PETITIONS THE DEPARTMENT FOR AN EXEMPTION UNDER SECTION
20129A, MAY ESTABLISH A BASIS TO DISTINGUISH EXISTING CONTAMINATION
FROM A NEW RELEASE THROUGH ANY OR A COMBINATION OF THE FOLLOWING:

(i) ENVIRONMENTAL DATA THAT CHARACTERIZES CONDITIONS AT THE
PROPERTY, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL DATA
MEASURING THE APPROXIMATE AGE OF HAZARDOUS SUBSTANCES USING METHODS
BASED ON PEER-REVIEWED SCIENTIFIC LITERATURE.

(ii) ENGINEERING CONTROLS.

(iii) ISOLATION ZONES. AN ISOLATION ZONE MAY ESTABLISH A BASIS TO DISTINGUISH EXISTING CONTAMINATION FROM A NEW RELEASE IN A BASELINE ENVIRONMENTAL ASSESSMENT NOTWITHSTANDING A POSSIBILITY THAT A NEW RELEASE OF A HAZARDOUS SUBSTANCE IN SOLID OR LIQUID FORM MAY OCCUR WITHIN AND MIGRATE BEYOND THE ISOLATION ZONE.

(iv) STIPULATED CONDITIONS.

(v) ANY OTHER METHOD THAT REASONABLY DISTINGUISHES EXISTING CONTAMINATION FROM A NEW RELEASE.

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

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

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

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

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

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

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

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

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

(n) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to existing contamination:

(i) Contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above cleanup criteria specified in section 20120a(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to section 20120b-20114B.

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

(o) "Facility" means any area, place, or property where a
hazardous substance in excess of the concentrations which satisfy
the requirements of section 20120a(1)(a) or (17) or the cleanup
criteria for unrestricted residential use under part 213 has been
released, deposited, disposed of, or otherwise comes to be located.

Facility—EXCEPT FOR PURPOSES OF SECTION 2(P) OF THE BROWNFIELD
REDEVELOPMENT FINANCING ACT, 1996 PA 381, MCL 125.2652, AND SECTION
2(H)(ii) OF THE OBSOLETE PROPERTY REHABILITATION ACT, 2000 PA 146,
MCL 125.2782, FACILITY does not include any area, place, or
property at which WHERE ANY OF THE FOLLOWING CONDITIONS ARE
SATISFIED:

(i) THE DEPARTMENT HAS ISSUED A NO FURTHER ACTION LETTER UNDER
SECTION 20114C, THE DEPARTMENT HAS ISSUED A NO FURTHER ACTION
LETTER UNDER SECTION 20114D FOR A CLOSURE REPORT THAT ADDRESSES ALL
KNOWN RELEASES ON A PROPERTY, OR response activities have been
completed which satisfy the cleanup criteria for the residential
category provided for in section 20120a(1)(a) and (17). or at which
corrective

(ii) SITE-SPECIFIC CRITERIA APPLICABLE TO THE AREA, PLACE, OR
PROPERTY THAT HAVE BEEN APPROVED BY THE DEPARTMENT ARE MET OR
SATISFIED AND HAZARDOUS SUBSTANCES THAT ARE NOT ADDRESSED BY THE
SITE-SPECIFIC CRITERIA SATISFY THE CLEANUP CRITERIA FOR THE
RESIDENTIAL CATEGORY PROVIDED FOR IN SECTION 20120A(1)(A) AND (17).

(iii) CORRECTIVE action has been completed under part 213 which
satisfies the cleanup criteria for unrestricted residential use.

(iv) THE AREA, PLACE, OR PROPERTY IS RESIDENTIAL REAL PROPERTY
ONTO WHICH CONTAMINATION HAS MIGRATED THROUGH AIR, SOIL,
GROUNDWATER, SURFACE WATER, OR ANY OTHER MEDIA FROM A SOURCE NOT
LOCATED ON THE RESIDENTIAL REAL PROPERTY AND ANY HAZARDOUS
SUBSTANCES LOCATED ON THE PROPERTY THAT HAVE NOT MIGRATED FROM
ANOTHER SOURCE MEET SITE-SPECIFIC CRITERIA APPROVED BY THE
DEPARTMENT OR THE CLEANUP CRITERIA FOR THE RESIDENTIAL CATEGORY
PROVIDED FOR IN SECTION 20120A(1)(A) AND (17).

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

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

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

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

(t) "Hazardous substance" means 1 or more of the following,
but does not include fruit, vegetable, or field crop residuals or
processing by-products, or aquatic plants, that are applied to the
land for an agricultural use or for use as an animal feed, if the
use is consistent with generally accepted agricultural management
practices developed pursuant to the Michigan right to farm act, Act
No. 93 of the Public Acts of 1981, being sections 286.471 to
286.474 of the Michigan Compiled Laws 1981 PA 93, MCL 286.471 TO
286.474:

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


(iii) Hazardous waste as defined in part 111.

(iv) Petroleum as described in part 213.

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

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

(i) A state or nationally chartered bank.

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

(iii) A state or federally chartered credit union.

(iv) Any other state or federally chartered lending institution or regulated affiliate or regulated subsidiary of any entity listed in this subparagraph or subparagraphs (i) to (iii).
(v) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws 1956 PA 218, MCL 500.100 TO 500.8302.

(vi) A motor vehicle finance company subject to the motor vehicle finance act, Act No. 27 of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws 1950 (EX SESS) PA 27, MCL 492.101 TO 492.141, with net assets in excess of $50,000,000.00.

(vii) A foreign bank.

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

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

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

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

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

(w) "Local health department" means that term as defined in section 1105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws 1978 PA 368, MCL 333.1105.
(x) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include the state or federal government or a state or federal agency.

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

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

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

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

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

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

(AA) "PANEL" MEANS THE MICHIGAN REMEDIAL ACTION REVIEW PANEL CREATED IN SECTION 20114E.

(BB) "Permitted release" means 1 or more of the following:
(i) A release in compliance with an applicable, legally enforceable permit issued under state law.

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


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

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

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

(iii) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of chapter 14 of title I of the atomic energy act of 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release of source by-product or special nuclear material from any
processing site designated under section 102(a)(1) of title I or
302(a) of title III of the uranium mill tailings radiation control

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

(v) A release does not include fruits, vegetables, field crop
processing by-products, or aquatic plants, that are applied to the
land for an agricultural use or for use as an animal feed, if the
use is consistent with generally accepted agricultural and
management practices developed pursuant to the Michigan right to
farm act, Act No. 93 of the Public Acts of 1981, being sections
286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL
286.471 to 286.474.

(DD) (ee) "Remedial action" includes, but is not limited to,
cleanup, removal, containment, isolation, destruction, or treatment
of a hazardous substance released or threatened to be released into
the environment, monitoring, maintenance, or the taking of other
actions that may be necessary to prevent, minimize, or mitigate
injury to the public health, safety, or welfare, or to the
environment.
(EE) (ee)—"Remedial action plan" means a work plan for performing remedial action under this part AND INCLUDES PLANS FOR INTERIM RESPONSE DESIGNED TO MEET CRITERIA AND REPORTS OF REMEDIAL INVESTIGATIONS. REMEDIAL ACTION PLAN DOES NOT INCLUDE A REPORT SUMMARIZING REMEDIAL WORK CONDUCTED.

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

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

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

(II) (hh) "Site" means the location of environmental contamination.

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

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

Sec. 20102. The legislature hereby finds and declares:

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health, safety, or welfare, or to the environment of this state.

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the state.

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at facilities within the state.

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies.

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury, destruction, or loss to natural resources caused
by a release or threat of release should not be placed upon the
public except when funds cannot be collected from, or a response
activity cannot be undertaken by, a person liable under this part.

(f) That liability for response activities to address
environmental contamination should be imposed upon those persons
who are responsible for the environmental contamination.

(g) That to the extent possible, consistent with requirements
under this part and rules promulgated under this part, response
activities shall be undertaken by persons liable under this part.

(h) That this part is intended to provide remedies for
facilities posing any threat to the public health, safety, or
welfare, or to the environment, regardless of whether the release
or threat of release of a hazardous substance occurred before or
after October 13, 1982, the effective date of the former
environmental response act, Act No. 307 of the Public Acts of 1982
1982 PA 307, and for this purpose this part shall be given
retroactive application. However, criminal and civil penalties
provided in this part shall apply to violations of this part that
occur after July 1, 1991.

(i) That a facility that is owned by the federal government,
the state, or a local unit of government, or a facility where a
release or threat of release is caused by the federal government,
the state, or a local unit of government, should not be treated
differently in terms of the expenditure of money for response
activities than any facility.

(j) That if a person who is liable under section 20126 is the
state or a local unit of government, this part should be enforced
by the attorney general and the department in the same manner as it
would be for any other person who is liable under section 20126.

(k) That this part is not intended to impose penalties or
exemplary damages upon parties conducting response activities
pursuant to a decree or order to which the United States is a
party.

(l) That this part is intended to foster the redevelopment and
reuse of vacant manufacturing facilities and abandoned industrial
sites that have economic development potential, if that
redevelopment or reuse assures the protection of the public health,
safety, welfare, and the environment.

(m) That it is the intent of the legislature that, in
implementing this part, the department shall act reasonably in its
exercise of professional judgment.

Sec. 20105. (1) The department shall do all of the following:

(a) Upon discovery of a site, identify and evaluate the site
for the purpose of assigning to the site a priority score for
response activities. Upon assignment to the site of a priority
score for response activity, the site shall retain the same score
assignment unless a substantial body of data is provided to or
available to the department indicating to the department that a
substantial change in the score is warranted, and a person requests
rescoring for a site during the annual public comment period
following the publication of the list, or the department determines
that rescoring is appropriate.

(b) Develop 1 or more numerical risk assessment models for
assessing the relative present and potential hazards posed to the
public health, safety, or welfare, or to the environment by each site identified pursuant to subdivision (a). The model, or models if more than 1 is developed, shall provide a fair and objective site specific numerical score designating the relative risk posed to the public health, safety, or welfare, or to the environment of each site.

(c) Include in rules promulgated under this part the numerical risk assessment model or models if more than 1 is developed. The numerical risk assessment model or models shall be reviewed annually by the department to identify potential improvements.

(d) Except as provided in subsection (9), submit to the legislature in November of each fourth year a list strictly derived from the numerical risk assessment model or models provided for in this section that does all of the following:

(i) Includes all sites.

(ii) Categorizes sites according to the response activity at the site at the time of listing and according to categories established by rules.

(iii) Indicates whether the owner of a site is the federal government, the state, or a local unit of government.

(iv) Indicates a change in the status of a site since the last previously prepared list.

(e) Maintain and make available to the public upon request records regarding sites where remedial actions have been completed, including sites where land use restrictions have been imposed, if the records are not otherwise protected from disclosure by law.

(f) Submit the list for public hearings geographically
dispersed throughout the state. These hearings shall be completed
at least 30 days before the governor's annual budget
recommendations to the legislature.

(g) Report to the legislature and the governor those sites
that have been removed from the list pursuant to this section and
rules promulgated under this part and the source of the funds used
to undertake the response activity at each of the sites.

(h) Publish a notice each fourth year in the Michigan register
of the availability of, and submit to the standing committees of
the senate and the house of representatives that primarily consider
issues pertaining to the protection of natural resources and the
environment, a report describing the response activity that is
undertaken at each site where response activity is or has occurred
during the reporting period and the nature of the contamination
that resulted in the necessity for that response activity.

(2) THE DEPARTMENT SHALL NOT DO ANY OF THE FOLLOWING WITH
REGARD TO SITE CATEGORIZATION UNDER SUBSECTION (1) WITHOUT FIRST
NOTIFYING THE PROPERTY OWNER OR OPERATOR OF ITS INTENT AND ALLOWING
THE PERSON THE OPPORTUNITY TO PRESENT INFORMATION RELATING TO THE
RISKS POSED BY THE PROPERTY, AND THE PERSON SHALL BE ALLOWED TO
ATTEND AND PARTICIPATE IN ANY DELIBERATION BY THE DEPARTMENT ON
SUCH CHANGE:

(A) ALTER A SITE'S LISTING TO A HIGHER RISK CATEGORY THAN ITS
INITIAL LISTING.

(B) ASSIGN A SITE TO A RISK CATEGORY WHEN SUCH SITE HAS NOT
ALREADY BEEN LISTED.

(C) ASSIGN A SITE TO A HIGHER RISK CATEGORY THAN A LOW-HAZARD
SITE UNTIL THE DEPARTMENT CONDUCTS AN EVALUATION OF THE SITE'S RISK.

(3) Following July 1, 1991, if the department has information identifying the owner of property that may be listed as a site, the department shall make reasonable efforts to notify in writing the owner of the property and the local health department and the municipality in which the site is located prior to including the site on the list. This subsection does not provide a defense to liability.

(4) A site shall be removed from the list when the department's review of a site shows that the site does not meet the criteria specified in rules promulgated under this part. A site shall not be removed from this list until any necessary response activity that meets the standards specified in rules promulgated under this part is complete.

(5) A person may request that a site be removed from the list by submitting a petition to the department. A petition shall include all of the following information:

(a) A description and history of the site.

(b) A description of the nature and extent of the environmental contamination that existed at the site at the time the site was included on the list.

(c) A description of the response activity undertaken to remedy the release or threat of a release, consistent with rules promulgated under this part, or a description of the investigation conducted that supports the person's petition that the site should be removed from the list without further response activity.
(d) An analysis of the effectiveness of the response activity undertaken to remediate the release or threat of release. The analysis shall include site specific analytical data that documents the effectiveness of the response activity.

(e) Other site-specific information required by the department.

(6) A person seeking the removal of a site from the list shall prepare and submit to the department the documentation required by subsection (4)(5). If response activities have been conducted by the department at the site, the department shall prepare the documentation required by subsection (4)(5). UPON ISSUANCE BY THE DEPARTMENT OF A NO FURTHER ACTION LETTER UNDER SECTION 20114C(8) OR A NO FURTHER ACTION LETTER ADDRESSING ALL KNOWN RELEASES UNDER SECTION 20114D(6) FOR A PROPERTY, THE DEPARTMENT SHALL REMOVE THE PROPERTY FROM THE LIST.

(7) Within 30 days after receipt of the petition, the department shall determine whether a petition submitted under subsection (4)(5) is administratively complete. Within 60 days after a determination that a petition is administratively complete, the petitioner shall be notified by the department of the department's intent to remove the site from the list, or the petitioner shall be notified that the petition for removal of the site from the list does not meet the criteria for removal of the site from the list as determined by rule. Removal of sites from the list shall be accomplished as part of the process described in rules promulgated under this part. However, if the department concludes pursuant to subsection (3)(4) that the circumstances
warrant removal of the site from the list before or at the next
regularly scheduled hearing to be held in accordance with rules
promulgated under this part, the department shall prepare a notice
of intent to remove the site from the list. A notice of intent
shall include information considered appropriate by the department
and shall be published in at least 1 newspaper of general
circulation that serves the area of the site and the notice of
intent shall be provided to the local health department and the
municipality in which the site is located. Public comment on the
notice of intent to remove the site from the site list shall be
accepted for a period of not less than 30 days from the date of
publication. The department may hold a public hearing on the
proposed action.

(8) The department shall make a final determination
whether to include the site on the next list. The department shall
consider any comments received in response to the notice described
in subsection (6).

(9) The department shall notify the person that requested
that the site be removed from the list, the local health
department, and the municipality in which the site is located of
the decision within 45 days of the end of the public comment period
provided for in the notice published pursuant to subsection (6).

(10) If the department provides the information required
to be included on the list prepared under this section on a
computer data base that is accessible through public access
computer terminals in each county in the state, the department need
not prepare a printed copy of the list.

(11) As used in this section, "list" means the list described in subsection (1)(d).

Sec. 20112a. (1) Within 2 years after the effective date of this section— NOT LATER THAN JUNE 5, 1997, and biennially thereafter, the department shall report to the legislature on the effectiveness of the amendatory act that added this section in restoring the economic value of sites of environmental contamination. The report shall include but not be limited to an examination of the effectiveness of the categorical cleanup criteria and liability provisions in encouraging the redevelopment of sites of environmental contamination. In preparing this report, the department shall consult the chairpersons of the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment.

(2) THE DEPARTMENT SHALL RECORD AND ANNUALLY REPORT TO THE LEGISLATURE THE NUMBERS OF ALL OF THE FOLLOWING:

(A) REQUESTS FOR APPROVAL OF REMEDIAL ACTION PLANS RECEIVED BY THE DEPARTMENT AND APPROVED OR DISAPPROVED BY THE DEPARTMENT OR BY THE PANEL UNDER SECTION 20114E.

(B) REQUESTS FOR APPROVAL OF NO FURTHER ACTION UNDER SECTION 20114C RECEIVED BY THE DEPARTMENT AND APPROVED OR DISAPPROVED BY THE DEPARTMENT OR BY THE PANEL UNDER SECTION 20114E.

(C) CLOSURE PLANS SUBMITTED TO THE DEPARTMENT UNDER SECTION 20114D FOR REVIEW AND APPROVAL AND APPROVED OR DISAPPROVED BY THE DEPARTMENT OR BY THE PANEL UNDER SECTION 20114E.

(D) BASELINE ENVIRONMENTAL ASSESSMENTS CATEGORIZED BY TYPE
RECEIVED BY THE DEPARTMENT FOR APPROVAL AND FOR DISCLOSURE AND
APPROVED OR DISAPPROVED BY THE DEPARTMENT OR BY THE PANEL UNDER
SECTION 20114E.

(3) THE DEPARTMENT SHALL POST THE INFORMATION DESCRIBED IN
SUBSECTION (2) ON ITS WEBSITE MONTHLY AS THE SUBMISSIONS AND
REQUESTS ARE MADE AND ACTED UPON.

Sec. 20114. (1) Except as provided in subsection (4), an owner
or operator of property who has knowledge that the property is a
facility and who is liable under section 20126 shall do all of the
following:
(a) Determine the nature and extent of a release at the
facility.
(b) Report the release to the department within 24 hours after
obtaining knowledge of the release. The requirements of this
subdivision shall apply to reportable quantities of hazardous
substances established pursuant to 40 C.F.R. 302.4 and 302.6
(1989), unless the department establishes through rules alternate
or additional reportable quantities as necessary to protect the
public health, safety, or welfare, or the environment.
(c) Immediately stop or prevent the release at the source.
(d) Immediately implement source control or removal measures
to remove or contain hazardous substances that are released after
the effective date of the 1995 amendments to this section JUNE 5,
1995 if those measures are technically practical, cost effective,
and provide protection to the environment. At a facility where
hazardous substances are released after the effective date of the
1995 amendments to this section JUNE 5, 1995, and those hazardous
substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and provide protection to the environment.

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

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

(g) Diligently pursue response activities necessary to achieve the cleanup criteria specified in this part and the rules promulgated under this part. For a period of 2 years after the effective date of the 1995 amendments to this section, fines and penalties shall not be imposed under this part for a violation of this subdivision.

(h) Upon written request by the department, take the following actions:

(i) Provide a plan for and undertake interim response activities.

(ii) Provide a plan for and undertake evaluation activities.

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

(iv) Submit to the department for approval a remedial action plan that, when implemented, will achieve the cleanup criteria specified in this part and the rules promulgated under this part.

(v) Implement an approved remedial action plan in accordance
with a schedule approved by the department pursuant to this part.

(2) A person may undertake response activity without prior approval by the department unless that response activity is being done pursuant to an administrative order or agreement or judicial decree which requires prior department approval. Any such action shall not relieve any person of liability for further response activity as may be required by the department. **A PERSON WHO UNDERTAKES RESPONSE ACTIVITY UNDER THIS SUBSECTION MAY, BUT IS NOT OBLIGATED TO, SEEK DEPARTMENT APPROVAL OF THE RESPONSE ACTIVITY.**

(3) Except as provided in subsection (4), a person who holds an easement interest in a portion of a property who has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. Unless the department establishes through rules alternate or additional reportable quantities as necessary to protect the public health, safety, or welfare, or the environment, this subsection shall apply to reportable quantities of hazardous substances established pursuant to 40 C.F.R. 302.4 and 302.6 (1989).

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

(5) Upon a determination by the department that a person has completed all response activity at a facility pursuant to an approved remedial action plan prepared and implemented in compliance with this part and the rules promulgated under this part, the department, upon request of a person, shall execute and
present a document stating that all response activities required in
the approved remedial action plan have been completed. **THIS SECTION
DOES NOT PREVENT A PERSON FROM REQUESTING THAT THE DEPARTMENT
APPROVE A RESPONSE ACTIVITY OR REMEDIAL ACTION PLAN EVEN IF NOT
REQUESTED BY THE DEPARTMENT.**

(6) An owner or operator of a facility from which a hazardous
substance is released that is determined to be reportable under
subsection (1)(b), other than a permitted release, who fails to
notify the department within 24 hours after obtaining knowledge of
the release or who submits in such notification any information
that the person knows to be false or misleading, is subject to a
civil fine of not more than $25,000.00 for each day in which the
violation occurs or the failure to comply continues. A fine imposed
under this subsection shall be based upon the seriousness of the
violation and any good faith efforts by the violator to comply with
this subsection.

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

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

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

(8) Any request for approval of a plan shall be granted or
denied within 6 months of submittal of the information necessary or
required for the department to make its decision. If the department
does not approve the plan, the reasons for the denial shall be
provided by the department in writing with a complete and specific
statement of the conditions or requirements necessary to obtain
approval. The department may not add additional items to this statement after it has been issued. Failure of the department to act within the specified time period shall result in the request being considered approved. The time frame for decision may be extended by the mutual consent of the department and the person submitting the plan. The department shall review and make a determination regarding a plan submitted for approval according to this subsection, as follows:

(A) For a plan to undertake interim response activities or a plan to undertake evaluation activities, the department shall review the plan and approve or deny the plan within 60 days after it is submitted for approval. If the department determines within 60 days after a plan is submitted for approval that the plan lacks sufficient information for the department to approve or deny the plan, the department may submit a request for additional information in writing to the person submitting the plan for approval. The department shall then grant or deny the plan on or before the later of the thirtieth day after receiving the additional information or the sixtieth day after the plan was submitted for approval.

(B) For a remedial action plan, the department shall review the plan and provide one of the following written responses within 90 days after receiving the request:

(i) An unconditional approval.

(ii) A conditional approval that delineates necessary modifications to the remedial action plan. The department may not modify this conditional approval after it has been issued.
(iii) A denial. The department shall accompany the denial with a letter that states with specificity the reason for the denial.

(iv) If the remedial action plan lacks sufficient information for the department to respond under subparagraph (i), (ii), or (iii), the department shall specify in writing to the person requesting approval of the remedial action plan the information the department needs to respond under subparagraph (i), (ii), or (iii). The person requesting approval of the remedial action plan shall then respond to the department within 60 days. Notwithstanding any requests for information submitted by the department under this subparagraph, the department shall provide 1 of the responses in subparagraph (i), (ii), or (iii) within 6 months after receiving the request for approval of the remedial action plan.

(C) The department shall review and make decisions regarding a plan under this subsection according to the following:

(i) The department shall take into account site-specific conditions and uses that allow the most cost-effective, creative, and modern methods to effectively manage risks, including, but not limited to, source removal, risk assessment, pathway controls, or use controls.

(ii) The department shall make decisions that reflect an evaluation of the risks actually present or posed at a facility and not give weight to unlikely hypothetical concerns or risks.

(D) The department shall give 7 days' written notice to a person requesting approval of a remedial action plan of all meetings convened by any reviewing body, including, but not limited to, the remedial advisory team, the quality review team, or any
SIMILAR GROUP TO REVIEW A REQUEST FOR APPROVAL OF A REMEDIAL ACTION PLAN. THE DEPARTMENT SHALL PERMIT THE PERSON REQUESTING APPROVAL OF A REMEDIAL ACTION PLAN TO ATTEND ALL MEETINGS RELATED TO THE REMEDIAL ACTION PLAN, HEAR ALL DELIBERATIONS AND DISCUSSIONS, AND ADDRESS THE DEPARTMENT REGARDING THE REMEDIAL ACTION PLAN. THE DEPARTMENT SHALL PROVIDE THE PERSON REQUESTING APPROVAL OF A REMEDIAL ACTION PLAN WITH ANY WRITTEN SUMMARY, COMMENTS, OR RECOMMENDATIONS PREPARED BY AN EMPLOYEE OF THE DEPARTMENT OR A CONTRACTOR HIRED BY THE DEPARTMENT REGARDING THE REMEDIAL ACTION PLAN.

(E) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE WITHIN THE REQUIRED TIME FRAMES IN SUBDIVISIONS (A) AND (B), THE PLAN SUBMITTED FOR APPROVAL IS CONSIDERED APPROVED. IF THE DEPARTMENT DENIES A PLAN UNDER SUBDIVISIONS (A) OR (B), A PERSON MAY SUBSEQUENTLY RESUBMIT THE PLAN FOR APPROVAL.

(F) A PERSON REQUESTING APPROVAL OF A PLAN MAY APPEAL THE DEPARTMENT'S DECISION UNDER SUBDIVISION (A) OR (B) TO THE PANEL IN ACCORDANCE WITH SECTION 20114E.

SEC. 20114B. (1) IF A REMEDIAL ACTION PLAN IS BASED ON CRITERIA FOR THE RESIDENTIAL CATEGORY PROVIDED FOR IN SECTION 20120A(1)(A), LAND USE RESTRICTIONS OR MONITORING ARE NOT REQUIRED ONCE THOSE STANDARDS HAVE BEEN ACHIEVED BY THE REMEDIAL ACTION.

(2) IF A REMEDIAL ACTION PLAN IS BASED ON CRITERIA IN CATEGORIES PROVIDED FOR IN SECTION 20120A(1)(B) TO (E), A NOTICE OF APPROVED ENVIRONMENTAL REMEDIATION SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE FACILITY IS LOCATED WITHIN 21 DAYS AFTER SELECTION OF THE REMEDIAL ACTION, OR WITHIN 21
DAYS AFTER COMPLETION OF CONSTRUCTION OF THE REMEDIAL ACTION AS APPROPRIATE TO THE CIRCUMSTANCES. A NOTICE SHALL BE FILED PURSUANT TO THIS SECTION ONLY BY THE PROPERTY OWNER OR BY ANOTHER PERSON WHO HAS THE EXPRESS WRITTEN PERMISSION OF THE PROPERTY OWNER. THE FORM AND CONTENT OF THE NOTICE ARE SUBJECT TO APPROVAL BY THE STATE. ANY RESTRICTIONS CONTAINED IN THE NOTICE SHALL BE BINDING ON THE OWNER'S SUCCESSORS, ASSIGNS, AND LESSEES AND SHALL RUN WITH THE LAND. A NOTICE OF ENVIRONMENTAL REMEDIATION RECORDED PURSUANT TO THIS SUBSECTION SHALL STATE WHICH OF THE CATEGORIES OF LAND USE SPECIFIED IN SECTION 20120A(1)(B) TO (D) ARE CONSISTENT WITH THE ENVIRONMENTAL CONDITIONS AT THE PROPERTY TO WHICH THE NOTICE APPLIES, AND THAT A CHANGE FROM THAT LAND USE OR USES MAY NECESSITATE FURTHER EVALUATION OF POTENTIAL RISKS TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT. THE NOTICE OF APPROVED ENVIRONMENTAL REMEDIATION SHALL INCLUDE A SURVEY AND PROPERTY DESCRIPTION THAT DEFINE THE AREAS ADDRESSED BY THE REMEDIAL ACTION PLAN IF LAND USE OR RESOURCE USE RESTRICTIONS APPLY TO LESS THAN THE ENTIRE PARCEL OR IF DIFFERENT RESTRICTIONS APPLY TO DIFFERENT AREAS OF A PARCEL, AND THE SCOPE OF ANY LAND USE OR RESOURCE USE LIMITATIONS. ADDITIONAL REQUIREMENTS FOR FINANCIAL ASSURANCE, MONITORING, OR OPERATION, AND MAINTENANCE DO NOT APPLY IF A REMEDIAL ACTION COMPLIES WITH CRITERIA PROVIDED FOR IN SECTION 20120A(1)(B) TO (E), UNLESS MONITORING OR OPERATION AND MAINTENANCE ARE REQUIRED TO ASSURE THE COMPLIANCE WITH CRITERIA THAT APPLY OUTSIDE THE BOUNDARY OF THE PROPERTY THAT IS THE SOURCE OF THE RELEASE.

(3) IF A REMEDIAL ACTION PLAN IS BASED ON CRITERIA PROVIDED
FOR IN SECTION 20120A(1)(D) TO (F) OR (2), PROVISIONS CONCERNING
SUBDIVISIONS (A) TO (E) SHALL BE STIPULATED IN A LEGALLY
ENFORCEABLE AGREEMENT WITH THE DEPARTMENT. IF THE DEPARTMENT
CONCURS WITH AN ANALYSIS PROVIDED IN A REMEDIAL ACTION PLAN THAT 1
OR MORE OF THE REQUIREMENTS SPECIFIED IN SUBDIVISIONS (A) TO (E)
ARE NOT NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE,
OR THE ENVIRONMENT AND TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF
THE REMEDIAL ACTION, THAT ELEMENT MAY BE OMITTED FROM THE
AGREEMENT. IF PROVISIONS FOR ANY OF THE FOLLOWING, DETERMINED BY
THE DEPARTMENT TO BE APPLICABLE FOR A FACILITY, LAPSE OR ARE NOT
COMPLIED WITH AS PROVIDED IN THE AGREEMENT OR REMEDIAL ACTION PLAN,
THE DEPARTMENT'S APPROVAL OF THE REMEDIAL ACTION PLAN IS VOID FROM
THE TIME OF THE LAPSE OR VIOLATION, UNLESS THE LAPSE OR VIOLATION
IS CORRECTED TO THE SATISFACTION OF THE DEPARTMENT:

    (A) LAND USE OR RESOURCE USE RESTRICTIONS.

    (B) MONITORING.

    (C) OPERATION AND MAINTENANCE.

    (D) PERMANENT MARKERS TO DESCRIBE RESTRICTED AREAS OF THE SITE
        AND THE NATURE OF ANY RESTRICTIONS.

    (E) FINANCIAL ASSURANCE, IN A MECHANISM ACCEPTABLE TO THE
        DEPARTMENT TO PAY FOR MONITORING, OPERATION AND MAINTENANCE,
        OVERSIGHT, AND OTHER COSTS DETERMINED BY THE DEPARTMENT TO BE
        NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL
        ACTION.

    (4) IF A REMEDIAL ACTION PLAN RELIES IN WHOLE OR IN PART ON
        CLEANUP CRITERIA APPROVED PURSUANT TO SECTION 20120A(1)(D) TO (F)
        OR (2), LAND USE OR RESOURCE USE RESTRICTIONS TO ASSURE THE

(A) RESTRICT ACTIVITIES AT THE FACILITY THAT MAY INTERFERE WITH A REMEDIAL ACTION, OPERATION AND MAINTENANCE, MONITORING, OR OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL ACTION.
(B) Restrict activities that may result in exposures above levels established in the remedial action plan.

(C) Require notice to the department of the owner's intent to convey any interest in the facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for compliance with the terms and conditions of the agreement described in subsection (3) and the prevention of releases and exposures described in subdivision (B).

(D) Grant to the department the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the remedial action plan, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.

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

(F) Describe generally the uses of the property that are consistent with the categorical criteria and limitations approved as part of a remedial action plan.

(5) If the exposure to hazardous substances may be reliably restricted by an institutional control in lieu of a restrictive covenant, and that imposition of land use or resource use restrictions through restrictive covenants is impractical, a remedial action plan under section 20120a(1)(D) to (F) or (2) may rely on institutional control. Mechanisms that may be considered
UNDER THIS SUBSECTION INCLUDE, BUT ARE NOT LIMITED TO, AN ORDINANCE THAT PROHIBITS THE USE OF GROUNDWATER OR AN AQUIFER IN A MANNER AND TO A DEGREE THAT PROTECTS AGAINST UNACCEPTABLE EXPOSURES AS DEFINED BY THE CLEANUP CRITERIA APPROVED AS PART OF THE REMEDIAL ACTION PLAN. AN ORDINANCE THAT SERVES AS AN EXPOSURE CONTROL PURSUANT TO THIS SUBSECTION SHALL BE PUBLISHED AND MAINTAINED IN THE SAME MANNER AS ZONING ORDINANCES AND SHALL INCLUDE A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO ADOPTING A MODIFICATION TO THE ORDINANCE, OR TO THE LAPSING OR REVOCATION OF THE ORDINANCE.

(6) IMPLEMENTATION OF A REMEDIAL ACTION DOES NOT RELIEVE A PERSON WHO IS LIABLE UNDER SECTION 20126 OF THAT PERSON'S RESPONSIBILITY TO REPORT AND PROVIDE FOR RESPONSE ACTIVITY TO ADDRESS A SUBSEQUENT RELEASE OR THREAT OF RELEASE AT THE FACILITY.

(7) A REMEDIAL ACTION SHALL NOT BE CONSIDERED APPROVED BY THE DEPARTMENT UNLESS A REMEDIAL ACTION PLAN IS SUBMITTED TO THE DEPARTMENT AND THE DEPARTMENT APPROVES THE PLAN ACCORDING TO SECTION 20114C. IMPLEMENTATION BY ANY PERSON OF RESPONSE ACTIVITY WITHOUT DEPARTMENT APPROVAL DOES NOT RELIEVE THAT PERSON OF AN OBLIGATION TO UNDERTAKE RESPONSE ACTIVITY OR LIMIT THE ABILITY OF THE DEPARTMENT TO TAKE ACTION TO REQUIRE RESPONSE ACTIVITY NECESSARY TO COMPLY WITH THIS ACT BY A PERSON WHO IS LIABLE UNDER SECTION 20126.

(8) A PERSON SHALL NOT FILE A NOTICE OF APPROVED ENVIRONMENTAL REMEDIATION INDICATING APPROVAL OR A DETERMINATION OF THE DEPARTMENT UNLESS THE DEPARTMENT HAS APPROVED OF THE FILING OF THE NOTICE.
(9) A person who implements a remedial action plan approved by the department pursuant to subsections (2) to (5) shall provide notice of the land use restrictions that are part of the remedial action plan to the zoning authority for the local unit of government in which the facility is located within 30 days of approval of the plan.

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

Sec. 20114C. (1) Upon completion of implementation of a remedial action plan approved by the department, a person shall submit to the department a request for no further action. The request for no further action shall document the basis for concluding that the remedial action plan has been completed and that the remedial goals of the remedial action plan have been met. A request to confirm no further action shall be accompanied by a fee of $1,500.00. The department shall deposit all fees collected under this section into the fund.

(2) If the remedial action plan includes ongoing monitoring, operation, or maintenance activities, a person submitting a request for no further action shall include a plan for those activities and a financial assurance mechanism to ensure the implementation of those activities.

(3) Each person submitting a request for no further action shall include a signed oath attesting to the fact that the information included in the request for no further action is true to the best of that person's knowledge.
(4) A person submitting a request for no further action shall maintain all documents and data prepared or acquired in connection with the request for not less than 10 years after the date the department issues a no further action letter under this section and shall make such documents and data available to the department upon request.

(5) After receiving a request for no further action, the department shall review the request to verify the completion of the activities and to verify whether the property complies with the standards under Section 20120A approved by the department in the remedial action plan. The department shall do all of the following:

(A) The department shall give 7 days' written notice to a person who submits a request for no further action of all meetings convened by any reviewing body, including, but not limited to, the remedial advisory team, the quality review team, or any similar group to review the request. The department shall permit the person submitting the request for no further action to attend all of these meetings, hear all deliberations and discussions, and address the department regarding the request. The department shall provide the person submitting a request for no further action with any written summary, comments, or recommendations prepared by an employee of the department or a contractor hired by the department regarding the request.

(B) The department shall approve or deny a request for no further action within 120 days after receiving the request.

(C) The department shall review and make decisions regarding a request for no further action under this section according to the
FOLLOWING:

(i) THE DEPARTMENT SHALL TAKE INTO ACCOUNT SITE-SPECIFIC CONDITIONS AND USES THAT ALLOW THE MOST COST-EFFECTIVE, CREATIVE, AND MODERN METHODS TO EFFECTIVELY MANAGE RISKS, INCLUDING, BUT NOT LIMITED TO, SOURCE REMOVAL, RISK ASSESSMENT, PATHWAY CONTROLS, OR USE CONTROLS.

(ii) THE DEPARTMENT SHALL MAKE DECISIONS THAT REFLECT AN EVALUATION OF THE RISKS ACTUALLY PRESENT OR POSED AT A FACILITY AND NOT GIVE WEIGHT TO UNLIKELY HYPOTHETICAL CONCERNS OR RISKS.

(6) THE DECISION OF THE DEPARTMENT AND THE REASONS FOR THE DECISION SHALL BE IN WRITING WITH SPECIFIC REFERENCE TO THIS PART OR RULES PROMULGATED UNDER THIS PART FOR ANY SUBSTANTIATION OF DENIAL OF APPROVAL OF THE REQUEST FOR NO FURTHER ACTION AND SHALL BE SENT BY FIRST-CLASS MAIL TO THE APPLICANT WITHIN 10 DAYS AFTER THE FINAL DECISION IS MADE. IF THE DEPARTMENT FAILS TO MAKE A FINAL DECISION WITHIN THE TIME ALLOTTED UNDER SUBSECTION (5), THE REQUEST FOR NO FURTHER ACTION SHALL BE CONSIDERED APPROVED AND THE DEPARTMENT SHALL BE OBLIGATED TO PREPARE AND ISSUE A NO FURTHER ACTION LETTER TO THE APPLICANT.

BEEN IMPLEMENTED.

(8) THE ISSUANCE OF A NO FURTHER ACTION LETTER BY THE DEPARTMENT SHALL BE CONSIDERED FINAL AND SHALL RENDER THE SUBJECT PROPERTY NO LONGER A FACILITY UNDER THIS PART IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE REQUIREMENTS OF THE REQUEST FOR NO FURTHER ACTION ARE COMPLIED WITH.

(B) THERE ARE NO NEW RELEASES THAT OCCUR AT THE PROPERTY AFTER THE DATE OF ISSUANCE OF THE NO FURTHER ACTION LETTER.

(C) PREVIOUSLY UNKNOWN RELEASES AT THE PROPERTY ARE NOT DISCOVERED.

(D) ALL ONGOING OPERATION AND MAINTENANCE ACTIVITIES INCLUDED IN THE REMEDIAL ACTION PLAN ARE IMPLEMENTED ACCORDING TO THE REMEDIAL ACTION PLAN. IF AT ANY TIME AFTER THE DEPARTMENT ISSUES A NO FURTHER ACTION LETTER OPERATION AND MAINTENANCE ACTIVITIES ARE NOT IMPLEMENTED ACCORDING TO THE REMEDIAL ACTION PLAN, THE OWNER OR OPERATOR IS ONLY LIABLE FOR ANY EXACERBATION OF EXISTING CONTAMINATION RESULTING FROM THE FAILURE TO IMPLEMENT THE OPERATION AND MAINTENANCE ACTIVITIES OR ANY CONTAMINATION ASSOCIATED WITH A NEW RELEASE RESULTING FROM THE FAILURE TO IMPLEMENT THE OPERATION AND MAINTENANCE ACTIVITIES.

(9) A CHANGE IN REMEDIAL STANDARDS UNDER THIS PART SHALL NOT BE CONSIDERED A BASIS FOR CHALLENGING OR OTHERWISE NEGATING A NO FURTHER ACTION LETTER.

(10) A PERSON SUBMITTING A REQUEST FOR NO FURTHER ACTION MAY APPEAL THE DEPARTMENT'S DECISION UNDER THIS SECTION TO THE PANEL ACCORDING TO SECTION 20114E.
SEC. 20114D. (1) A PERSON WHO IMPLEMENTS A RESPONSE ACTIVITY THAT HAS NOT BEEN APPROVED BY THE DEPARTMENT MAY CHOOSE TO IMPLEMENT THAT RESPONSE ACTIVITY ACCORDING TO THIS SECTION. WITHIN 60 DAYS AFTER A PERSON COMPLETES A RESPONSE ACTIVITY, THE PERSON MUST COMPLETE A CLOSURE REPORT AND SUBMIT THE REPORT TO THE DEPARTMENT ON A FORM CREATED BY THE DEPARTMENT. A CLOSURE REPORT SHALL BE ACCOMPANIED BY A FEE OF $1,500.00. THE DEPARTMENT SHALL DEPOSIT ALL FEES COLLECTED UNDER THIS SECTION INTO THE FUND. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING INFORMATION:

(A) A SUMMARY OF THE RESPONSE ACTIVITY.

(B) CLOSURE VERIFICATION SAMPLING RESULTS.

(C) A CLOSURE CERTIFICATION PREPARED BY THE CONSULTANT.

(2) WITHIN 15 DAYS AFTER RECEIPT OF A CLOSURE REPORT UNDER SUBSECTION (1), THE DEPARTMENT SHALL PROVIDE THE CONSULTANT WHO SUBMITTED THE CLOSURE REPORT WITH A CONFIRMATION OF THE DEPARTMENT'S RECEIPT OF THE REPORT.

(3) THE DEPARTMENT SHALL DESIGN AND IMPLEMENT A PROGRAM TO SELECTIVELY AUDIT OR OVERSEE ALL ASPECTS OF SELF-IMPLEMENTED RESPONSE ACTIVITIES UNDERTAKEN UNDER THIS PART TO ASSURE COMPLIANCE WITH THIS PART. WHEN CONDUCTING AN AUDIT, THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION, IN WHICH CASE THE PERSON SUBMITTING THE CLOSURE REPORT SHALL RESPOND TO THE DEPARTMENT WITHIN 60 DAYS AFTER RECEIVING THE INFORMATION REQUEST. IF THE DEPARTMENT AUDITS A SITE OF A SELF-IMPLEMENTED RESPONSE ACTIVITY, THE DEPARTMENT SHALL COMPLETE THE AUDIT WITHIN 6 MONTHS AFTER RECEIVING THE CLOSURE REPORT UNLESS THE DEPARTMENT REQUESTS ADDITIONAL INFORMATION DURING
THE AUDIT, IN WHICH CASE THE DEPARTMENT MUST COMPLETE THE AUDIT
WITHIN 9 MONTHS AFTER RECEIVING THE CLOSURE REPORT. WHEN CONDUCTING
AN AUDIT, THE DEPARTMENT SHALL REVIEW AND MAKE DECISIONS REGARDING
A SELF-IMPLEMENTED RESPONSE ACTIVITY ACCORDING TO THE FOLLOWING:

(A) THE DEPARTMENT SHALL TAKE INTO ACCOUNT SITE-SPECIFIC
CONDITIONS AND USES THAT ALLOW THE MOST COST-EFFECTIVE, CREATIVE,
AND MODERN METHODS TO EFFECTIVELY MANAGE RISKS, INCLUDING, BUT NOT
LIMITED TO, SOURCE REMOVAL, RISK ASSESSMENT, PATHWAY CONTROLS, OR
USE CONTROLS.

(B) THE DEPARTMENT SHALL MAKE DECISIONS THAT REFLECT AN
EVALUATION OF THE RISKS ACTUALLY PRESENT OR POSED AT A FACILITY AND
NOT GIVE WEIGHT TO UNLIKELY HYPOTHETICAL CONCERNS OR RISKS.

(4) WITHIN 10 DAYS AFTER THE DEPARTMENT COMPLETES AN AUDIT,
THE DEPARTMENT SHALL PROVIDE EITHER OF THE FOLLOWING WRITTEN
RESPONSES TO THE PERSON WHO SUBMITTED THE CLOSURE REPORT:

(A) AN APPROVAL OF THE CLOSURE REPORT IF THE AUDIT CONFIRMS
THAT THE CLEANUP CRITERIA APPROVED PURSUANT TO SECTION 20120A(1)(D)
TO (F) OR (2) HAVE BEEN MET.

(B) A DENIAL OF THE CLOSURE REPORT IF AN AUDIT CONDUCTED UNDER
THIS SECTION DOES NOT CONFIRM THAT RESPONSE ACTIVITY HAS BEEN
CONDUCTED IN COMPLIANCE WITH THIS PART OR THAT CLEANUP CRITERIA
HAVE BEEN MET. THE REASONS FOR THE DECISION SHALL MAKE SPECIFIC
REFERENCE TO THIS PART OR RULES PROMULGATED UNDER THIS PART AND
SHALL SPECIFY THE ADDITIONAL ACTIVITIES NECESSARY TO COMPLY WITH
THIS PART OR TO PROTECT PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
ENVIRONMENT.

(5) IF THE DEPARTMENT APPROVES A CLOSURE REPORT UNDER
SUBSECTION (4)(A), THE DEPARTMENT SHALL PROVIDE A NO FURTHER ACTION LETTER TO THE PERSON WHO SUBMITTED THE CLOSURE REPORT. THE NO FURTHER ACTION LETTER SHALL BE CONSIDERED FINAL IN REGARD TO THE CONTAMINATION ADDRESSED BY THE CLOSURE REPORT. THE NO FURTHER ACTION LETTER SHALL ALSO RENDER THE SUBJECT PROPERTY NO LONGER A FACILITY UNDER THIS PART IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

(A) THE REQUIREMENTS OF THE CLOSURE REPORT ARE COMPLIED WITH.

(B) THERE ARE NO NEW RELEASES THAT OCCUR AT THE PROPERTY AFTER THE DATE OF ISSUANCE OF THE NO FURTHER ACTION LETTER.

(C) THE CLOSURE REPORT ADDRESSES ALL KNOWN RELEASES AT THE PROPERTY.

(D) PREVIOUSLY UNKNOWN RELEASES AT THE PROPERTY ARE NOT DISCOVERED.

(6) IF AN AUDIT IS NOT CONDUCTED, THE CLOSURE REPORT SHALL BE CONSIDERED FINAL AND NO FURTHER ACTION SHALL BE REQUIRED WITH RESPECT TO THE CONTAMINATION ADDRESSED BY THE CLOSURE REPORT.

(7) A PERSON SUBMITTING A CLOSURE REPORT MAY APPEAL THE DEPARTMENT'S DECISION UNDER THIS SECTION TO THE MICHIGAN REMEDIAL ACTION REVIEW PANEL ACCORDING TO SECTION 20114E.

SEC. 20114E. (1) THE MICHIGAN REMEDIAL ACTION REVIEW PANEL IS CREATED IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(2) THE PANEL SHALL CONSIST OF 6 INDIVIDUALS NOT CURRENTLY EMPLOYED BY AN AGENCY OF THE STATE, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, WHO MEET ALL OF THE FOLLOWING MINIMUM REQUIREMENTS:

(A) POSSESS SUFFICIENT SPECIFIC EDUCATION, TRAINING, AND
EXPERIENCE NECESSARY TO EXERCISE PROFESSIONAL JUDGMENT UNDER THIS PART TO DEVELOP OPINIONS AND CONCLUSIONS REGARDING CONDITIONS INDICATIVE OF RELEASES OR THREATENED RELEASES ON, AT, IN, OR TO A PROPERTY, SUFFICIENT TO MEET THE OBJECTIVES AND PERFORMANCE FACTORS IN 40 CFR 312.20(E) AND (F).

(B) MEET 1 OR MORE OF THE FOLLOWING:

(i) HOLD A CURRENT PROFESSIONAL ENGINEER'S OR PROFESSIONAL GEOLOGIST'S LICENSE OR REGISTRATION FROM A STATE, TRIBE, OR UNITED STATES TERRITORY, OR THE COMMONWEALTH OF PUERTO RICO, AND HAVE THE EQUIVALENT OF 6 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

(ii) BE LICENSED OR CERTIFIED BY THE FEDERAL GOVERNMENT, A STATE, TRIBE, OR UNITED STATES TERRITORY, OR THE COMMONWEALTH OF PUERTO RICO, TO PERFORM ENVIRONMENTAL INQUIRIES AS DEFINED IN 40 CFR 312.21 AND HAVE THE EQUIVALENT OF 6 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

(iii) HAVE A BACCALAUREATE OR HIGHER DEGREE FROM AN ACCREDITED INSTITUTION OF HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND THE EQUIVALENT OF 8 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

(iv) HAVE THE EQUIVALENT OF 15 YEARS OF FULL-TIME RELEVANT EXPERIENCE. AS USED IN THIS SECTION, "RELEVANT EXPERIENCE" MEANS PARTICIPATION IN THE PREPARATION, IMPLEMENTATION, OR PERFORMANCE OF REMEDIAL INVESTIGATIONS, REMEDIAL FEASIBILITY STUDIES, OR REMEDIAL ACTION PLANS UNDER THIS PART THAT INVOLVE THE UNDERSTANDING OF SURFACE AND SUBSURFACE ENVIRONMENTAL CONDITIONS AND THE PROCESSES USED TO EVALUATE THESE CONDITIONS AND FOR WHICH PROFESSIONAL JUDGMENT WAS USED TO DEVELOP OPINIONS REGARDING CONDITIONS.
INDICATIVE OF RELEASES OR THREATENED RELEASES.

(C) REMAIN CURRENT IN HIS OR HER FIELD THROUGH PARTICIPATION IN CONTINUING EDUCATION OR OTHER ACTIVITIES.

(3) AN INDIVIDUAL APPOINTED TO THE PANEL SHALL SERVE FOR A TERM OF 2 YEARS. HOWEVER, THE TERMS FOR MEMBERS FIRST APPOINTED SHALL BE STAGGERED SO THAT NOT MORE THAN 3 VACANCIES ARE SCHEDULED TO OCCUR IN A SINGLE YEAR.

(4) A VACANCY ON THE PANEL SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

(5) THE FIRST MEETING OF THE PANEL SHALL BE CALLED BY THE DEPARTMENT. AT ITS FIRST MEETING, THE PANEL SHALL ELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS NECESSARY. AFTER THE FIRST MEETING, A MEETING OF THE PANEL SHALL BE CALLED BY THE CHAIRPERSON ON HIS OR HER OWN INITIATIVE OR BY THE CHAIRPERSON ON PETITION OF 3 OR MORE MEMBERS. UPON RECEIPT OF A PETITION OF 3 OR MORE MEMBERS, A MEETING SHALL BE CALLED FOR A DATE NO LATER THAN 14 DAYS AFTER THE DATE OF RECEIPT OF THE PETITION.


(7) FIVE MEMBERS OF THE PANEL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE PANEL. ACTION BY THE PANEL SHALL REQUIRE AT LEAST 4 OF THE VOTES CAST.

(8) ANY PERSON AGGRIEVED BY A DECISION OF THE DEPARTMENT RELATING TO A REQUEST FOR NO FURTHER ACTION, A BASELINE ENVIRONMENTAL ASSESSMENT, A REMEDIAL ACTION PLAN, OR A CLOSURE REPORT MAY PETITION THE PANEL FOR A REVIEW OF THE DEPARTMENT'S
ACTIONS. THE PETITION SHALL INCLUDE A FEE OF $2,500.00 WHICH SHALL
BE SPLIT AMONG THE MEMBERS OF THE PANEL TO COMPENSATE THEM FOR
THEIR SERVICE ON THE PANEL.

(9) THE PANEL SHALL SCHEDULE A MEETING OF 5 OF ITS MEMBERS,
SELECTED AT RANDOM, WITHIN 60 DAYS OF RECEIPT OF THE PETITION FOR
REVIEW. THE PETITIONER AND THE DEPARTMENT SHALL EACH BE AFFORDED AN
OPPORTUNITY TO PRESENT THEIR POSITIONS TO THE PANEL.

(10) WITHIN 5 DAYS AFTER THE MEETING, THE PANEL SHALL REACH A
CONCLUSION REGARDING THE PETITION AND SHALL SO NOTIFY THE DIRECTOR
OF THE DEPARTMENT AND THE PETITIONER IN WRITING.

(11) THE PANEL SHALL REVIEW THE DEPARTMENT’S DECISIONS UNDER
THIS SECTION ACCORDING TO THE FOLLOWING:

(A) THE PANEL SHALL ENSURE THAT THE DEPARTMENT TOOK INTO
ACCOUNT SITE-SPECIFIC CONDITIONS AND USES THAT ALLOW THE MOST COST-
EFFECTIVE, CREATIVE, AND MODERN METHODS TO EFFECTIVELY MANAGE
RISKS, INCLUDING, BUT NOT LIMITED TO, SOURCE REMOVAL, RISK
ASSESSMENT, PATHWAY CONTROLS, OR USE CONTROLS.

(B) THE PANEL SHALL ENSURE THAT THE DEPARTMENT MAKE DECISIONS
THAT REFLECT AN EVALUATION OF THE RISKS ACTUALLY PRESENT OR POSED
AT A FACILITY AND NOT GIVE WEIGHT TO UNLIKELY HYPOTHETICAL CONCERNS
OR RISKS.

(12) IF THE PANEL’S DETERMINATION IS THAT THE REQUEST FOR NO
FURTHER ACTION, THE BASELINE ENVIRONMENTAL ASSESSMENT, THE REMEDIAL
ACTION PLAN, OR THE CLOSURE REPORT SHOULD HAVE BEEN APPROVED BY THE
DEPARTMENT, WITHIN 30 DAYS AFTER RECEIPT OF THE DETERMINATION BY
THE DIRECTOR, THE DIRECTOR SHALL ISSUE AN APPROVAL UNLESS THE
DIRECTOR DETERMINES THAT THE PANEL’S FINDING WAS THE RESULT OF A
CLEAR ERROR OR MALFEASANCE BY THE PANEL. A FINDING OF THE PANEL IS
SUBJECT TO REVIEW PURSUANT TO SECTION 631 OF THE REVISED JUDICATURE

(13) UPON REQUEST OF THE DIRECTOR, THE PANEL SHALL MAKE A
RECOMMENDATION TO THE DEPARTMENT ON WHETHER A MEMBER SHOULD BE
REMOVED FROM THE PANEL. PRIOR TO MAKING THIS RECOMMENDATION, THE
PANEL MAY CONVENE A PEER REVIEW PANEL TO EVALUATE THE CONDUCT OF
THE MEMBER WITH REGARD TO COMPLIANCE WITH THIS PART.

(14) A MEMBER OF THE PANEL SHALL ABSTAIN FROM VOTING ON ANY
MATTER IN WHICH THAT MEMBER HAS A CONFLICT OF INTEREST.

Sec. 20116. (1) A person who has knowledge or information or
is on notice through a recorded instrument that a parcel of his or
her real property is a facility shall not transfer an interest in
that real property unless he or she provides written notice to the
purchaser or other person to which the property is transferred that
the real property is a facility and discloses the general nature
and extent of the release.

(2) The owner of real property for which a notice required in
subsection (1) has been recorded may, upon completion of all
response activities for the facility as approved by the department,
record with the register of deeds for the appropriate county a
certification that all response activity required in an approved
remedial action plan has been completed.

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

(4) AN OWNER OF RESIDENTIAL REAL PROPERTY ONTO WHICH CONTAMINATION HAS MIGRATED THROUGH AIR, SOIL, GROUNDWATER, SURFACE WATER, OR ANY OTHER MEDIA FROM A SOURCE NOT LOCATED ON THE RESIDENTIAL REAL PROPERTY SHALL NOT TRANSFER AN INTEREST IN THAT RESIDENTIAL REAL PROPERTY UNLESS THE OWNER PROVIDES TO THE PURCHASER ALL NOTICES RECEIVED UNDER R 299.51017 OF THE MICHIGAN ADMINISTRATIVE CODE.

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

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

(a) Assure the protection of the public health, safety, and welfare, and the environment.

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

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

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

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

(5) The department may select or approve of a remedial action plan meeting the criteria provided for in section 20120a that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.5705(5) or R 299.5705(6) of the Michigan administrative code, or both, if the department makes a finding that the remedial action is protective of the public health, safety, and welfare, and the environment. Notwithstanding any other provision of this subsection, the department shall not approve of a remedial action plan that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.5705(5) or R 299.5705(6) of the Michigan administrative code if the remedial action plan is being implemented by a person who is liable under section 20126 and the release was grossly negligent or intentional, unless attaining that degree of control is technically infeasible, or the adverse environmental impact of implementing a remedial action to satisfy the rule would exceed the environmental benefit of that remedial action.

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

(a) Compliance with R 299.5705(5) or R 299.5705(6), or both, of the Michigan administrative code is technically impractical.

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

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

(d) The remedial action provides for the reduction of hazardous substance concentrations in the aquifer through a naturally occurring process that is documented to occur at the facility and both of the following conditions are met:

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

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

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

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

(9) Any liability a person may have under this part shall be
unaffected by a decision of the department pursuant to subsection
(5), (6), or (7), including liability for natural resources damages
pursuant to section 20126a(1)(c).

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

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

(b) Identification of points of compliance for judging the
effectiveness of the remedial action.

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

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

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

Sec. 20119. (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

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

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

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

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

(5) A person, to which an administrative order was issued under this section, and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126a(3) and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of...
that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order. MAY SEEK DE NOVO REVIEW OF THE ADMINISTRATIVE ORDER IN CIRCUIT COURT AT ANY TIME AFTER THE ADMINISTRATIVE ORDER IS ISSUED. CIVIL FINES UNDER SUBSECTION (4)(A) SHALL NOT ACCRUE BETWEEN THE DATE SUCH AN ACTION IS FILED AND THE DATE THE CIRCUIT COURT ISSUES A FINAL JUDGMENT IN THE ACTION. THE DEPARTMENT HAS THE BURDEN OF PROOF IN AN ACTION UNDER THIS SUBSECTION TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE ALL OF THE FOLLOWING:

(A) THAT THE PERSON IS LIABLE UNDER SECTION 20126 FOR THE RELEASE OR THREAT OF RELEASE THAT IS THE SUBJECT OF THE ADMINISTRATIVE ORDER.

(B) THAT THE ACTIONS PROPOSED BY THE DEPARTMENT IN THE ADMINISTRATIVE ORDER ARE NECESSARY TO ABATE THE IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT.

(C) THAT THE ADMINISTRATIVE ORDER IS OTHERWISE LAWFUL AND ENFORCEABLE.

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

(a) Residential.

(b) Commercial—NONRESIDENTIAL.

(c) Recreational.

(d) Industrial.

(C) (e) Other land use based categories established by the department.

(D) (f) Limited residential.

(E) (g) Limited commercial—NONRESIDENTIAL.

(h) Limited recreational.

(i) Limited industrial.

(F) (j) Other limited categories established by the department.

(2) The department may approve a remedial action plan based on site specific SITE-SPECIFIC criteria IN WRITING UNDER THIS SUBSECTION that satisfy the applicable requirements of this part and the rules promulgated under this part. THE DEPARTMENT SHALL APPROVE SITE-SPECIFIC CRITERIA IF SUCH CRITERIA, IN COMPARISON TO GENERIC CRITERIA, BETTER REFLECT BEST AVAILABLE INFORMATION CONCERNING THE TOXICITY OR EXPOSURE RISK POSED BY THE HAZARDOUS SUBSTANCE AND, FOR NONNUMERIC CRITERIA, PROVIDE PROTECTION EQUIVALENT TO, OR BETTER THAN, THE RISK AND HAZARD LEVELS SET FORTH IN SUBSECTION (4). THE DEPARTMENT SHALL IN WRITING UNCONDITIONALLY APPROVE, CONDITIONALLY APPROVE, OR DENY ANY WRITTEN PROPOSAL FOR SITE-SPECIFIC CRITERIA WITHIN 90 DAYS OF RECEIVING THE PROPOSAL. IF
DENIED, THE SPECIFIC REASONS FOR THE DENIAL SHALL BE PROVIDED BY
THE DEPARTMENT IN WRITING. IF CONDITIONALLY APPROVED, THE NECESSARY
MODIFICATIONS TO THE WRITTEN PROPOSAL SHALL BE PROVIDED BY THE
DEPARTMENT IN WRITING. IF THE DEPARTMENT REJECTS A PROPOSAL FOR
SITE-SPECIFIC CRITERIA, THE PERSON PROPOSING THE CRITERIA MAY SEEK
DE NOVO REVIEW IN CIRCUIT COURT. The department shall utilize only
reasonable and relevant exposure pathways in determining the
adequacy of a site-specific SITE-SPECIFIC criterion. Additionally,
the department may approve a remedial action plan for a designated
area-wide AREAWIDE zone encompassing more than 1 facility — and may
consolidate remedial actions for more than 1 facility.

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

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

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, Act No. 399 of the Public Acts of 1976, being section 325.1005 of the Michigan Compiled Laws 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the cleanup criterion shall be the more stringent of (a) or (b) unless the department determines that compliance with this rule is
not necessary because the use of the aquifer is reliably restricted
pursuant to section 20120b(4) or (5).

(6) The department shall not approve of a remedial action plan
in categories set forth in subsection (1)(b) to (j), unless the
person proposing the plan documents that the current zoning of the
property is consistent with the categorical criteria being
proposed, or that the governing zoning authority intends to change
the zoning designation so that the proposed criteria are consistent
with the new zoning designation, or the current property use is a
legal nonconforming use. The department shall not grant final
approval for a remedial action plan that relies on a change in
zoning designation until a final determination of that zoning
change has been made by the local unit of government. The
department may approve of a remedial action that achieves
categorical criteria that is based on greater exposure potential
than the criteria applicable to current zoning. In addition, the
remedial action plan shall include documentation that the current
property use is consistent with the current zoning or is a legal
nonconforming use. Abandoned or inactive property shall be
considered on the basis of zoning classifications as described
above.

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

(8) Except as provided in subsection (4) and subsections (9)
to (13), compliance with the residential category in subsection
(1)(a) shall be based on R 299.5709 through R 299.5711(4), R

(9) The need for soil remediation to protect an aquifer from hazardous substances in soil shall be determined by R 299.5711(2) of the Michigan administrative code, considering the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriate based on consideration of site specific factors.

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

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

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

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

(11) If the cleanup criterion for a hazardous substance determined by R 299.5707 of the Michigan administrative code is greater than a cleanup criterion developed for a category pursuant
to subsection (1), the criterion determined pursuant to R 299.5707
of the Michigan administrative code shall be the cleanup criterion
for that hazardous substance in that category.

(12) In determining the adequacy of a land-use based response
activity to address sites contaminated by polychlorinated
biphenyls, the department shall not require response activity in
addition to that which is subject to and complies with applicable
federal regulations and policies that implement the toxic
substances control act, Public Law 94-469, 15 U.S.C. 2601 to
2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692.

(13) Response activity to address the release of
uncontaminated mineral oil satisfies R 299.5709 for groundwater or
R 299.5711 for soil under the Michigan administrative code if all
visible traces of mineral oil are removed from groundwater and
soil.

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

(15) If a remedial action allows for venting groundwater, the
discharge shall comply with requirements of part 31, and the rules
promulgated under that part or an alternative method established by
rule. If the discharge of venting groundwater is provided for in a remedial action plan that is approved by the department, a permit for the discharge is not required. As used in this subsection, "venting groundwater" means groundwater that is entering a surface water of the state from a facility. UNLESS PROHIBITED BY PART 31, THE DEPARTMENT SHALL APPROVE THE USE OF A MIXING ZONE AS PART OF A REMEDIAL ACTION PLAN, RESPONSE ACTIVITY, OR CLOSURE REPORT, IF THE MIXING ZONE IS PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT UTILIZING WATER QUALITY STANDARDS PURSUANT TO PART 31. FOR PURPOSES OF THIS SUBSECTION AND SECTION 3109A, THE VENTING OF A CONTAMINANT PLUME TO A SURFACE WATER OF THIS STATE SHALL NOT BE CONSIDERED A NEW OR INCREASED LOADING OF POLLUTANTS SUBJECT TO R 323.1098 OF THE MICHIGAN ADMINISTRATIVE CODE. THE DEPARTMENT SHALL, WHEN REQUESTED, APPROVE A SITE-SPECIFIC CONCENTRATION FOR GROUNDWATER LEACHING INTO SURFACE WATER, IF THE REQUESTER DEMONSTRATES THAT THE CONCENTRATIONS OF CONTAMINANTS ARE IN A STATE OF EQUILIBRIUM BETWEEN THE GROUNDWATER AND THE SURFACE WATER AND THE LEVEL OF CONTAMINANTS IN THE GROUNDWATER DOES NOT EXCEED APPLICABLE FEDERAL DRINKING WATER STANDARDS.

(16) A remedial action plan shall provide response activity to meet the residential categorical criteria, or provide for acceptable land use or resource use restrictions pursuant to section 20120b–20114b, SUBJECT TO OMISSION OF LAND OR RESOURCE USE RESTRICTIONS IF THE DEPARTMENT CONCURS.

(17) A remedial action plan that relies on categorical cleanup criteria developed pursuant to subsection (1) shall also consider other factors necessary to protect the public health, safety, and
welfare, and the environment as specified by the department, if the department determines based on data and existing information that such considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of R 299.5717 of the Michigan administrative code.

(18) The department shall annually evaluate and revise, if appropriate, the cleanup criteria derived under this section. The evaluation shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment. The department shall prepare and submit to the legislature a report detailing revisions made to cleanup criteria under this section.

(19) NOTWITHSTANDING ANY OTHER PROVISION IN THIS PART, THE DEPARTMENT SHALL NOT ESTABLISH, BY RULE OR OTHERWISE, OR ENFORCE CLEANUP CRITERIA FOR A HAZARDOUS SUBSTANCE THAT ARE MORE STRINGENT THAN COMPARABLE CRITERIA ESTABLISHED OR PUBLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR THAT HAZARDOUS SUBSTANCE. FURTHERMORE, CLEANUP CRITERIA FOR A HAZARDOUS SUBSTANCE ESTABLISHED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION THAT ARE MORE STRINGENT THAN COMPARABLE CRITERIA ESTABLISHED OR PUBLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR THAT HAZARDOUS SUBSTANCE ARE SUBJECT TO BOTH OF THE FOLLOWING:

(A) THE CLEANUP CRITERIA ARE NOT APPLICABLE, RELEVANT, OR APPROPRIATE WITHIN THE MEANING OF 42 USC 9621 OR 40 CFR PART 300, AND SHALL NOT BE IDENTIFIED BY THE STATE AS SUCH TO THE UNITED
(B) THE CLEANUP CRITERIA SHALL NOT OTHERWISE APPLY AT ANY AREA, PLACE, OR PROPERTY WHERE A RESPONSE ACTION UNDER THE OVERSIGHT OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, PUBLIC LAW 96-510, IS UNDERWAY OR IS COMPLETE.

(20) SITE-SPECIFIC CRITERIA MAY, AS APPROPRIATE:

(A) USE THE ALGORITHMS FOR CALCULATING GENERIC CRITERIA ESTABLISHED BY RULE OR PROPOSE AND USE DIFFERENT ALGORITHMS.

(B) ALTER ANY DEFAULT VALUE ESTABLISHED BY RULE SO LONG AS SUCH VALUE IS NOT EXPRESSLY DETERMINED BY THIS PART.

(C) TAKE INTO CONSIDERATION THE DEPTH BELOW THE GROUND SURFACE OF CONTAMINATION, WHICH MAY REDUCE THE POTENTIAL FOR EXPOSURE.

(D) BE BASED ON INFORMATION RELATED TO THE SPECIFIC FACILITY OR INFORMATION OF GENERAL APPLICABILITY, INCLUDING PEER-REVIEWED SCIENTIFIC LITERATURE.

(E) USE PROBABILISTIC METHODS OF CALCULATION.

(F) USE NONLINEAR-THRESHOLD-BASED CALCULATIONS WHERE SCIENTIFICALLY JUSTIFIED.

(G) TAKE INTO ACCOUNT ANY ACTUAL EXPOSURE DATA, INCLUDING, BUT NOT LIMITED TO, BLOOD SERUM BIOMONITORING DATA, WATER QUALITY DATA, AND AIR QUALITY MONITORING DATA. NONNUMERIC SITE-SPECIFIC CRITERIA MAY BE USED IN PLACE OF NUMERIC CRITERIA. NONNUMERIC CRITERIA MAY INCLUDE PRESUMPTIVE REMEDIES, EXPOSURE CONTROLS, USE RESTRICTIONS, REMOVAL ACTIONS, OR OTHER RESPONSE ACTIVITIES THAT PROVIDE PROTECTION EQUIVALENT TO MEETING THE RISK AND HAZARD LEVELS SET
(21) For purposes of this part, surface water to which the department's groundwater-surface water interface criteria adopted under this section shall apply includes only the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of open water with definite banks, a bed, and visible evidence of a continued flow or continued occurrence of open waters and does not include groundwater, pore water, wetlands without a year-round presence of open water, or enclosed sewers or utility lines or the fill around such sewers or lines.

(22) The department shall, when requested, approve a site-specific concentration for contaminants that do, or may, migrate into indoor air or ambient air, if the requester demonstrates that the concentrations of contaminants are in a state of equilibrium between the soil or groundwater, or both, and the indoor air or ambient air, as applicable, and that the level of contaminants in the indoor air or ambient air does not exceed the applicable federal EPA or OSHA exposure standards.

(23) Nonvolatile hazardous substance contamination in soil at a depth greater than 12 inches is not an applicable or relevant exposure pathway for the following soil exposure pathways:

(A) Direct contact.

(B) Inhalation of particulates being emitted to and dispersed in ambient air.

(C) Food chain contamination.

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

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

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

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

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

(ii) The owner or operator discloses the results of a baseline environmental assessment to the department and subsequent purchaser or transferee if the baseline environmental assessment confirms that the property is a facility. UNLESS THE OWNER OR OPERATOR PETITIONS THE DEPARTMENT FOR A DETERMINATION REGARDING AN EXEMPTION FROM LIABILITY UNDER SECTION 20129A, THE DEPARTMENT SHALL NOT CHALLENGE THE VALIDITY OF A BASELINE ENVIRONMENTAL ASSESSMENT AFTER DISCLOSURE TO THE DEPARTMENT EXCEPT AS NECESSARY IN A CIVIL ACTION TO PROVE THAT A PERSON IS LIABLE UNDER THIS PART.

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

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

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

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

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

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

(3) Notwithstanding subsection (1), the following persons are not liable under this part WITH RESPECT TO CONTAMINATION AT A FACILITY RESULTING FROM A RELEASE unless the person is responsible for an activity causing a THREAT OF RELEASE at the facility:

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

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

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

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

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

(f) A person who owns or occupies residential real property if hazardous substance use at the property is consistent with residential use.
(g) A person who acquires a facility as a result of the death of the prior owner or operator of the facility, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

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

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

(j) A lessee who uses THE LEASED property for A retail, office, or commercial purpose REGARDLESS OF THE LEVEL OF THE LESSEE'S HAZARDOUS SUBSTANCE USE.

(K) AN OWNER OR OPERATOR WHO ACQUIRES A FACILITY FROM A TRANSFEROR WHO MEETS THE FOLLOWING REQUIREMENTS:
(i) The transferor and the owner or operator are members of an affiliated group. As used in this subsection, "affiliated group" means 1 or more corporations or limited liability companies connected by ownership to a common parent corporation or limited liability company.

(ii) The transferor has conducted and disclosed a baseline environmental assessment according to section 20126(1)(C) for the facility or is otherwise not liable under section 20126 for contamination at the facility.

(l) An auctioneer or liquidator who takes control of a facility for purposes of liquidation as part of a foreclosure, provided that such auctioneer or liquidator is not responsible for an activity causing a release or threat of release or exacerbation of the existing contamination.

(M) An owner or operator of a facility where hazardous substances are not, as of the date the owner or operator acquires or occupies the facility, anticipated to be present in a quantity and manner that constitute significant hazardous substance use after ownership or occupancy commences. This subdivision does not prevent the disclosure of a baseline environmental assessment by such an owner or operator in accordance with section 20126(1)(C) or the petitioning for an exemption from liability in accordance with section 20129A(1). As used in this subdivision, "significant hazardous substance use" means the use, storage, handling, or management, at any time, of hazardous substances in quantities that exceed those commonly used for typical residential or office purposes. However, significant hazardous substance use does not
INCLUDE ANY OF THE FOLLOWING:

(i) GASOLINE, OIL, OR OTHER VEHICLE FLUIDS THAT ARE CONTAINED IN VEHICLES TRAVERSING OR PARKED AT A PROPERTY ON A SHORT-TERM BASIS.

(ii) STORAGE OF HAZARDOUS SUBSTANCES FOR RETAIL SALE IN PACKAGING AND IN QUANTITIES CONSISTENT WITH USE BY OCCUPANTS OF RESIDENTIAL DWELLINGS.

(iii) STORAGE OR MANAGEMENT OF ABOVEGROUND STORAGE TANKS, BARRELS, CONTAINERS, OR OTHER RECEPTACLES CONTAINING HAZARDOUS SUBSTANCES THAT ARE ABANDONED OR DISCARDED AT THE TIME OF PURCHASE, OCCUPANCY, OR FORECLOSURE.

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

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

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

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

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

(i) An act of God.

(ii) An act of war.

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

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

(6) In establishing liability under this section, the department bears the burden of proof. If the department proves a prima facie case against a person, the person shall bear the burden of showing by a preponderance of the evidence that he or she is not liable under this section.

(7) A lender that is not responsible for an activity causing a release at a facility and that establishes that it has met the requirements of subsection (1)(c) with respect to that facility may immediately transfer to the state the property on which there has
been a release or a threat of a release if the lender complies with all of the following:

(a) Within 9 months following foreclosure and for a period of at least 120 days, the lender either lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication, a trade or other publication suitable for the facility in question, or a newspaper of general circulation of over 10,000 covering the area where the property is located.

(b) The lender has taken reasonable care in maintaining and preserving the real estate and permanent fixtures.

(c) The lender provides to the department all environmental information related to the facility that is available to the lender.

(d) If the department has issued an order pursuant to section 20119, the lender has complied with the order to the department's satisfaction.

(e) If conditions on the property pose a threat of fire or explosion or present an imminent hazard through direct contact with hazardous substances, the lender has undertaken appropriate response activities to abate the threat or hazard.

(8) IF A BASELINE ENVIRONMENTAL ASSESSMENT DISTINGUISHES EXISTING CONTAMINATION FROM A NEW RELEASE THROUGH AN ENGINEERING CONTROL OR AN ISOLATION ZONE, THE OWNER OR OPERATOR IS ONLY LIABLE UNDER THIS PART FOR THE CONTAMINATION ASSOCIATED WITH A NEW RELEASE BUT HAS THE BURDEN OF PROOF UNDER SECTION 20129 TO DISTINGUISH
EXISTING CONTAMINATION FROM A NEW RELEASE IF THE NEW RELEASE COMINGLES WITH THE EXISTING CONTAMINATION AS A RESULT OF A FAILURE OF AN ENGINEERING CONTROL OR THE MIGRATION OF A NEW RELEASE BEYOND AN ISOLATION ZONE.

(9) The department shall establish minimum technical standards for baseline environmental assessments conducted under this section in guidelines pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) 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.

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

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

(b) Any other necessary costs of response activity reasonably incurred under the circumstances by any other person consistent with rules relating to the selection and implementation of response activity promulgated under this part.

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

(2) The costs of response activity recoverable under subsection (1) shall also include all of the following:

(a) All costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred. Recoverable costs include costs incurred reasonably consistent with the rules relating to the selection and implementation of response activity in effect on July 12, 1990.

(b) Any other necessary costs of response activity reasonably incurred by any other person prior to the promulgation of rules relating to the selection and implementation of response activity under this part. A person seeking recovery of these costs has the burden of establishing that the costs were reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall
be the same rate as is specified in section 6013(5) of the revised
being section 600.6013 of the Michigan Compiled Laws 1961 PA 236,
MCL 600.6013.

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

(5) A person shall not be required under this part to
undertake response activity for a permitted release. Recovery by
any person for response activity costs or damages resulting from a
permitted release shall be pursuant to other applicable law, in
lieu of this part. With respect to a permitted release, this
subsection does not affect or modify the obligations or liability
of any person under any other state law, including common law, for
damages, injury, or loss resulting from a release of a hazardous
substance or for response activity or the costs of response
activity.
(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

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

Sec. 20137. (1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

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

(d) A declaratory judgment on liability for future response costs and damages.

(e) A civil fine of not more than $1,000.00 for each day of
noncompliance without sufficient cause with a written request of
the department pursuant to section 20114(1)(h). A fine imposed
under this subdivision shall be based on the seriousness of the
violation and any good faith efforts of the person to comply with
the request of the department.

(f) A civil fine of not more than $10,000.00 for each day of
violation of this part or a rule promulgated under this part. A
fine imposed under this subdivision shall be based upon the
seriousness of the violation and any good faith efforts of the
person to comply with this part or a rule promulgated under this
part.

(g) A civil fine of not more than $25,000.00 for each day of
violation of a judicial order or an administrative order issued
pursuant to section 20119, including exemplary damages pursuant to
section 20119.

(h) Enforcement of an administrative order issued pursuant to
section 20119.

(i) Enforcement of information gathering and entry authority
pursuant to section 20117.

(j) Enforcement of the reporting requirements under section
20114(1), (3), and (6).

(k) Any other relief necessary for the enforcement of this
part.

(2) If an action is brought under this part by a plaintiff
other than the attorney general, the plaintiff shall, at the time
of filing, provide a copy of the complaint to the attorney general.

(3) Except as otherwise provided in this part, an action
brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(4) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(F) An action pursuant to section 20120a(2) to challenge the department's rejection or lack of approval of site-specific criteria.
(5) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(6) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

Enacting section 1. Section 20126b of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126b, is repealed.