SUBSTITUTE FOR

SENATE BILL NO. 891

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

(c) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312 **(2014)**.

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

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

(*i*) The hazardous substance complies with the statewide default background levels under ~~R 299.5746~~ **R 299.46** of the Michigan administrative code.

(*ii*) The hazardous substance is listed in **TABLE 2, 3, OR 4 OF** the department's 2005 Michigan background soil survey, ~~and falls within the typical ranges published in that document.~~**IS PRESENT IN A SOIL TYPE IDENTIFIED IN 1 OR MORE OF THOSE TABLES, AND MEETS 1 OF THE FOLLOWING:**

(A) IF A GLACIAL LOBE AREA IN TABLE 2, 3, OR 4 LISTS AN ARITHMETIC OR GEOMETRIC MEAN FOR THE HAZARDOUS SUBSTANCE THAT IS REPRESENTED BY 9 OR MORE SAMPLES, THE CONCENTRATION OF THAT HAZARDOUS SUBSTANCE FALLS WITHIN 2 STANDARD DEVIATIONS OF THAT MEAN FOR THE SOIL TYPE AND GLACIAL LOBE AREA IN WHICH THE HAZARDOUS SUBSTANCE IS LOCATED.

(B) IF A GLACIAL LOBE AREA IN TABLE 2, 3, OR 4 LISTS A NONPARAMETRIC MEDIAN FOR THE HAZARDOUS SUBSTANCE THAT IS REPRESENTED BY 10 OR MORE SAMPLES, THE CONCENTRATION OF THAT HAZARDOUS SUBSTANCE FALLS WITHIN THE 97.5 QUANTILE FOR THE SOIL TYPE AND GLACIAL LOBE AREA IN WHICH THE HAZARDOUS SUBSTANCE IS LOCATED.

(C) THE CONCENTRATION OF THE HAZARDOUS SUBSTANCE MEETS A LEVEL ESTABLISHED USING THE 2005 MICHIGAN BACKGROUND SOIL SURVEY IN A MANNER THAT IS APPROVED BY THE DEPARTMENT.

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

(*iv*) A site-specific demonstration.

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

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

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

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

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

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

(*iii*) SITE-SPECIFIC CLEANUP CRITERIA APPROVED BY THE DEPARTMENT FOR UNRESTRICTED RESIDENTIAL USE PURSUANT TO SECTIONS 20120A AND 20120B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*iv*) THE PROPERTY HAS BEEN LAWFULLY SPLIT, SUBDIVIDED, OR DIVIDED FROM A FACILITY AND DOES NOT CONTAIN HAZARDOUS SUBSTANCES IN EXCESS OF CONCENTRATIONS THAT SATISFY THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.

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

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

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

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

~~(w) "Free product" means a hazardous substance in a liquid~~

~~phase equal to or greater than 1/8 inch of measurable thickness that is not dissolved in water and that has been released into the environment.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*vii*) A foreign bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) "NONRESIDENTIAL" MEANS THAT CATEGORY OF LAND USE FOR PARCELS OF PROPERTY OR PORTIONS OF PARCELS OF PROPERTY THAT IS NOT RESIDENTIAL. THIS CATEGORY OF LAND USE MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:

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

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

(*iii*) HOTELS, HOSPITALS, AND CAMPGROUNDS.

(*iv*) NATURAL AREAS SUCH AS WOODLANDS, BRUSHLANDS, GRASSLANDS, AND WETLANDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices at the time of the application, 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 at the time of the application.

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

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

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

(SS) "RESIDENTIAL" MEANS THAT CATEGORY OF LAND USE FOR PARCELS OF PROPERTY OR PORTIONS OF PARCELS OF PROPERTY WHERE PEOPLE LIVE AND SLEEP FOR SIGNIFICANT PERIODS OF TIME SUCH THAT THE FREQUENCY OF EXPOSURE IS REASONABLY EXPECTED OR FORESEEABLE TO MEET THE EXPOSURE ASSUMPTIONS USED BY THE DEPARTMENT TO DEVELOP GENERIC RESIDENTIAL CLEANUP CRITERIA AS SET FORTH IN RULES PROMULGATED UNDER THIS PART. THIS CATEGORY OF LAND USE MAY INCLUDE, BUT IS NOT LIMITED TO, HOMES AND SURROUNDING YARDS, CONDOMINIUMS, AND APARTMENTS.

(TT) ~~(pp)~~ "Residential closure" means a property at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under section

20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource use restrictions, and that is approved by the department or is considered approved by the department under section 20120d.

(UU) "RESIDUAL NAPL SATURATION" MEANS THAT TERM AS IT IS DEFINED IN PART 213.

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

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

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

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

(*ii*) A plan for evaluation activities.

(*iii*) A feasibility study.

(*iv*) A remedial action plan.

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

(ZZ) "SOURCE" MEANS ANY STORAGE, HANDLING, DISTRIBUTION, OR PROCESSING EQUIPMENT FROM WHICH THE RELEASE ORIGINATES AND FIRST ENTERS THE ENVIRONMENT.

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

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

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

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

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

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

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

(2) As used in this part:

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

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

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

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

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

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

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

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

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

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

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but

is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

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

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future

development.

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

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 **WITH RESPECT TO A RELEASE FOR WHICH THE OWNER OR OPERATOR IS LIABLE UNDER SECTION 20126**:

(a) ~~Determine~~ **SUBJECT TO SUBSECTION (6), DETERMINE** the nature and extent of ~~a~~ **THE** release at the facility.

(b) Make the following notifications:

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

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

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

(c) Immediately stop or prevent ~~the~~ **AN ONGOING** release at the source.

(d) Immediately implement ~~source control or removal~~ measures to **ADDRESS,** remove**,** or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, **ARE** cost effective, and ~~provide protection to~~ **ABATE AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR** the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and ~~provide protection to~~ **ABATE AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR** 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.~~ **INITIATE A REMEDIAL ACTION THAT IS NECESSARY AND FEASIBLE TO ADDRESS UNACCEPTABLE RISKS ASSOCIATED WITH RESIDUAL NAPL SATURATION, MIGRATING NAPL, AND MOBILE NAPL USING BEST PRACTICES FOR MANAGING NAPL, INCLUDING, BUT NOT LIMITED TO, BEST PRACTICES DEVELOPED BY THE AMERICAN SOCIETY FOR TESTING AND MATERIALS OR THE INTERSTATE TECHNOLOGY AND REGULATORY COUNCIL.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) IF A HAZARDOUS SUBSTANCE IS RELEASED AT A PROPERTY AND THERE IS NO AVAILABLE ANALYTICAL METHOD OR GENERIC CLEANUP CRITERIA

FOR THAT HAZARDOUS SUBSTANCE, THE NATURE AND EXTENT OF THE HAZARDOUS SUBSTANCE MAY BE DETERMINED BY ANY OF THE FOLLOWING MEANS, SINGLY OR IN COMBINATION:

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

(B) FOR VENTING GROUNDWATER, USE A MODELING DEMONSTRATION, AN ECOLOGICAL DEMONSTRATION, OR A COMBINATION OF BOTH, CONSISTENT WITH SECTION 20120E(9) AND (10), TO DETERMINE WHETHER THE HAZARDOUS SUBSTANCE HAS REACHED SURFACE WATER.

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

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

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

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

(2) Upon completion of remedial actions at a facility for a

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

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

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

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

(*ii*) Use of groundwater.

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

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

~~(3) Land use or resource use restrictions that assure the effectiveness and integrity of any containment, exposure barrier, or other land use or resource use restrictions necessary to assure the effectiveness and integrity of the remedy shall be described in~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The person submitting a no further action report shall include a signed affidavit attesting to the fact that the information upon which the no further action report is based is

complete and true to the best of that person's knowledge. The no further action report shall also include a signed affidavit from an environmental consultant who meets the professional qualifications described in section 20114e(2) and who prepared the no further action report, attesting to the fact that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. In addition, the environmental consultant shall attach a certificate of insurance demonstrating that the environmental consultant has obtained at least all of the following from a carrier that is authorized to conduct business in this state:

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

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

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

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

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

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

(8) Upon receipt of a no further action report submitted under this subsection, the department shall approve or deny the no further action report or shall notify the submitter that the report does not contain sufficient information for the department to make a decision. If the no further action report requires a postclosure agreement, the department may negotiate alternative terms than those included within the proposed postclosure agreement. The department shall provide its determination within 150 days after the report was received by the department under this subsection unless the report requires public participation under section 20120d(2). If the report requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision.

If the report is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the department shall provide the person submitting the no further action report with a no further action letter. The department shall review and provide a written response within the time frames required by this subsection for at least 90% of the no further action reports submitted to the department under this section in each calendar year.

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

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

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

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

no further action report is the same as the process for no further action reports.

Sec. 20116. (1) A person who has knowledge or information or is on notice through a recorded instrument that a **PORTION OR THE ENTIRETY OF A** parcel of ~~his or her real~~ **THAT PERSON'S** 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~~ **DISCLOSING** the **KNOWN** general nature and extent of the **HAZARDOUS SUBSTANCE** release **AND ANY LAND OR RESOURCE USE RESTRICTIONS THAT ARE KNOWN BY THE PERSON TO APPLY. A RESTRICTIVE COVENANT OR NOTICE THAT CONTAINS THE REQUIRED INFORMATION THAT IS RECORDED IN THE DEED RECORDS FOR THE PROPERTY SATISFIES THIS REQUIREMENT.**

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of ~~all~~ **A** response ~~activities~~ **ACTIVITY UNDER THIS PART** for the facility**,** ~~as approved by the department,~~ record with the register of deeds for the appropriate county a certification that ~~all~~ **THE** 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.~~

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~~ **MAY ADDRESS ALL OR A PORTION OF CONTAMINATION AT A FACILITY AS FOLLOWS:**

(A) REMEDIAL ACTION MAY ADDRESS 1 OR MORE RELEASES AT A FACILITY.

(B) REMEDIAL ACTION MAY ADDRESS 1 OR MORE HAZARDOUS SUBSTANCES AT A FACILITY.

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

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

(E) REMEDIAL ACTION MAY ADDRESS CONTAMINATION AT A FACILITY THROUGH ANY COMBINATION OF SUBDIVISIONS (A) THROUGH (D).

(3) REMEDIAL ACTION UNDERTAKEN UNDER SUBSECTION (1) shall accomplish all of the following:

(a) Assure the protection of the public health, safety, and welfare, and the environment **WITH RESPECT TO THE ENVIRONMENTAL CONTAMINATION ADDRESSED BY THE REMEDIAL ACTION**.

(b) Except as otherwise provided in subsections **(4) AND** (5)**,** ~~and (6),~~ attain a degree of cleanup and control of ~~hazardous substances~~ **THE ENVIRONMENTAL CONTAMINATION ADDRESSED BY THE REMEDIAL ACTION** 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 **(4) AND** (5)**,** ~~and (6),~~ be consistent with any cleanup criteria incorporated in rules promulgated under this part **FOR THE ENVIRONMENTAL CONTAMINATION ADDRESSED BY THE REMEDIAL ACTION**.

~~(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.~~

(4) ~~(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)~~ **R 299.3(5)** or ~~R 299.5705(6)~~ **R 299.3(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)~~ **R 299.3(5)** or ~~R 299.5705(6)~~ **R 299.3(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.

(5) ~~(6)~~ A remedial action ~~plan~~ may be selected or approved pursuant to subsection ~~(5)~~ **(4)** with regard to ~~R 299.5705(5)~~ **R 299.3(5)** or ~~R 299.5705(6),~~ **R 299.3(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)~~ **R 299.3(5)** or ~~R 299.5705(6),~~ **R 299.3(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)~~ **R 299.3(5)** or ~~R 299.5705(6)~~ **R 299.3(6)** of the Michigan administrative code.

(c) The adverse environmental impact of implementing a remedial action to satisfy ~~R 299.5705(5)~~ **R 299.3(5)** or ~~R 299.5705(6),~~ **R 299.3(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 **CONNECTION WITH** 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. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed shall be the option of the person proposing the remedial action, subject to department approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

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

(c) Limited residential.

(d) Limited nonresidential.

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

(3) The department shall develop cleanup criteria pursuant to subsection (1) based on generic human health risk assessment assumptions determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall utilize only reasonable and relevant exposure pathways in determining these assumptions. The department may prescribe more than 1 generic set of exposure

assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories.

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

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

(6) The department shall not approve a remedial action plan or no further action report in categories set forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan or no further action report that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit

of government. The department may approve of a remedial action plan or no further action report that achieves categorical criteria that are based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan or no further action report shall include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property shall be considered on the basis of zoning classifications as described above.

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

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

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

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

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

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

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

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

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

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

removed from groundwater and soil.

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

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

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

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

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

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

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

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

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77003 of the

Michigan administrative code, except that unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) THE DEPARTMENT SHALL MAKE AVAILABLE THE ALGORITHMS USED TO CALCULATE ALL RESIDENTIAL AND NONRESIDENTIAL GENERIC CLEANUP CRITERIA, AND TABLES LISTING, BY HAZARDOUS SUBSTANCE, ALL TOXICITY, EXPOSURE, AND OTHER ALGORITHM FACTORS OR VARIABLES USED IN THE DEPARTMENT'S CALCULATIONS.

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

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

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

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

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

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

(e) Use probabilistic methods of calculation.

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

(G) TAKE INTO ACCOUNT A LAND USE OR RESOURCE USE RESTRICTION.

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

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

(B) IF ANOTHER HAZARDOUS SUBSTANCE IS EXPECTED TO HAVE SIMILAR FATE, MOBILITY, BIOACCUMULATION, AND TOXICITY CHARACTERISTICS, APPLY THE CLEANUP CRITERIA FOR THAT HAZARDOUS SUBSTANCE AS A SURROGATE. BEFORE USING A SURROGATE, THE PERSON SHALL NOTIFY THE DEPARTMENT, PROVIDE A WRITTEN EXPLANATION WHY THE SURROGATE IS SUITABLE, AND REQUEST APPROVAL. IF THE DEPARTMENT DOES NOT NOTIFY THE PERSON THAT IT DISAPPROVES THE USE OF THE CHOSEN SURROGATE WITHIN 90 DAYS AFTER RECEIPT OF THE NOTICE, THE SURROGATE IS CONSIDERED APPROVED. A HAZARDOUS SUBSTANCE MAY BE USED AS A SURROGATE FOR A SINGLE HAZARDOUS SUBSTANCE OR FOR A CLASS OR CATEGORY OF HAZARDOUS SUBSTANCES.

(C) FOR VENTING GROUNDWATER, USE A MODELING DEMONSTRATION, AN ECOLOGICAL DEMONSTRATION, OR A COMBINATION OF BOTH, CONSISTENT WITH SECTION 20120E(9) AND (10), TO DEMONSTRATE THAT THE HAZARDOUS SUBSTANCE IS NOT LIKELY TO MIGRATE TO A SURFACE WATER BODY OR HAS

NOT OR WILL NOT IMPAIR THE EXISTING OR DESIGNATED USES FOR A SURFACE WATER BODY.

(D) IF TOXICITY INFORMATION IS AVAILABLE FOR THE HAZARDOUS SUBSTANCE, DEVELOP SITE-SPECIFIC CLEANUP CRITERIA FOR THE HAZARDOUS SUBSTANCE PURSUANT TO SUBSECTIONS (1) AND (2), OR DEVELOP SIMPLIFIED SITE-SPECIFIC SCREENING CRITERIA BASED UPON TOXICITY AND CONCENTRATIONS FOUND ON SITE, AND REQUEST DEPARTMENT APPROVAL. IF THE DEPARTMENT DOES NOT NOTIFY THE PERSON THAT IT DISAPPROVES THE SITE-SPECIFIC CRITERIA OR SCREENING CRITERIA WITHIN 90 DAYS AFTER RECEIPT OF THE REQUEST, THE CRITERIA ARE CONSIDERED APPROVED.

(E) ANY OTHER METHOD APPROVED BY THE DEPARTMENT.

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for residents of the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

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

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

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

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

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

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

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

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

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

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

(a) Remedial investigation data regarding the facility.

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

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

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

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

(f) Other information appropriate to the facility.

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

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

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

(A) A DESCRIPTION OF THE PROPERTY THAT IS SUBJECT TO THE RESTRICTIONS THAT IS SUFFICIENT TO IDENTIFY THE PROPERTY AND IS

SUFFICIENT TO RECORD THE DOCUMENT WITH THE REGISTER OF DEEDS FOR THE COUNTY WHERE THE PROPERTY IS LOCATED.

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

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

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

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

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

(A) A PROVISION REQUIRING NOTICE TO THE DEPARTMENT OR OTHER PERSONS UPON TRANSFER OR BEFORE CONSTRUCTION OR CHANGES IN USE THAT

COULD AFFECT ENVIRONMENTAL CONTAMINATION OR INCREASE EXPOSURE AT THE PROPERTY.

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

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

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

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

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

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

(4) A RESTRICTIVE COVENANT USED TO IMPOSE LAND OR RESOURCE USE RESTRICTIONS UNDER THIS SECTION SHALL BE RECORDED WITH THE REGISTER

OF DEEDS FOR THE COUNTY WHERE THE PROPERTY IS LOCATED.

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

(A) RUNS WITH THE LAND.

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

(6) UPON RECORDING, A COPY OF THE RESTRICTIVE COVENANT SHALL BE PROVIDED TO THE DEPARTMENT TOGETHER WITH A NOTICE THAT INCLUDES THE STREET ADDRESS OR PARCEL NUMBER FOR THE PROPERTY OR PROPERTIES SUBJECT TO THE COVENANT. IF A PROPERTY THAT IS SUBJECT TO A RESTRICTIVE COVENANT CONSTITUTES A PORTION OF A PARCEL, THE PERSON PROVIDING THE RESTRICTIVE COVENANT TO THE DEPARTMENT SHALL ALSO INCLUDE A LEGAL SURVEY OF THAT PORTION OR A SKETCH THAT CLEARLY AND ACCURATELY DEPICTS THAT PORTION. A RESTRICTIVE COVENANT THAT MEETS THE REQUIREMENTS OF THIS SECTION NEED NOT BE APPROVED BY THE DEPARTMENT EXCEPT AS EXPRESSLY REQUIRED ELSEWHERE IN THIS PART.

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

(A) A CONSERVATION EASEMENT.

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

(8) AN INSTITUTIONAL CONTROL MAY BE USED TO IMPOSE THE LAND OR RESOURCE USE RESTRICTIONS DESCRIBED IN SUBSECTION (1) INSTEAD OF OR IN ADDITION TO A RESTRICTIVE COVENANT. INSTITUTIONAL CONTROLS THAT MAY BE CONSIDERED INCLUDE, BUT ARE NOT LIMITED TO, LOCAL ORDINANCES

OR STATE LAWS AND REGULATIONS THAT LIMIT OR PROHIBIT THE USE OF CONTAMINATED GROUNDWATER, PROHIBIT THE RAISING OF LIVESTOCK, PROHIBIT DEVELOPMENT IN CERTAIN LOCATIONS, OR RESTRICT PROPERTY TO CERTAIN USES, SUCH AS A ZONING ORDINANCE. A LOCAL ORDINANCE THAT SERVES AS AN INSTITUTIONAL CONTROL UNDER THIS SECTION SHALL BE PUBLISHED AND MAINTAINED IN THE SAME MANNER AS A ZONING ORDINANCE 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 PRIOR TO THE LAPSING OR REVOCATION OF THE ORDINANCE.

(9) ALTERNATIVE INSTRUMENTS AND MEANS MAY BE USED, WITH DEPARTMENT APPROVAL, TO IMPOSE THE LAND OR RESOURCE USE RESTRICTIONS DESCRIBED IN SUBSECTION (1), INCLUDING, BUT NOT LIMITED TO, LICENSES AND LICENSE AGREEMENTS, CONTRACTS WITH LOCAL, STATE, OR FEDERAL UNITS OF GOVERNMENT, HEALTH CODES OR REGULATIONS, OR GOVERNMENT PERMITTING REQUIREMENTS.

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

(11) A RESTRICTIVE COVENANT RECORDED PURSUANT TO THIS PART, WHETHER RECORDED BEFORE OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, IS VALID AND ENFORCEABLE EVEN IF 1 OR MORE OF THE FOLLOWING SITUATIONS EXIST:

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

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

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

(D) IT IMPOSES A NEGATIVE BURDEN.

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

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

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

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

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

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~~ **EITHER** 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**, AND THE OWNER OR OPERATOR PROVIDES THE BASELINE ENVIRONMENTAL ASSESSMENT TO THE DEPARTMENT AND SUBSEQUENT PURCHASER OR TRANSFEREE WITHIN 6 MONTHS AFTER THE EARLIER OF THE DATE OF PURCHASE, OCCUPANCY, OR FORECLOSURE**. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator ~~provides a baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure.~~**REQUESTS AND RECEIVES FROM THE DEPARTMENT A DETERMINATION THAT ITS FAILURE TO COMPLY WITH THE TIME FRAMES IN SUBPARAGRAPH (*i*) WHEN CONDUCTING AND SUBMITTING A BASELINE ENVIRONMENTAL ASSESSMENT WAS INCONSEQUENTIAL.**

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

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

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

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

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

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

(a) to (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The owner or operator of ~~a hazardous waste treatment, storage, or disposal facility regulated pursuant to part 111~~ **PROPERTY AT OR** 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 **OR IS BEING ADDRESSED AS PART OF A CORRECTIVE ACTION UNDER PART 111. A CORRECTIVE ACTION UNDER PART 111 MAY BE IMPLEMENTED USING PROCESSES AND CLEANUP CRITERIA, AS APPROPRIATE, UNDER THIS PART. HOWEVER, A RELEASE OR THREAT OF RELEASE THAT IS SUBJECT TO OR THAT HAS BEEN OR IS BEING ADDRESSED THROUGH PART 111 CORRECTIVE ACTION SHALL NOT ALSO BE SUBJECT TO REMEDIATION AND DEPARTMENT OVERSIGHT UNDER THIS PART.**

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

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

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

(*i*) An act of God.

(*ii*) An act of war.

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

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

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

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

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

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

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

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

(6) In establishing liability under this section, the

department bears the burden of proof.

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

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