

**SUBSTITUTE FOR
SENATE BILL NO. 605**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20101, 20107a, 20112a, 20114, 20114b, 20114c,
20114d, 20114e, 20119, 20126, 20126a, 20137, and 20139 (MCL
324.20101, 324.20107a, 324.20112a, 324.20114, 324.20114b,
324.20114c, 324.20114d, 324.20114e, 324.20119, 324.20126,
324.20126a, 324.20137, and 324.20139), sections 20101, 20114d, and
20114e as amended by 2018 PA 581, sections 20107a, 20114, 20114c,
and 20126 as amended by 2014 PA 542, section 20112a as amended by
2010 PA 234, section 20114b as added by 2010 PA 228, section 20119
as amended by 1995 PA 71, section 20126a as amended by 2010 PA 227,
and sections 20137 and 20139 as amended by 2010 PA 230, and by
adding sections 20113a and 20139a; and to repeal acts and parts of



acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

22 (e) "Background concentration" means the concentration or
23 level of a hazardous substance that exists in the environment at or
24 regionally proximate to a facility that is not attributable to any
25 release at or regionally proximate to the facility. A person may
26 demonstrate that a hazardous substance is not present at a level
27 that exceeds background concentration by any of the following



1 methods:

2 (i) The hazardous substance complies with the statewide default
3 background levels under table 2 as referenced in R 299.46 of the
4 Michigan Administrative Code.

5 (ii) The hazardous substance is listed in table 2, 3, or 4 of
6 the department's ~~2005-"Michigan background soil survey,"~~ **Background**
7 **Soil Survey 2015 Update**" is present in a soil type identified in 1
8 or more of those tables, and meets 1 of the following:

9 (A) If a glacial lobe area in table 2, 3, or 4 lists an
10 arithmetic or geometric mean for the hazardous substance that is
11 represented by 9 or more samples, the concentration of that
12 hazardous substance is the lesser of the following:

13 (I) Two standard deviations of that mean for the soil type and
14 glacial lobe area in which the hazardous substance is located.

15 (II) The uppermost value in the typical range of data for the
16 hazardous substance in table 1 of the department's ~~2005-"Michigan~~
17 ~~background soil survey."~~ **Background Soil Survey 2015 Update**".

18 (B) If a glacial lobe area in table 2, 3, or 4 lists a
19 nonparametric median for the hazardous substance that is
20 represented by 10 or more samples, the concentration of that
21 hazardous substance is the lesser of the following:

22 (I) The 97.5 quantile for the soil type and glacial lobe area
23 in which the hazardous substance is located.

24 (II) The uppermost value in the typical range of data for the
25 hazardous substance in table 1 of the department's ~~2005-"Michigan~~
26 ~~background soil survey."~~ **Background Soil Survey 2015 Update**".

27 (C) The concentration of the hazardous substance meets a level
28 established using the ~~2005-"Michigan background soil survey~~
29 **Background Soil Survey 2015 Update**" in a manner that is approved by



1 the department.

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

6 (iv) A site-specific demonstration.

7 (f) "Baseline environmental assessment" means a written
8 document that ~~describes~~ **meets all of the following requirements:**

9 (i) **Describes** the results of an all appropriate inquiry. ~~and~~
10 ~~the~~ **The all appropriate inquiry may be conducted or updated before**
11 **or within 45 days after the earlier of the date of purchase,**
12 **occupancy, or foreclosure.**

13 (ii) **Describes the** sampling and analysis, ~~that~~ **which** confirm
14 that the property is or contains a facility. ~~For purposes of a~~
15 ~~baseline environmental assessment, the all appropriate inquiry may~~
16 ~~be conducted or updated prior to or within 45 days after the~~
17 ~~earlier of the date of purchase, occupancy, or foreclosure.~~

18 (iii) **Inform the preparation of a due care plan to comply with**
19 **section 20107a.**

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

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

26 (i) "Cleanup criteria for unrestricted residential use" means
27 any of the following:

28 (i) Cleanup criteria that satisfy the requirements for the
29 residential category in section 20120a(1)(a).



(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~~ **under** sections 20120a and 20120b.

(j) "Department" means the director or ~~his or her~~ **the director's** designee to whom the director delegates a power or duty by written instrument.

(k) "Director" means the director of the department of ~~environmental quality~~ **environment, Great Lakes, and energy**.

(l) "Directors" means the directors or their designees of the departments of ~~environmental quality, community health,~~ **environment, Great Lakes, and energy, health and human services,** 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) **"Due care plan" means a written document that details the response activities necessary to comply with section 20107a and includes provisions for monitoring, operation, and maintenance to ensure the effectiveness and integrity of response activities that are in place to mitigate unacceptable exposures.**

(o) ~~(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.



(p) ~~(e)~~—"Environment" or "natural resources" means land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota within this state.

(q) ~~(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.

(r) ~~(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.

(s) ~~(r)~~—"Exacerbation" means the occurrence of either of the following caused by **a failure to carry out activities required under a due care plan or by** an activity undertaken by the person ~~who—that~~ owns or operates the property, with respect to contamination for which the person is not liable:

(i) Migration of contamination beyond the boundaries of the property that 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.

(t) ~~(s)~~—"Facility" means any area, place, 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



1 does not include any area, place, parcel or parcels of property, or
 2 portion of a parcel of property where any of the following
 3 conditions are satisfied:

4 (i) Response activities have been completed under this part or
 5 the comprehensive environmental response, compensation, and
 6 liability act **of 1980**, 42 USC 9601 to 9675, that satisfy the
 7 cleanup criteria for unrestricted residential use.

8 (ii) Corrective action has been completed under the resource
 9 conservation and recovery act **of 1976**, 42 USC 6901 to ~~6992k~~, **6987**,
 10 part 111, or part 213 that satisfies the cleanup criteria for
 11 unrestricted residential use.

12 (iii) Site-specific criteria that have been approved by the
 13 department for application at the area, place, parcel of property,
 14 or portion of a parcel of property are met or satisfied and
 15 hazardous substances at the area, place, or property that are not
 16 addressed by site-specific criteria satisfy the cleanup criteria
 17 for unrestricted residential use.

18 (iv) Hazardous substances in concentrations above unrestricted
 19 residential cleanup criteria are present due only to the placement,
 20 storage, or use of beneficial use by-products or inert materials at
 21 the area, place, or property in compliance with part 115.

22 (v) The property has been lawfully split, subdivided, or
 23 divided from a facility and does not contain hazardous substances
 24 in excess of concentrations that satisfy the cleanup criteria for
 25 unrestricted residential use.

26 (vi) Natural attenuation or other natural processes have
 27 reduced concentrations of hazardous substances to levels at or
 28 below the cleanup criteria for unrestricted residential use.

29 (u) ~~(t)~~ "Feasibility study" means a process for developing,



1 evaluating, and selecting appropriate response activities.

2 (**v**) ~~(u)~~—"Financial assurance" means a performance bond,
3 escrow, cash, certificate of deposit, irrevocable letter of credit,
4 corporate guarantee, or other equivalent security, or any
5 combination thereof.

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

9 (**x**) ~~(w)~~—"Fund" means the cleanup and redevelopment fund
10 established in section 20108.

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

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

22 (ii) Hazardous substance, as **that term is** defined in the
23 comprehensive environmental response, compensation, and liability
24 act **of 1980**, 42 USC 9601 to 9675.

25 (iii) Hazardous waste, as **that term is** defined in part 111.

26 (iv) Petroleum, as described as a regulated substance in
27 section 21303.

28 (**z**) ~~(y)~~—"Interim response activity" means the cleanup or
29 removal of a released hazardous substance or the taking of other



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

(aa) ~~(z)~~ "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.

(v) Any state or federally regulated affiliate or regulated subsidiary of any entity listed in subparagraphs (i) to (iv).

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

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

(viii) A foreign bank.

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

(x) A state or federal agency authorized by law to hold a



1 security interest in real property or a local unit of government
2 holding a reversionary interest in real property.

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

6 (xii) Any other person that loans money for the purchase of or
7 improvement of real property.

8 (xiii) Any person that retains or receives a security interest
9 to service a debt or to secure a performance obligation.

10 (bb) ~~(aa)~~ "Local health department" means that term as defined
11 in section 1105 of the public health code, 1978 PA 368, MCL
12 333.1105.

13 (cc) ~~(bb)~~ "Local unit of government" means a county, city,
14 township, or village, an agency of a local unit of government, an
15 authority or any other public body or entity created by or pursuant
16 ~~to~~ **in accordance with** state law. Local unit of government does not
17 include this state, ~~or~~ the federal government, or a state or
18 federal agency.

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

24 (ee) ~~(dd)~~ "Migrating NAPL" means that ~~terms~~ **term** as ~~it is~~
25 defined in section 21302.

26 (ff) ~~(ee)~~ "Mobile NAPL" means that term as ~~it is~~ defined in
27 section 21302.

28 (gg) ~~(ff)~~ "NAPL" means that term as ~~it is~~ defined in section
29 21303.



~~(gg) "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) "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, **and the frequency of exposure is reasonably expected or foreseeable to meet the exposure assumptions used by the department to develop generic nonresidential cleanup criteria.** 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) "Operator" means a person ~~who is in control of that~~ **controls or controlled or is or was** responsible for the operation of a facility. Operator does not include either of the following:

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

(ii) A person ~~who is acting~~ **that acts or acted** as a fiduciary in compliance with section 20101b.



1 (kk) "Owner" means a person ~~who~~**that** owns **or owned** a facility.
 2 Owner does not include either of the following:

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

9 (ii) A person ~~who is acting~~**that acts or acted** as a fiduciary
 10 in compliance with section 20101b.

11 (ll) "Panel" means the response activity review panel
 12 established under section 20114e.

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

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

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

18 (iii) A federally permitted release, as **that term is** defined in
 19 the comprehensive environmental response, compensation, and
 20 liability act **of 1980**, 42 USC 9601 to 9675.

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

26 ~~(oo) "Postclosure plan" means a plan for land use or resource~~
 27 ~~use restrictions or permanent markers at a facility upon completion~~
 28 ~~of remedial actions as provided for in section 20114e.~~

29 **(nn)** ~~(pp)~~ "Release" includes, but is not limited to, any



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

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

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

12 (iii) A release of source, by-product, or special nuclear
 13 material from a nuclear incident, as those terms are defined in the
 14 atomic energy act of 1954, ~~42 USC 2011 to 2286i~~, **Public Law 83-703**,
 15 if the release is subject to requirements with respect to financial
 16 protection established by the ~~nuclear regulatory commission~~ **Nuclear**
 17 **Regulatory Commission** under 42 USC 2210, or any release of source
 18 by-product or special nuclear material from any processing site
 19 designated under 42 USC 7912(a)(1) or 42 USC 7942(a).

20 (iv) If applied according to label directions and according to
 21 generally accepted agricultural and management practices at the
 22 time of the application, the application of a fertilizer, soil
 23 conditioner, agronomically applied manure, or pesticide, or fruit,
 24 vegetable, or field crop residuals or processing by-products,
 25 aquatic plants, or a combination of these substances, **or the**
 26 **application of biosolids if applied in accordance with part 31 and**
 27 **the rules promulgated under part 31.** As used in this subparagraph:
 28 ~~, fertilizer and soil~~

29 (A) "Biosolids" means that term as defined in R 323.2402 of



1 the Michigan Administrative Code.

2 (B) "Fertilizer" means that term as defined in section 8501.

3 (C) "Pesticide" means that term as defined in section 8305.

4 (D) "Soil conditioner" ~~have the meaning given to these terms~~
 5 ~~in part 85, and pesticide has the meaning given to~~ **means** that term
 6 **as defined in part 83, section 8501a.**

7 (v) Application of fruits, vegetables, field crop processing
 8 by-products, or aquatic plants to the land for an agricultural use
 9 or for use as an animal feed, if the use is consistent with
 10 generally accepted agricultural and management practices at the
 11 time of the application.

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

13 (vii) The placement, storage, or use of beneficial use by-
 14 products or inert materials at the site of storage or use if in
 15 compliance with part 115.

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

23 (pp) "Remedial action closure report" means a report submitted
 24 under section 20114c that details the completion of remedial
 25 actions and includes provisions for ongoing operation, maintenance,
 26 and monitoring, land and resource use restrictions, permanent
 27 markers, and financial assurance as necessary.

28 (qq) ~~(rr)~~ "Remedial action plan" means a work plan for
 29 performing remedial action under this part.



1 **(rr)** ~~(ss)~~ "Residential" means that category of land use for
 2 parcels of property or portions of parcels of property where people
 3 live and sleep for significant periods of time such that the
 4 frequency of exposure is reasonably expected or foreseeable to meet
 5 the exposure assumptions used by the department to develop generic
 6 residential cleanup criteria ~~as set forth in rules promulgated~~
 7 under this part. This category of land use may include, but is not
 8 limited to, homes and surrounding yards, condominiums, and
 9 apartments.

10 **(ss)** ~~(tt)~~ "Residential closure" means a property at which the
 11 contamination has been addressed in a **remedial action closure**
 12 **report or** no further action report that satisfies the limited
 13 residential cleanup criteria under section 20120a(1)(c) or the
 14 site-specific residential cleanup criteria under sections 20120a(2)
 15 and 20120b, that contains land use or resource use restrictions,
 16 and that is approved by the department or is considered approved by
 17 the department under section **20114c or** 20120d.

18 **(tt)** ~~(uu)~~ "Residual NAPL saturation" means that term as ~~it is~~
 19 defined in ~~part 213.~~ **section 21303.**

20 **(uu)** ~~(vv)~~ "Response activity" means evaluation, interim
 21 response activity, remedial action, demolition, providing an
 22 alternative water supply, or the taking of other actions necessary
 23 to protect the public health, safety, or welfare, or the
 24 environment or the natural resources. Response activity also
 25 includes health assessments or health effect studies carried out
 26 under the supervision, or with the approval of, the department of
 27 ~~community health~~ **and human services** and enforcement actions related
 28 to any response activity.

29 **(vv)** ~~(ww)~~ "Response activity costs" or "costs of response

1 activity" means all costs incurred in taking or conducting a
2 response activity, including enforcement costs.

3 **(ww)** ~~(xx)~~ "Response activity plan" means a plan for
4 undertaking response activities. A response activity plan may
5 include 1 or more of the following:

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

7 (ii) A plan for evaluation activities.

8 (iii) A feasibility study.

9 (iv) A remedial action plan.

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

23 **(yy)** ~~(zz)~~ "Source" means any storage, handling, distribution,
24 or processing equipment from which the release originates and first
25 enters the environment **or any contaminated environmental media from**
26 **which hazardous substances above cleanup criteria continue to**
27 **leach, migrate, or expand into the environment.**

28 **(zz)** ~~(aaa)~~ "Stamp sands" means finely grained crushed rock
29 resulting from mining, milling, or smelting of copper ore and



1 includes native substances contained within the crushed rock and
2 any ancillary material associated with the crushed rock.

3 **(aaa) "State drinking water standards" means that term as**
4 **defined in section 2 of the safe drinking water act, 1976 PA 399,**
5 **MCL 325.1002.**

6 (bbb) "Target detection limit" means the detection limit for a
7 hazardous substance in a given environmental medium that is
8 ~~specified in a rule promulgated by the department~~ **on a list that is**
9 **published on the department's website not more than once per year.**

10 The department shall identify 1 or more analytical methods, when a
11 method is available, that are judged to be capable of achieving the
12 target detection limit for a hazardous substance in a given
13 environmental medium. The target detection limit for a given
14 hazardous substance is greater than or equal to the method
15 detection limit for that hazardous substance. In establishing a
16 target detection limit, the department shall consider the following
17 factors:

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

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

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

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

26 **(ccc) "Technically infeasible" means not achievable using**
27 **currently available remediation methods.**

28 **(ddd) "Technically practical" means reasonably achievable**
29 **using currently available remediation methods considering long-term**



1 effectiveness and permanence, reduction of toxicity, mobility or
 2 volume through treatment, short-term effectiveness, ability to
 3 implement, and cost.

4 (eee) ~~(eee)~~ "Threatened release" or "threat of release" means
 5 any circumstance that may reasonably be anticipated to cause a
 6 release.

7 (fff) ~~(ddd)~~ "Venting groundwater" means groundwater that is
 8 entering a surface water of this state from a facility.

9 (2) As used in this part:

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

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

16 Sec. 20107a. (1) **A person that owns or operates property that**
 17 **has information that indicates a property is a facility shall, not**
 18 **later than 90 days after obtaining the information or not later**
 19 **than 90 days after the effective date of the amendatory act that**
 20 **amended this subsection, whichever is later, report the facility to**
 21 **the department, on a form and in manner prescribed by the**
 22 **department. If a facility is reported to the department in**
 23 **accordance with a law or program other than this part, or has been**
 24 **previously reported under this part, notification is not required**
 25 **under this section. A person ~~who~~ **that** owns or operates property**
 26 **that ~~he or she~~ **the person** has knowledge is a facility shall do all**
 27 **of the following with respect to hazardous substances at the**
 28 **facility owned or operated by the person:**

29 (a) Undertake measures as are necessary to prevent



1 exacerbation.

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

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

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

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

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

26 (g) **Not later than 180 business days after a report is made to**
27 **the department under this subsection, or not later than 180 days**
28 **after the effective date of the amendatory act that added this**
29 **subdivision if the facility was previously reported to the**



1 department, whichever is later, submit and implement a due care
2 plan. A due care plan submitted under this subdivision must be on a
3 form and in a manner prescribed by the department. The department
4 may, on request and with good cause shown, grant an extension to
5 the timeline specified under this subdivision if the property is
6 not in use and access to the property is prohibited except as
7 necessary to perform response activities. When a person submits a
8 due care plan under this subdivision, the person may request that
9 the department review and approve the due care plan before the
10 person implements the due care plan. Not later than 90 business
11 days after receipt of a request to review and approve a due care
12 plan, the department shall review the due care plan to ensure that
13 it contains sufficient information and approve, approve with
14 conditions, or deny the due care plan. If the department denies the
15 due care plan, the department shall provide to the person the
16 reasons why the due care plan was not approved. A person that
17 disagrees with the department's decision under this subdivision may
18 submit a petition for review to the response activity review panel
19 in accordance with section 20114e. The department may review a due
20 care plan submitted under this subdivision to determine compliance
21 with this section. The department shall inform the person that
22 submits a due care plan of any deficiencies and provide a timeline
23 to correct any deficiencies.

24 (2) A due care plan submitted under subsection (1)(g) must
25 include, but is not limited to, both of the following:

26 (a) A list of specific actions, and a schedule for completing
27 the specific actions, that the person that owns or operates the
28 property will take to fulfill the person's obligations under this
29 part.

(b) A description of how the person that owns or operates the property will monitor, to the extent necessary, the property for a release or threat of release and a timeline for submitting a report to the department regarding the monitoring conducted in accordance with this subparagraph. A report under this subparagraph must be submitted at least once every 5 years or at an interval determined by the department.

(3) ~~(2)~~—The owner's or operator's obligations under this section shall be based ~~upon~~**on** the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(4) ~~(3)~~—A person ~~who~~**that** violates subsection (1) ~~who~~**that** 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~~**is** borne by the party seeking relief.

(5) A person that violates subsection (1) that is otherwise liable under this part is responsible for all costs of response activities lawfully incurred by this state that relate to the selection and implementation of response activities. Costs recoverable under this subsection include interest, which begins accruing on the date payment is demanded in writing or the date the expenditure or damage occurs, whichever is later. The rate of interest on the outstanding unpaid balance of the costs recoverable



1 under this subsection is the same rate that is specified in section
 2 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL
 3 600.6013.

4 (6) ~~(4)~~—Compliance with this section does not satisfy a
 5 person's obligation to perform response activities as otherwise
 6 required under this part.

7 (7) ~~(5)~~—Subsection (1)(a) to (c) ~~does~~ and (g) does not apply
 8 to ~~the~~ **this** state or to a local unit of government that is not
 9 liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to
 10 ~~the~~ **this** state or a local unit of government that acquired property
 11 by purchase, gift, transfer, or condemnation ~~prior to~~ **before** June
 12 5, 1995 or to a person ~~who~~ **that** is exempt from liability under
 13 section 20126(4)(c). However, if the state or local unit of
 14 government, acting as the operator of a parcel of property that ~~the~~
 15 **this** state or local unit of government has knowledge is a facility,
 16 offers access to that parcel on a regular or continuous basis
 17 ~~pursuant to~~ **in accordance with** an express public purpose and
 18 invites the general public to use that property for the express
 19 public purpose, ~~the~~ **this** state or local unit of government is
 20 subject to this section but only with respect to that portion of
 21 the facility that is opened to and used by the general public for
 22 that express purpose, and not the entire facility. Express public
 23 purpose includes, but is not limited to, activities such as a
 24 public park, municipal office building, or municipal public works
 25 operation. Express public purpose does not include activities
 26 surrounding the acquisition or compilation of parcels for the
 27 purpose of future development.

28 (8) ~~(6)~~—Subsection (1)(a) to (c) ~~does~~ and (g) does not apply
 29 to a person ~~who~~ **that** is exempt from liability under section



1 20126(3)(c) or (d) except with regard to that person's activities
2 at the facility.

3 (9) On completion of response activities in a due care plan
4 submitted under subsection (1)(g), a person shall submit to the
5 department documentation of due care compliance regarding a
6 facility. The documentation of due care compliance must be
7 submitted on a form and in a manner prescribed by the department
8 and contain documentation of compliance with this section, and any
9 other information required by the department. A person may request
10 that the department review the documentation of due care
11 compliance.

12 (10) Not later than 45 business days after receipt of the
13 request to review the documentation of due care compliance under
14 subsection (9), the department shall approve, approve with
15 conditions, or deny the documentation of due care compliance. If
16 the department does not approve the documentation of due care
17 compliance, the department shall provide the person that submitted
18 the documentation the reasons why the documentation of due care
19 compliance was not approved.

20 (11) A person that disagrees with a decision of the department
21 under subsection (10) may submit a petition for review of
22 scientific or technical disputes to the response activity review
23 panel in accordance with section 20114e.

24 Sec. 20112a. (1) Subject to subsection (3), the department
25 shall create, and update on an ongoing basis, an inventory of
26 residential closures and a separate inventory of other known
27 facilities. Each inventory ~~shall~~**must** contain, if applicable, at
28 least the following information for each facility:

29 (a) Location.



(b) Whether 1 or more response activity plans were submitted under section 20114b and the status of department approval.

(c) Whether a notice of land use or resource use restrictions under section 20114c was submitted to the department.

(d) Whether a **remedial action closure report under section 20114c or** no further action report under section 20114d was submitted to the department. ~~and whether the report included a postclosure plan or proposed postclosure agreement and the status of department approval.~~

(2) The department may categorize facilities on the inventory created under subsection (1) in a manner that the department believes is useful for the general public.

(3) The department shall create and update on an ongoing basis a separate inventory of residential closures.

(4) The department shall post ~~the inventories created under subsections (1) and (2)~~ **the following** on the department's website:

- (a) **The inventory created under subsection (1).**
- (b) **All of the following received by the department:**
 - (i) **Response activity plans.**
 - (ii) **Remedial action plans.**
 - (iii) **Remedial action closure reports.**
 - (iv) **No further action reports.**
 - (v) **Requests for certificate of completion or documentation of due care compliance.**
 - (vi) **Initial assessment reports.**
 - (vii) **Baseline environmental assessments.**
 - (viii) **Due care plans.**
- (5) The department shall compile the following data on a



1 quarterly basis and post the data **in a searchable format** on its
2 website:

3 (a) The number of response activity plans received by the
4 department and itemized as follows:

5 (i) Approved by the department.

6 (ii) Disapproved by the department.

7 (iii) Recommended for approval by the panel.

8 (iv) Recommended for disapproval by the panel.

9 (v) Approved by operation of law under section 20114b.

10 (b) The number of no further action reports received by the
11 department and itemized as follows:

12 (i) Approved by the department.

13 (ii) Disapproved by the department.

14 (iii) Recommended for approval by the panel.

15 (iv) Recommended for disapproval by the panel.

16 (v) Approved by operation of law.

17 (c) The number of baseline environmental assessments received
18 by the department.

19 (6) The department shall annually determine the percentage of
20 no further action reports approved by operation of law under
21 section 20114d. If the percentage in any year is in excess of 10%,
22 the department shall notify the standing committees of the senate
23 and the house of representatives with jurisdiction over issues
24 related to natural resources and the environment of this
25 occurrence.

26 **Sec. 20113a. (1) When a person who is liable under section**
27 **20126 obtains information that a release of a hazardous substance**
28 **has occurred at or on a property, the person who is liable under**
29 **section 20126 shall make the following notifications:**



1 (a) If the release is of a reportable quantity of a hazardous
2 substance under 40 CFR 302.4 and 302.6, report the release to the
3 department not later than 24 hours after the person obtains
4 information of the release.

5 (b) If the release is less than the reportable quantity of a
6 hazardous substance in subdivision (a) and is not contained and
7 cleaned up within 24 hours, report the release to the department
8 not later than 48 hours after the person obtains information of the
9 release.

10 (c) If the person obtains information that 1 or more hazardous
11 substances are migrating and present beyond the boundary of the
12 property at which the release occurred and at a concentration in
13 excess of cleanup criteria for unrestricted residential use or
14 state drinking water standards, report the release to the
15 department and any owner of property where the hazardous substance
16 has migrated to and is present not later than 30 days after the
17 person obtains information of the migration.

18 (d) If the release is a result of an activity that is subject
19 to permitting under part 615, the owner or operator is not the
20 owner of the surface property, and the release results in hazardous
21 substance concentrations in excess of cleanup criteria for
22 unrestricted residential use, notify the department and the surface
23 owner not later than 30 days after the person obtains information
24 of the release.

25 (2) Except as provided in subsection (3), a person that holds
26 an easement interest in a portion of a property and has knowledge
27 that there may be a release within that easement shall report the
28 release to the department not later than 24 hours after the person
29 obtains information about the release. This subsection applies to



1 reportable quantities of hazardous substances established in
2 accordance with 40 CFR 302.4 and 302.6 for which the person that
3 holds the easement interest is not liable under section 20126.

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

7 (4) If a release is reported to the department in accordance
8 with a law or program other than this part, or has been previously
9 reported under this part, notification is not required under this
10 section.

11 (5) After a person obtains knowledge of a release of hazardous
12 substances on or migrating from the person's property and the
13 release is reported under subsection (1), the person who is liable
14 under section 20126 shall immediately begin and perform all of the
15 following initial actions:

16 (a) Determine the nature and extent of the release.

17 (b) Immediately stop or prevent an ongoing release at the
18 source.

19 (c) Identify and mitigate immediate fire, explosion, and acute
20 vapor hazards.

21 (d) Take action to prevent further release of hazardous
22 substances.

23 (e) Excavate and contain, treat, or dispose of hazardous
24 substances above the water table as necessary to prevent or
25 mitigate further groundwater contamination.

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

28 (g) Determine if the release resulted in hazardous substance
29 concentrations in excess of cleanup criteria for unrestricted



1 residential use.

2 (h) Continue to monitor and mitigate additional hazards posed
3 by the hazardous substances.

4 (i) Take any required action under section 20107a.

5 (6) If access to property is limited due to the property's
6 nature or location, the person who is liable under section 20126
7 shall inform the department of any conditions that limit the
8 performance of initial actions under subsection (5).

9 (7) The department may investigate a release or facility. An
10 investigation by the department under this subsection does not
11 relieve the person who is liable under section 20126 from any
12 responsibilities related to the release or facility provided for in
13 this part.

14 (8) If at any time sufficient response activities that meet
15 the requirements of section 20114c or 20114d have been undertaken
16 to address the facility, the owner or operator that is liable under
17 section 20126a may submit a remedial action closure report under
18 section 20114c or a no further action report under section 20114d
19 and omit any remaining interim reports and plans.

20 Sec. 20114. (1) Except as provided in subsection ~~(4)~~, **(3)**, an
21 owner or operator of property ~~who~~ **that** has knowledge that the
22 property is a facility shall do all of the following with respect
23 to a release for which the owner or operator is liable under
24 section 20126:

25 ~~(a) Subject to subsection (6), determine the nature and extent~~
26 ~~of the release at the facility.~~

27 ~~(b) Make the following notifications:~~

28 ~~(i) If the release is of a reportable quantity of a hazardous~~
29 ~~substance under 40 CFR 302.4 and 302.6 (July 1, 2012 edition),~~



1 ~~report the release to the department within 24 hours after~~
2 ~~obtaining knowledge of the release.~~

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

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

16 ~~(c) Immediately stop or prevent an ongoing release at the~~
17 ~~source.~~

18 ~~(d) Immediately implement measures to address, remove, or~~
19 ~~contain hazardous substances that are released after June 5, 1995~~
20 ~~if those measures are technically practical, are cost effective,~~
21 ~~and abate an unacceptable risk to the public health, safety, or~~
22 ~~welfare or the environment. At a facility where hazardous~~
23 ~~substances are released after June 5, 1995, and those hazardous~~
24 ~~substances have not affected groundwater but are likely to,~~
25 ~~groundwater contamination shall be prevented if it can be prevented~~
26 ~~by measures that are technically practical, cost effective, and~~
27 ~~abate an unacceptable risk to the public health, safety, or welfare~~
28 ~~or the environment.~~

29 ~~(e) Immediately identify and eliminate any threat of fire or~~

~~explosion or any direct contact hazards.~~

~~(f) 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.~~

(a) On request by the department, submit supporting documents, including data and conclusions of the initial assessment report.

(b) Unless a response activity plan under section 20114b, a remedial action closure report under section 20114c, or no further action report under section 20114d is submitted to the department for the release, not later than 365 days after a release has been discovered or not later than the effective date of the amendatory act that added this subdivision, whichever is later, the owner or operator that is liable under section 20126 shall complete an initial assessment report and submit the report to the department on a form and in a manner prescribed by the department. The owner or operator may submit a request to the department for an extension to the timeline described in this subdivision. The initial assessment report must include the following information:

(i) Results of initial actions taken under section 20113a(5).

(ii) Property information and facility characterization results, including all of the following, as appropriate:

(A) The property address.

(B) The name of the business, if applicable.

(C) The name, address, and telephone number of a contact individual for the owner or operator that is liable under section 20126.



1 (D) The time and date the release was discovered and a
2 description of how the release was discovered.

3 (E) The time and date the release was reported to the
4 department.

5 (F) A map that includes all of the following:

6 (I) Soil and groundwater sample locations, if applicable.

7 (II) The locations of nearby buildings, roadways, paved areas,
8 or other structures.

9 (III) The location of nearby surface waters and wetlands.

10 (IV) The location of nearby underground sewers and utility
11 lines.

12 (G) Steps taken to prevent further migration of the hazardous
13 substance into the soil or groundwater.

14 (H) Steps taken to evaluate the extent of the release, current
15 conditions, and current levels of hazardous substances remaining at
16 or on the property.

17 (I) Data from analytical testing of soil and groundwater
18 samples.

19 (J) An estimate of the horizontal and vertical extent of on-
20 site and off-site soil or groundwater contamination that exceeds
21 cleanup criteria for unrestricted residential use.

22 (K) The depth to groundwater and groundwater flow rate and
23 direction.

24 (L) An identification of potential migration and exposure
25 pathways and receptors.

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



1 following:

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

4 ~~(ii) Proceed under section 20114b if the owner or operator~~
5 ~~wishes to, or is required to, obtain departmental approval of 1 or~~
6 ~~more aspects of planning response activities.~~ **shall do 1 of the**
7 **following:**

8 (i) Not later than 180 days after submitting an initial
9 assessment report under subdivision (b), submit and implement a
10 response activity plan for department approval in accordance with
11 20114b. The response activity plan must include a schedule for
12 performance of the activities and for the submission of a remedial
13 action plan to the department.

14 (ii) Not later than 365 days after submitting an initial
15 assessment report under subdivision (b), submit and implement 1 of
16 the following, as appropriate:

17 (A) A response activity plan that includes a remedial action
18 plan under 20114b.

19 (B) A remedial action closure report, if remedial actions are
20 complete that meet the conditions under 20114c.

21 (C) A no further action report if remedial actions are
22 complete that meet the conditions under 20114d.

23 (d) ~~(h) Upon~~ **On** written request by the department, take 1 or
24 more of the following actions:

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

28 (ii) Provide a response activity plan ~~containing~~ **that contains**
29 a plan for undertaking evaluation activities and undertake



1 evaluation activities consistent with that plan.

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

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

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

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

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

14 **(e) Provide an annual report on the progress of response**
 15 **activities conducted under this part until a remedial action**
 16 **closure report is submitted under section 20114c or a no further**
 17 **action report is submitted under section 20114d, or at an interval**
 18 **determined by the department not to exceed once every 5 years.**

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

27 **(2)** ~~(3)~~ Except as provided in subsection ~~(4)~~, **(3)**, a person
 28 ~~who~~ **that** holds an easement interest in a portion of a property ~~who~~
 29 **that** has knowledge that there may be a release within that easement



1 shall report the release to the department ~~within~~**not later than** 24
 2 hours after obtaining knowledge of the release. ~~This subsection~~
 3 ~~applies to reportable quantities of hazardous substances~~
 4 ~~established pursuant to 40 CFR 302.4 and 302.6 (July 1, 2012~~
 5 ~~edition).~~

6 (3) ~~(4)~~ The requirements of subsections (1) and ~~(3)~~ (2) do not
 7 apply to a permitted release or a release in compliance with
 8 applicable federal, state, and local air pollution control laws.

9 (4) ~~(5)~~ This section does not do either of the following:

10 (a) Limit the authority of the department to take or conduct
 11 response activities ~~pursuant to~~**in accordance with** this part.

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

14 (5) ~~(6)~~ If a hazardous substance is released at a property and
 15 there is no available analytical method or generic cleanup criteria
 16 for that hazardous substance, the nature and extent of the
 17 hazardous substance may be determined by any of the following
 18 means, singly or in combination:

19 (a) If another hazardous substance with an available
 20 analytical method was released at the same location and has similar
 21 fate and mobility characteristics, determine the nature and extent
 22 of that hazardous substance as a surrogate.

23 (b) For venting groundwater, use ~~a~~**an ecological demonstration**
 24 **or** modeling demonstration, ~~an ecological demonstration,~~ or a
 25 combination of both, consistent with section ~~20120e(9) and (10),~~
 26 **20120e(6) and (7)**, to determine whether the hazardous substance has
 27 reached surface water.

28 (c) Develop and propose to the department an analytical method
 29 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.~~

(6) After a person completes response activities in accordance with subsection (1) (a), the owner or operator that is liable under section 20126a shall submit a remedial action closure report under section 20114c or a no further action report under section 20114d. A person who is not liable under section 20126 may take any of the actions outlined under sections 20114, 20114b, 20114c, 20114d, and 20121.

(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. 20114b. (1) ~~Subject to section 20114(1) (h), a person undertaking response activity under this part may submit to the department a response activity plan that includes a request for department approval of 1 or more aspects of response activity.~~

~~(2) A person who~~ **that** submits a response activity plan under this section and ~~who~~ is not subject to an administrative order or agreement or judicial decree that requires prior department approval of response activity shall submit a response activity plan ~~review request form with the response activity plan. on a form and in a manner prescribed by the department.~~ The department shall specify the required content of the response activity ~~request plan~~ form and make the form available on the department's website. **A**



1 person may request that the department review a response activity
2 plan submitted under this section.

3 (2) A response activity plan submitted under this section must
4 address the release of hazardous substances in all environmental
5 media at the facility for which the owner or operator is liable
6 under section 20126a and must be consistent with sections 20118,
7 20120, 20120a, and 20120b. A response activity plan must include
8 all of the following:

9 (a) The address and legal description of the property subject
10 to remedial action.

11 (b) The proposed cleanup category under section 20120a that is
12 applicable to the remedial action and how the current and
13 foreseeable land use and activity patterns are consistent with the
14 proposed cleanup category.

15 (c) Identification of all hazardous substances present as a
16 result of the release.

17 (d) The results of all remedial actions that identify the
18 source and define the nature and extent of contamination at the
19 facility.

20 (e) An evaluation of the exposure pathways that are relevant
21 for the facility and a determination of what exposure pathways must
22 be addressed by remedial action.

23 (f) A feasibility study that describes remedial action
24 alternatives. A feasibility study must include all of the
25 following:

26 (i) Remedial action alternatives that permanently or
27 significantly reduce the volume, toxicity, persistence, and
28 mobility of hazardous substances at the facility.

29 (ii) The effectiveness and feasibility of each remedial action



1 alternative described under subparagraph (i) in meeting the cleanup
2 criteria.

3 (iii) The costs associated with each remedial action alternative
4 described under subparagraph (i) .

5 (iv) The time necessary to implement and complete each remedial
6 action alternative described under subparagraph (i) .

7 (v) If appropriate, the preferred remedial action alternative
8 and how it is the most technically feasible, cost effective, and
9 practical remedy to protect public, health, safety, and welfare and
10 the environment and achieve compliance with sections 20118, 20120,
11 20120a, and 20120b.

12 (g) A description of source removal or control measures that
13 have or will take place as part of the remedial action.

14 (h) An explanation of any land or resource use restrictions,
15 including how the restrictions will be effective in preventing or
16 mitigating unacceptable exposures.

17 (i) An operation and maintenance plan if any element of the
18 remedial action requires operation and maintenance.

19 (j) A monitoring plan and location of monitoring points if
20 monitoring is required to confirm the effectiveness or integrity of
21 the remedial action.

22 (k) Performance objectives and a plan to measure performance
23 to determine if the remedial action is or will be effective in
24 meeting the remedial action goals.

25 (l) A schedule for implementing remedial actions.

26 (3) ~~Upon~~ Subject to section 20118, on receipt of a request to
27 review a response activity plan submitted ~~for approval~~ under this
28 subsection, ~~section~~, the department shall approve, approve with
29 conditions, or deny the response activity plan, or ~~shall~~ notify the



submitter that the **response activity** plan does not contain sufficient information for the department to make a decision. The department shall provide its determination ~~within~~ **not later than** 150 days after the **request to review a response activity** plan was received by the department unless the **response activity** plan requires public participation under section 20120d(2). If the plan requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the **response activity** plan does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a **response activity** plan is approved with conditions, the department's approval ~~shall~~ **must** state with specificity the conditions of the approval. **The conditions may include, but are not limited to, requiring a timeline for completion of certain response activities, requiring intermediary benchmarks, and requiring submission of progress reports at regular intervals.** If the **response activity** plan is denied, the department's denial ~~shall~~ **must**, to the extent practical, state with specificity all of the reasons for denial. **The department may review any response activity plan submitted and approve, approve with conditions, or deny the response activity plan.**

(4) If the department fails to provide a written response within the ~~time frames~~ **timelines** required by subsection (3), the response activity plan is considered approved. If the department denies a response activity plan under subsection (3), a person may subsequently revise and resubmit the response activity plan for approval.

(5) **The department may require that a person undertaking**

1 response activity under this part submit a new response activity
2 plan under this section if any of the following occur:

3 (a) There is new information about the nature and extent of
4 contamination.

5 (b) There is evidence that any of the following are creating
6 the potential of unacceptable exposure at the facility:

7 (i) Migration of hazardous substances.

8 (ii) That the person undertaking response activities
9 substantially misrepresented response activities or the type or
10 extent of contamination or failed to comply with conditions set
11 forth in the response activity plan.

12 (iii) There is new scientific information released regarding the
13 contaminants present at the facility.

14 (6) ~~(5)~~ Any ~~time frame~~ **timeline** required by this section may
15 be extended by mutual agreement of the department and a person
16 submitting a response activity plan. An agreement extending a time
17 frame ~~shall~~ **must** be in writing.

18 (7) ~~(6)~~ A person requesting approval of a response activity
19 plan may appeal the department's decision in accordance with
20 section 20114e, if applicable.

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

24 ~~(2) Upon~~ **On** completion of remedial actions at a facility ~~for a~~
25 ~~category of cleanup that does not satisfy cleanup criteria for~~
26 ~~unrestricted residential use, that do not meet the requirements for~~
27 **no further action under 20114d**, the person conducting the remedial
28 actions **under section 20114 or 20114b** shall ~~prepare~~ **submit** and
29 implement a ~~postclosure plan~~ **remedial action closure report** for

1 that facility. A person may submit a remedial action closure report
2 under this subsection for remedial actions addressing contamination
3 for which the person is or is not liable.

4 (2) A remedial action closure report must be submitted on a
5 form and in a manner prescribed by the department. A remedial
6 action closure report may include a request that, on approval, the
7 release or conditions addressed by the remedial action closure
8 report be designated as a residential closure. A ~~postclosure plan~~
9 ~~shall~~ remedial action closure report must include ~~both~~ all of the
10 following:

11 (a) Land use or resource use restrictions as provided in
12 section 20121.

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

17 (i) A facility at which remedial action satisfies the cleanup
18 criteria for the nonresidential category under section
19 20120a(1)(b).

20 (ii) Use of groundwater.

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

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



1 (c) Provisions for monitoring, operation and maintenance, and
2 oversight necessary to ensure the effectiveness and integrity of
3 the remedial action.

4 (d) Financial assurance sufficient to pay for monitoring,
5 operation and maintenance, oversight, and other costs determined by
6 the department to be necessary to ensure the effectiveness and
7 integrity of the remedial action. The cost of activities covered by
8 the financial assurance mechanism must be documented on the basis
9 of an annual estimate of maximum costs for the activity as if the
10 activities were to be conducted by a person under contract to this
11 state. Costs must not be based on activities being conducted by
12 employees of the person proposing the remedial action.

13 (e) A timeline for submitting an annual report to the
14 department that contains the following information:

15 (i) Measures taken to ensure that the land and resource use
16 restrictions are effective in limiting human exposure to
17 contaminants.

18 (ii) Any known failures of the land or resource use
19 restrictions in preventing access or exposure to the restricted
20 land or resource.

21 (f) A description of continuous monitoring sufficient to
22 detect any vertical or horizontal migration or expansion of
23 contamination in soil or groundwater, and reporting on migration or
24 expansion of contaminants.

25 (3) At any time within 10 years after a remedial action
26 closure report is submitted under subsection (1), the department
27 may require changes or updates to the remedial action closure
28 report based on monitoring and reporting conducted in accordance
29 with subsection (2) (c), (e), and (f).



(4) ~~(3)~~ A person ~~who~~ **that** implements a ~~postclosure plan~~
remedial action closure report 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~~ **not later than** 30 days after recording the land use
 or resource use restrictions with the register of deeds.

(5) A person that submits a remedial action closure report
 must include the following:

(a) A signed affidavit that attests that the information on
 which the remedial action closure report is based is complete and
 true to the best of that person's knowledge.

(b) From the environmental consultant who prepared the
 remedial action closure report and meets the professional
 qualifications described in section 20114e(2), both of the
 following:

(i) A signed affidavit that attests that the remedial actions
 detailed in the remedial action closure report comply with all
 applicable requirements and the information on which the remedial
 action closure report is based is complete and true to the best of
 the environmental consultant's knowledge.

(ii) A certificate of insurance that demonstrates that the
 environmental consultant has obtained, at a minimum, 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 that
 includes bodily injury, property damage, and claims arising out of
 pollution for environmental work provisions and has a limit of not



1 less than \$1,000,000.00 per claim.

2 (C) If not covered under the professional liability errors and
3 omissions insurance under sub-subparagraph (B), contractor
4 pollution liability insurance that has a limit of not less than
5 \$1,000,000.00 per claim. The requirements under this sub-
6 subparagraph do not apply to an environmental consultant who does
7 not perform contracting functions.

8 (D) Commercial general liability insurance that has a limit of
9 not less than \$1,000,000.00 per claim and not less than
10 \$2,000,000.00 aggregate.

11 (E) Automobile liability insurance that has a limit of not
12 less than \$1,000,000.00 per claim.

13 (6) A person that submits a remedial action closure report
14 under this section shall maintain all documents and data prepared,
15 acquired, or relied on in connection with the remedial action
16 closure report for not less than 10 years after the date on which
17 no further monitoring, operation, or maintenance is required to be
18 undertaken as part of the remedial action covered by the remedial
19 action closure report and make the documents and data available to
20 the department on request.

21 (7) ~~(4)~~ Implementation of remedial actions does not relieve a
22 person who is liable under section 20126 of that person's
23 responsibility to report and provide for response activity to
24 address a subsequent release or threat of release.

25 (8) ~~(5) Implementation by any person of remedial actions~~
26 ~~without department approval does not relieve that person of an~~
27 ~~obligation to undertake response activities or limit the ability of~~
28 ~~the department to take action to require response activities~~
29 ~~necessary to comply with this part by a person who is liable under~~



~~section 20126.~~ On receipt of a remedial action closure report submitted under this section, the department shall approve or deny the remedial action closure report or shall notify the submitter that the remedial action closure report does not contain sufficient information for the department to make a decision. The department shall provide its determination not later than 150 days after the remedial action closure report was received by the department, unless the remedial action closure report requires public participation under section 20120d(2). If the remedial action closure report requires public participation under section 20120d(2), the department shall provide its determination not later than 180 days after the remedial action closure report was received. If the department determines that the remedial action closure report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the remedial action closure report is denied, the department's denial must, to the extent practical, state with specificity all of the reasons for denial.

(9) If the department fails to provide a written response within the timeline required under subsection (8), the remedial action closure report is considered approved.

(10) The department and a person that submits a remedial action closure report under this section may mutually agree in writing to extend a timeline required under this section.

Sec. 20114d. (1) On completion of remedial actions that satisfy the requirements of this part, rely only on land or resource use restrictions, and require no monitoring, operation, or maintenance to ensure the protectiveness and integrity of the remedial action, a person that conducts remedial actions under



1 **section 20114 or 20114b shall submit a no further action report to**
 2 **the department.** A person may submit a no further action report
 3 under this subsection for remedial actions addressing contamination
 4 for which the person is or is not liable. Remedial actions ~~included~~
 5 ~~in a no further action report may address all or a portion of~~
 6 ~~contamination at a facility as follows:~~

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

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

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

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

15 ~~(e) The remedial actions may address contamination at a~~
 16 ~~facility through any combination of subdivisions (a) through~~
 17 ~~(d). contamination at or within the whole or a part of a legally~~
 18 **described facility.**

19 (2) A no further action report submitted under subsection (1)
 20 must document the basis for concluding that the remedial actions
 21 ~~included in the no further action report are protective of the~~
 22 ~~public health, safety, and welfare, and the environment with~~
 23 ~~respect to the environmental contamination addressed by the~~
 24 ~~remedial actions. have been completed.~~ A no further action report
 25 may include a request that, ~~upon~~ **on** approval, the release or
 26 conditions addressed by the no further action report be designated
 27 as a residential closure. A no further action report ~~shall~~ **must** be
 28 submitted ~~with~~ **on** a form ~~developed~~ **and in a manner prescribed** by
 29 the department. ~~The department shall make this form available on~~



1 ~~its website.~~

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

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

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

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

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

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

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

26 ~~(c) A provision requiring notice to the department of the~~
27 ~~owner's intent to convey any interest in the facility 14 days prior~~
28 ~~to consummating the conveyance. A conveyance of title, an easement,~~
29 ~~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 waive the requirement for permanent markers.~~

(3) ~~(6)~~ The person ~~submitting~~ **that submits** a no further action report shall include a signed affidavit ~~attesting to the fact~~ **that attests** that the information ~~upon~~ **on** 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 must 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 attests** that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information ~~upon~~ **on** which the no further action report is based is complete and true to the best of ~~that person's~~ **the environmental consultant's** knowledge. In addition, the environmental consultant shall attach a certificate of insurance ~~demonstrating~~ **that demonstrates** 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 must not exclude~~ **that includes** bodily injury, property
 damage, ~~or and~~ claims arising out of pollution for environmental
 work and ~~must be issued with~~ **has** a limit of not less than
 \$1,000,000.00 per claim.

(c) ~~Contractor~~ **If not included under the professional**
liability errors and omissions insurance required under subdivision
(b), pollution liability insurance ~~with limits that has a limit~~ 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~~ **does not apply to an** environmental
~~consultants~~ **consultant** who ~~do~~ **does** not perform contracting
 functions.

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

(e) Automobile liability insurance ~~with limits that has a~~
limit of not less than \$1,000,000.00 per claim.

(4) ~~(7)~~ A person ~~submitting that submits~~ a no further action
 report shall maintain all documents and data prepared, acquired, or
 relied ~~upon on~~ 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 and make the~~ documents and data
~~required to be maintained under this section shall be made~~
 available to the department ~~upon on~~ request.



1 (5) ~~(8) Upon~~ On receipt of a no further action report
 2 submitted under this subsection, the department shall approve or
 3 deny the no further action report or shall notify the submitter
 4 that the **no further action** report does not contain sufficient
 5 information for the department to make a decision. ~~If the no~~
 6 ~~further action report requires a postclosure agreement, the~~
 7 ~~department may negotiate alternative terms than those included~~
 8 ~~within the proposed postclosure agreement. The department shall~~
 9 provide its determination ~~within~~ **not later than** 150 days after the
 10 **no further action** report was received by the department, ~~under this~~
 11 ~~subsection unless the~~ **no further action** report requires public
 12 participation under section 20120d(2). If the **no further action**
 13 report requires public participation under section 20120d(2), the
 14 department shall respond ~~within~~ **not later than** 180 days. If the
 15 department's response is that the **no further action** report does not
 16 include sufficient information, the department shall identify the
 17 information that is required for the department to make a decision.
 18 If the **no further action** report is denied, the department's denial
 19 must, to the extent practical, state with specificity all of the
 20 reasons for denial. ~~If the no further action report, including any~~
 21 ~~required postclosure plan and postclosure agreement, is approved,~~
 22 ~~the department shall provide the person submitting the no further~~
 23 ~~action report with a no further action letter. The department shall~~
 24 ~~review and provide a written response within the time frames~~
 25 ~~required by this subsection for at least 90% of the no further~~
 26 ~~action reports submitted to the department under this section in~~
 27 ~~each calendar year.~~

28 (6) ~~(9)~~ If the department fails to provide a written response
 29 within the ~~time frames~~ **timeline** required by subsection ~~(8)~~, **(5)**,



1 the no further action report is considered approved.

2 **(7) ~~(10)~~** A person ~~requesting that~~ **requests** approval of a no
3 further action report under subsection ~~(8)~~ **(5)** may appeal the
4 department's decision in accordance with section 20114e.

5 **(8) ~~(11)~~** ~~Any time frame required by this section may be~~
6 ~~extended by mutual agreement of the~~ **The** department and a person
7 ~~submitting that submits~~ a no further action report ~~. An agreement~~
8 ~~extending a time frame must be~~ **may mutually agree** in writing to
9 **extend a timeline required under this section.**

10 **(9) ~~(12)~~** Following approval of a no further action report
11 under this section, the owner or operator of the facility addressed
12 by the no further action report may submit to the department an
13 amended no further action report. The amended no further action
14 report must include the proposed changes to the original no further
15 action report and an accompanying rationale for the proposed
16 change. The process for review and approval of an amended no
17 further action report is the same as the process for no further
18 action reports.

19 Sec. 20114e. (1) The director shall establish a response
20 activity review panel to advise ~~him or her~~ **the director** on
21 **technical or scientific** disputes, **including disputes regarding**
22 **assessment of risk, response activity plans, due care plans,**
23 **initial assessment reports, no further action reports, certificates**
24 **of completion, and documentation of due care compliance under this**
25 **part, and final assessment reports, closure reports, and**
26 **documentation of due care compliance under part 213.**

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



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

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

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

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

12 (b) Remain current in ~~his or her~~ **the individual's** field
13 through participation in continuing education or other activities.

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

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

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

22 (c) The individual is employed by an entity that is a party to
23 1 or more contracts with the department and the compensation paid
24 to the individual's employer under these contracts represented more
25 than 5% of the employer's annual gross revenue in any of the
26 preceding 3 years.

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

29 (4) An individual appointed to the panel serves for a term of



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

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

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

(7) A person ~~who~~**that** submitted a ~~response activity~~**an assessment of risk, response activity plan, ; remedial action plan; postclosure plan; a due care plan, initial assessment report,** no further action report, ~~;~~**a** or request for certificate of completion or documentation of due care compliance under this part, ~~;~~**or an initial assessment report, a** final assessment report, closure report, or documentation of due care compliance under part 213, may appeal a decision made by the department regarding a **technical or scientific dispute, including a dispute regarding an assessment of risk, response activity plan, due care plan, initial assessment report, no further action report, request for certificate of completion under this part, or a final assessment report, closure report, or documentation of due care compliance under part 213,** by submitting a petition to the director. However, an issue that was addressed as part of the final decision of the director under



1 section 21332 or that is the subject of a contested case hearing
2 under section 21332 is not eligible for review by the panel. The
3 petition must include the issues in dispute, the relevant facts
4 ~~upon~~**on** which the dispute is based, factual data, analysis,
5 opinion, and supporting documentation for the petitioner's
6 position. The petitioner shall also submit a fee of \$3,500.00. If
7 the director believes that the dispute may be able to be resolved
8 without convening the panel, the director may contact the
9 petitioner regarding the issues in dispute and may negotiate a
10 resolution of the dispute. This negotiation period must not exceed
11 45 days. If the dispute is resolved without convening the panel,
12 any fee that is submitted with the petition ~~shall~~**must** be returned.

13 (8) If a dispute is not resolved ~~pursuant to~~**under** subsection
14 (7), the director shall schedule a meeting of 5 members of the
15 panel, selected on the basis of their relevant expertise, ~~within~~
16 **not later than** 45 days after receiving the original petition. If
17 the dispute involves an underground storage tank system, at least 3
18 of the members selected must have relevant experience in the
19 American Society for Testing and Materials risk-based corrective
20 action processes described in part 213. A member selected for the
21 dispute resolution process shall agree not to accept employment by
22 the person bringing the dispute before the panel, or to undertake
23 any employment concerning the facility in question for a period of
24 1 year after the decision has been rendered on the matter if that
25 employment would represent more than 5% of the member's gross
26 revenue in any of the preceding 3 years. The director shall provide
27 a copy of all supporting documentation to members of the panel who
28 will hear the dispute. An alternative member may be selected by the
29 director to replace a member who is unable to participate in the



1 dispute resolution process. Any action by the members selected to
2 hear the dispute requires a majority of the votes cast. The members
3 selected for the dispute resolution process shall elect a
4 chairperson of the dispute resolution process. At a meeting
5 scheduled to hear the dispute, representatives of the petitioner
6 and the department must each be afforded an opportunity to present
7 their positions to the panel. The fee that is received by the
8 director along with the petition ~~shall~~**must** be forwarded to the
9 state treasurer for deposit into the fund.

10 (9) ~~Within~~**Not later than** 45 days after hearing the dispute,
11 the members of the panel who were selected for and participated in
12 the dispute resolution process shall make a recommendation
13 regarding the petition and provide written notice of the
14 recommendation to the director of the department and the
15 petitioner. The written recommendation must include the specific
16 scientific or technical rationale for the recommendation. The
17 panel's recommendation regarding the petition may be to adopt,
18 modify, or reverse, in whole or in part, the department's decision
19 that is the subject of the petition. If the panel does not make its
20 recommendation within this 45-day time period, the decision of the
21 department is the final decision of the director.

22 (10) ~~Within~~**Not later than** 60 days after receiving written
23 notice of the panel's recommendation, the director shall issue a
24 final decision, in writing, regarding the petition. However, this
25 time period may be extended by written agreement between the
26 director and the petitioner. If the director agrees with the
27 recommendation of the panel, the department shall incorporate the
28 recommendation into its response to the response activity plan, no
29 further action report, request for certificate of completion,



1 initial assessment report, final assessment report, closure report,
 2 or documentation of due care compliance. If the director rejects
 3 the recommendation of the panel, the director shall issue a written
 4 decision to the petitioner with a specific rationale for rejecting
 5 the recommendation of the panel. If the director fails to issue a
 6 final decision within the time period provided for in this
 7 subsection, the recommendation of the panel ~~shall~~**must** be
 8 considered the final decision of the director. The final decision
 9 of the director under this subsection is subject to review ~~pursuant~~
 10 ~~to~~**in accordance with** section 631 of the revised judicature act of
 11 1961, 1961 PA 236, MCL 600.631.

12 (11) ~~Upon~~**On** request of the director, the panel shall make a
 13 recommendation to the department on whether a member should be
 14 removed from the panel for noncompliance with this part. ~~Prior to~~
 15 **Before** making this recommendation, the panel may convene a peer
 16 review panel to evaluate the conduct of the member.

17 (12) A member of the panel shall not participate in the
 18 dispute resolution process for any appeal in which that member has
 19 a conflict of interest. The director shall select a member of the
 20 panel to replace a member who has a conflict of interest under this
 21 subsection. For purposes of this subsection, a member has a
 22 conflict of interest if a petitioner has hired that member or the
 23 member's employer on any environmental matter within the preceding
 24 3 years.

25 (13) As used in this section, ÷

26 ~~(a) "Dispute" means any disagreement over a technical,~~
 27 ~~scientific, or administrative issue, including, but not limited to,~~
 28 ~~disagreements over assessment of risk, response activity plans,~~
 29 ~~remedial action plans, no further action reports, certificates of~~



~~completion, documentation of due care compliance under this part, determinations of whether a person has submitted sufficient information for the department to make a decision regarding a submittal under this part or part 213, and initial assessment reports, final assessment reports, closure reports, postclosure plans, and documentations of due care compliance under part 213.~~

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

Sec. 20119. (1) In accordance with this section, if the department determines that there ~~may be~~**is** an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require ~~persons~~**a person** who ~~are~~**is** liable under section 20126 **or a person who is subject to the requirements of section 20107a** to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 ~~requiring~~**or a person who is subject to the requirements of section 20107a that requires** that person to perform response activity relating to a facility for which that person is liable **or has obligations under section 20107a** or to take any other



1 action required by this part. An order issued under this section
 2 ~~shall~~**must** state with reasonable specificity the basis for issuance
 3 of the order and specify a reasonable time for compliance.

4 (3) ~~Within~~**Not later than** 30 days after issuance of an
 5 administrative order under this section, a person ~~to which the~~
 6 ~~order~~**that** was issued **an order** shall indicate in writing whether
 7 the person intends to comply with the order.

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

11 (a) A civil fine of not more than \$25,000.00 for each day ~~in~~
 12 ~~which~~ the violation occurs or the failure to comply continues. A
 13 fine imposed under this subsection ~~shall be~~**is** based ~~upon~~**on** the
 14 seriousness of the violation and any ~~good faith~~**good-faith** efforts
 15 by the ~~violation~~**person** to comply with the administrative order.

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

20 (5) A person ~~to~~ to which an administrative order was issued
 21 under this section and that complied with the terms of the order ~~to~~
 22 ~~who~~**and that** believes that the order was arbitrary and capricious
 23 or unlawful may petition the department, ~~within~~**not later than** 60
 24 days after completion of the required action, for reimbursement
 25 from the fund for the reasonable costs of the action plus interest
 26 at the rate described in section 20126a(3) and other necessary
 27 costs incurred in seeking reimbursement under this subsection. If
 28 the department refuses to grant all or part of the petition, the
 29 petitioner may, ~~within~~**not later than** 30 days ~~of~~**after** receipt of



1 the refusal, file an action against the department in the court of
 2 claims seeking this relief. A failure by the department ~~either to~~
 3 grant or deny all or any part of a petition ~~within~~ **not later than**
 4 120 days ~~of~~ **after** receipt constitutes a denial of that part of the
 5 petition, which denial is reviewable as final agency action in the
 6 court of claims. To obtain reimbursement, the petitioner shall
 7 establish by a preponderance of the evidence that the petitioner is
 8 not liable under section 20126, **was not subject to the requirements**
 9 **of section 20107a at the time the order was issued**, or that the
 10 action ordered was arbitrary and capricious or unlawful, and ~~in~~
 11 ~~either instance~~ that costs ~~for which~~ the petitioner seeks **for**
 12 reimbursement are reasonable in light of the action required by and
 13 undertaken ~~pursuant to~~ **in accordance with** the relevant order.

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

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

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

24 (c) An owner or operator of a facility ~~who~~ **that** becomes an
 25 owner or operator on or after June 5, 1995, unless the owner or
 26 operator complies with either of the following:

27 (i) A baseline environmental assessment is conducted ~~prior to~~
 28 **before** or within 45 days after the earlier of the date of purchase,
 29 occupancy, or foreclosure, and the owner or operator provides the



1 baseline environmental assessment to the department and subsequent
 2 purchaser or transferee within 6 months after the earlier of the
 3 date of purchase, occupancy, or foreclosure. For purposes of this
 4 section, assessing property to conduct a baseline environmental
 5 assessment does not constitute occupancy.

6 (ii) The owner or operator requests and receives from the
 7 department a determination that its failure to comply with the time
 8 frames in subparagraph (i) when conducting and submitting a baseline
 9 environmental assessment was inconsequential.

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

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

27 (ii) A person ~~who~~**that**, ~~prior to~~**before** June 5, 1995, arranges
 28 for the sale or transport of a secondary material for use in
 29 producing a new product unless the state has incurred response



1 activity costs associated with these secondary materials ~~prior to~~
2 **before** December 17, 1999. As used in this subparagraph, "secondary
3 material" means scrap metal, paper, plastic, glass, textiles, or
4 rubber, that ~~has demonstrated~~ **demonstrates** reuse or recycling
5 potential and ~~has been~~ **is** separated or removed from the solid waste
6 stream for reuse or recycling, whether or not subsequent separation
7 and processing is required, if substantial amounts of the material
8 are consistently used in the manufacture of products that may
9 otherwise be produced from a raw or virgin material.

10 (iii) A person ~~who~~ **that** arranges the lawful transport or
11 disposal of any product or container that is commonly used in a
12 residential household, is in a quantity commonly used in a
13 residential household, and was used in the person's residential
14 household.

15 (iv) A person ~~who~~ **that** stores or uses or arranges for the
16 storage or use of a beneficial use by-product or inert material in
17 compliance with part 115.

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

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

22 (2) Subject to section 20107a, an owner or operator ~~who~~ **that**
23 complies with subsection (1)(c)(i) and (ii) is not liable for
24 contamination existing at the facility at the earlier of the date
25 of purchase, occupancy, or foreclosure, unless the person is
26 responsible for an activity causing the contamination existing at
27 the facility. Subsection (1)(c) does not alter a person's liability
28 with regard to a subsequent release or threat of release at a
29 facility if the person is responsible for an activity causing the



1 subsequent release or threat of release.

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

7 (a) ~~The~~**This** state or a local unit of government that acquired
 8 ownership or control of a facility involuntarily through
 9 bankruptcy, tax delinquency, abandonment, or other circumstances in
 10 which the government involuntarily acquires title or control by
 11 virtue of its governmental function or as provided in this part; a
 12 local unit of government to which ownership or control of a
 13 facility is transferred by ~~the~~**this** state or by another local unit
 14 of government that is not liable under subsection (1); or ~~the~~**this**
 15 state or a local unit of government that acquired ownership or
 16 control of a facility by seizure, receivership, or forfeiture
 17 ~~pursuant to~~**in accordance with** the operation of law or by court
 18 order.

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

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



1 person that acquires access through an easement.

2 (d) A person ~~who~~**that** owns severed subsurface mineral rights
3 or severed subsurface formations or who leases subsurface mineral
4 rights or formations.

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

9 (f) A person ~~who~~**that** owns or occupies residential real
10 property if hazardous substance use at the property is consistent
11 with residential use.

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

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



1 inspection.

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

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

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

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

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

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

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

27 (a) The owner or operator of property at or from which there
28 is a release or threat of release and the release or threat of
29 release is subject to corrective action under part 111 or is being



1 addressed as part of a corrective action under part 111. A
 2 corrective action under part 111 may be implemented using processes
 3 and cleanup criteria, as appropriate, under this part. However, a
 4 release or threat of release that is subject to or that has been or
 5 is being addressed through part 111 corrective action ~~shall~~**must**
 6 not also be subject to remediation and department oversight under
 7 this part.

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

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

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

18 (i) An act of God.

19 (ii) An act of war.

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

24 (e) Any person for environmental contamination addressed in a
 25 **remedial action closure report under section 20114c** or no further
 26 action report **under section 20114d** that is approved by the
 27 department or is considered approved. ~~under section 20114d.~~

28 However, a person may be liable under this part for the following:

29 (i) A subsequent release not addressed in the **remedial action**



1 **closure report or** no further action report if the person is
2 otherwise liable under this part for that release.

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

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

13 (iv) If the ~~no further~~**remedial** action **closure** report relies on
14 monitoring necessary to ensure the effectiveness and integrity of
15 the remedial action, an owner or operator ~~who~~**that** is otherwise
16 liable for environmental contamination addressed in a ~~no further~~
17 **remedial** action **closure** report is liable under this part for
18 additional response activities necessary to address any potential
19 exposure to the environmental contamination demonstrated by the
20 monitoring in excess of the levels relied on in the ~~no further~~
21 **remedial** action **closure** report.

22 (v) If the remedial actions that were the basis for the
23 **remedial action closure report or** no further action report fail to
24 meet performance objectives that are identified in the **remedial**
25 **action closure report or** no further action report, an owner or
26 operator ~~who~~**that** is otherwise liable for environmental
27 contamination addressed in the **remedial action closure report or** no
28 further action report is liable under this part for response
29 activities necessary to satisfy the performance objectives or



1 otherwise comply with this part.

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

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

14 (7) Notwithstanding subsection (1)(c), if the owner or
 15 operator of the facility became the owner or operator of the
 16 facility on or after June 5, 1995 and ~~prior to~~**before** March 6,
 17 1996, and the facility contains an underground storage tank system
 18 as defined in part 213, that owner or operator is liable under this
 19 part only if the owner or operator is responsible for an activity
 20 causing a release or threat of release.

21 (8) An owner or operator ~~who~~**that** was in compliance with
 22 subsection (1)(c)(i) and (ii) ~~prior to~~**before** December 14, 2010 is
 23 considered to be in compliance with subsection (1)(c)(i) and (ii).

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

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



(b) Any other costs of response activity reasonably incurred under the circumstances by any other person.

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

(2) The costs of response activity recoverable under subsection (1) ~~shall~~**must** also include all costs of response activity reasonably incurred by ~~the~~**this** state ~~prior to~~**before** the promulgation of rules relating to the selection and implementation of response activity under this part **or before the cleanup criteria are developed or revised under section 20120a**, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person ~~challenging~~**that challenges** the recovery of costs under ~~this subdivision~~**subsection (1)** has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section ~~shall~~include interest. This interest ~~shall accrue~~**accrues** from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section ~~shall~~**must** be the same rate ~~as is specified~~**described** in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability ~~shall~~**must** be to ~~the~~**this** state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by ~~the~~**this** state



1 or a local unit of government. Sums recovered by ~~the~~**this** state
 2 under this part for natural resource damages ~~shall~~**must** be retained
 3 by the department, for use only to restore, repair, replace, or
 4 acquire the equivalent of the natural resources injured or acquire
 5 substitute or alternative resources. There ~~shall be~~**is** no double
 6 recovery under this part for natural resource damages, including
 7 the costs of damage assessment or restoration, rehabilitation,
 8 replacement, or acquisition, for the same release and natural
 9 resource.

10 (5) A person shall not be required under this part to
 11 undertake response activity for a permitted release. Recovery by
 12 any person for response activity costs or damages resulting from a
 13 permitted release ~~shall~~**must** be ~~pursuant to~~**in accordance with**
 14 other applicable ~~law, in lieu~~**laws instead** of this part. With
 15 respect to a permitted release, this subsection does not affect or
 16 modify the obligations or liability of any person under any other
 17 state law, including common law, for damages, injury, or loss
 18 resulting from a release of a hazardous substance or for response
 19 activity or the costs of response activity.

20 (6) If the department determines that there may be an imminent
 21 and substantial endangerment to the public health, safety, or
 22 welfare ~~or to~~ the environment because of an actual or threatened
 23 release from a facility, the attorney general may bring an action
 24 against ~~any~~**a** person who is liable under section 20126 or any other
 25 appropriate person to secure the relief that may be necessary to
 26 abate the danger or threat. The court has jurisdiction to grant
 27 ~~such~~ relief as the public interest and ~~the~~ equities of the case may
 28 require.

29 (7) The costs recoverable under this section may be recovered



1 in an action brought by ~~the~~**this** state or any other person.

2 Sec. 20137. (1) Subject to subsections (2) and (3), in
3 addition to other relief authorized by law, the attorney general
4 may, on behalf of ~~the~~**this** state, commence a civil action seeking 1
5 or more of the following:

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

9 (b) Recovery of state response activity costs ~~pursuant to~~
10 **under** section 20126a.

11 (c) **Recovery of state response activity costs incurred to**
12 **fulfill due care requirements under section 20107a.**

13 (d) ~~(e)~~ Damages for the full value of injury to, destruction
14 of, or loss of natural resources resulting from the release or
15 threat of release, including the reasonable costs of assessing the
16 injury, destruction, or loss resulting from the release or threat
17 of release.

18 (e) ~~(d)~~ A declaratory judgment on liability for future
19 response activity costs and damages.

20 (f) ~~(e)~~ A civil fine of not more than \$1,000.00 for each day
21 of noncompliance without sufficient cause with a written request of
22 the department pursuant to section ~~20114(1)(h)~~. **20114(1)(d)**. A fine
23 imposed under this subdivision ~~shall be~~**is** based on the seriousness
24 of the violation and any ~~good faith~~**good-faith** efforts of the
25 person to comply with the request of the department.

26 (g) ~~(f)~~ A civil fine of not more than \$10,000.00 for each day
27 of violation of this part. A fine imposed under this subdivision
28 ~~shall be~~**is** based ~~upon~~**on** the seriousness of the violation and any
29 good faith efforts of the person to comply with this part.



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

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

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

(k) ~~(j)~~ Enforcement of the reporting requirements under section 20114.

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

(2) An owner or operator of a facility from which a hazardous substance is released that is determined to be reportable under section ~~20114(1)(b)(i)~~, **20113a(1)(a)** other than a permitted release, ~~who~~ **that** fails to notify the department within 24 hours after obtaining knowledge of the release or ~~who~~ submits in ~~such~~ **the** notification any information that the person knows ~~to be~~ **is** false or misleading, is subject to a civil fine of not more than \$25,000.00 for each day ~~in which~~ the violation occurs or the failure to comply continues. A fine imposed under this subsection ~~shall be~~ **is** based ~~upon~~ **on** the seriousness of the violation and any good-faith efforts by the violator to comply with this subsection.

(3) A person ~~who~~ **that** is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to ~~under~~ section 20120a(1)(a) or (b), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a



1 civil fine ~~shall~~**must** not be imposed under this subsection against
 2 a person ~~who~~**that** made a good-faith effort to prevent the release
 3 and to comply with the provisions of this part. This subsection
 4 does not apply to a release from an underground storage tank system
 5 as defined in part 213.

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

9 (5) Except as otherwise provided in this part, an action
 10 brought under this part may be brought in the circuit court for ~~the~~
 11 ~~county of Ingham~~ **County**, in the county in which the defendant
 12 resides, has a place of business, or in which the registered office
 13 of a defendant corporation is located, or in the county where the
 14 release occurred.

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

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

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

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

28 (d) An action ~~pursuant to~~**under** section 20135 challenging a
 29 response activity selected or approved by the department, if the



1 action is filed after the completion of the response activity.

2 (e) An action by ~~the~~**this** state ~~pursuant to~~**under** section
3 20126a(6) to compel response activity.

4 (7) In any judicial action under this part, judicial review of
5 any issues concerning the selection or adequacy of a response
6 activity taken, ordered, or agreed to by ~~the~~**this** state are limited
7 to the administrative record. If the court finds that the record is
8 incomplete or inadequate, the court may consider supplemental
9 material in the action. In considering objections raised in a
10 judicial action under this part, the court shall uphold ~~the~~**this**
11 state's decision in selecting a response activity unless the
12 objecting party can demonstrate based on the administrative record
13 that the decision was arbitrary and capricious or otherwise not in
14 accordance with law. In reviewing alleged procedural errors, the
15 court may disallow costs or damages only to the extent the errors
16 were so serious and related to matters of such central importance
17 that the activity would have been significantly changed had the
18 errors not been made.

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

26 Sec. 20139. (1) The penalties provided in this section only
27 apply to a release that occurs after July 1, 1991.

28 (2) A person ~~who~~**that** does any of the following is guilty of a
29 felony ~~and shall be fined~~**punishable by a fine of** not less than



1 \$2,500.00 or more than \$25,000.00 for each violation:

2 (a) Knowingly releases or causes a release contrary to
3 applicable federal, state, or local requirements or contrary to any
4 permit or license held by that person, if that person knew or
5 should have known that the release could cause personal injury or
6 property damage.

7 (b) Intentionally makes a false statement, representation, or
8 certification in any application, record, report, plan, or other
9 document filed or required to be maintained under this part.

10 (c) Intentionally renders inaccurate any monitoring device or
11 record required to be maintained under this part.

12 (d) Misrepresents ~~his or her~~ **the person's** qualifications under
13 section 20114d or 20114e.

14 **(3) A person that fails to implement a due care plan is guilty**
15 **of a misdemeanor punishable by a fine of not less than \$500.00 or**
16 **more than \$5,000.00 for each violation.**

17 **(4)** ~~(3)~~ In addition to a fine imposed under subsection (2),
18 the court may impose an additional fine of not more than \$25,000.00
19 for each day during which the release occurred. If the conviction
20 is for a violation committed after a first conviction of the person
21 under this subsection, the court shall impose a fine of not less
22 than \$25,000.00 and not more than \$50,000.00 per day of violation.
23 ~~Upon~~ **On** conviction, in addition to a fine, the court in its
24 discretion may sentence the defendant to imprisonment for not more
25 than 2 years or ~~impose~~ **require** probation ~~upon a person~~ for a
26 violation of this part. With the exception of the issuance of
27 criminal complaints ~~, issuance of or~~ warrants ~~, and~~ the holding of
28 an arraignment, the circuit court for the county in which the
29 violation occurred has exclusive jurisdiction.



1 (5) ~~(4) Upon~~ On a finding by the court that the action of a
 2 criminal defendant prosecuted under this section poses or posed a
 3 substantial endangerment to public health, safety, or welfare, the
 4 court shall impose, in addition to the penalties set forth in
 5 subsections (2), ~~and (3), and (4)~~, a fine of not less than
 6 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
 7 imprisonment.

8 (6) ~~(5)~~ To find a defendant criminally liable for substantial
 9 endangerment under subsection ~~(4)~~, **(5)**, the court shall determine
 10 that the defendant knowingly or recklessly acted in such a manner
 11 as to cause a danger of death or serious bodily injury and that
 12 either of the following has occurred:

13 (a) The defendant had an actual awareness, belief, or
 14 understanding that ~~his or her~~ **the defendant's** conduct would cause a
 15 substantial danger of death or serious bodily injury.

16 (b) The defendant acted in gross disregard of the standard of
 17 care that any reasonable person would observe in similar
 18 circumstances.

19 (7) ~~(6)~~ Knowledge possessed by a person other than the
 20 defendant under subsection ~~(5)~~ **(6)** may be attributable to the
 21 defendant if the defendant took affirmative steps to ~~shield himself~~
 22 ~~or herself~~ **be shielded** from the relevant information.

23 (8) ~~(7)~~ The department may pay an award of up to \$10,000.00 to
 24 an individual that provides information leading to the arrest and
 25 conviction of a person for a violation of this section. The
 26 department shall promulgate rules **in accordance with the**
 27 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
 28 **24.328**, that prescribe criteria for granting awards under this
 29 section. An award ~~shall~~ **must** not be made under this section until



1 rules are promulgated prescribing the criteria for making awards.
 2 ~~Awards under this subsection may be paid from the Michigan~~
 3 ~~environmental assurance fund, if enabling legislation creating the~~
 4 ~~fund is enacted into law.~~

5 (9) ~~(8)~~ As used in this section, "serious bodily injury" means
 6 bodily injury that involves a substantial risk of death,
 7 unconsciousness, extreme physical pain, protracted and obvious
 8 disfigurement, or protracted loss or impairment of the function of
 9 a bodily member, organ, or mental faculty.

10 **Sec. 20139a. (1) Except as provided in subsection (6),**
 11 **beginning 180 days after the effective date of the amendatory act**
 12 **that added this section, a person that fails to submit a report,**
 13 **plan, or documentation required under section 20114 or 20114b**
 14 **within the timelines required under those sections is subject to a**
 15 **civil fine in accordance with the following:**

16 (a) Not more than \$100.00 per day for the first 7 days that
 17 the required submission is late.

18 (b) Not more than \$500.00 per day for days 8 through 14 that
 19 the required submission is late.

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

22 (2) The prosecutor of the county in which the violation
 23 occurred or the attorney general may bring an action to collect a
 24 civil fine described under subsection (1). A civil fine collected
 25 under this subsection must be deposited in the subaccount created
 26 under section 20108(4).

27 (3) Subject to a request for an extension authorized under
 28 this part, for purposes of determining the number of days under
 29 this section, the day that the act, event, or default occurred is



1 not included in counting the total number of days. The last day is
2 counted, unless the last day falls on a Saturday, Sunday, legal
3 holiday, or holiday, in which case the last day is counted as the
4 next day that is not a Saturday, Sunday, legal holiday, or holiday.

5 (4) The owner or operator that is liable under section 20126
6 may by contract transfer the responsibility for paying fines under
7 this section to a consultant retained by the owner or operator that
8 is liable under section 20126.

9 Enacting section 1. Sections 20114a and 20114g of the natural
10 resources and environmental protection act, 1994 PA 451, MCL
11 324.20114a and 324.20114g, are repealed.

12 Enacting section 2. This amendatory act does not take effect
13 unless all of the following bills of the 102nd Legislature are
14 enacted into law:

15 (a) Senate Bill No. 606.

16 (b) Senate Bill No. 607.

