

# HOUSE BILL No. 5878

June 14, 1990, Introduced by Reps. Alley, Bartnik, Stupak, Kosteva, Niederstadt, Hart, Brown, DeBeaussaert, Hickner and Gubow and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend the title and sections 1, 3, 4, 5, 6, 7, 9, and 10 of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

section 3 as amended by Act No. 388 of the Public Acts of 1984, being sections 299.601, 299.603, 299.604, 299.605, 299.606, 299.607, 299.609, and 299.610 of the Michigan Compiled Laws; to add sections 11a, 11b, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12g, 12h, 12i, 12j, 12k, 12l, 12m, 12n, 12o, 12p, 12q, 12r, and 12s; and to repeal certain parts of the act.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. The title and sections 1, 3, 4, 5, 6, 7, 9, and  
2 10 of Act No. 307 of the Public Acts of 1982, section 3 as  
3 amended by Act No. 388 of the Public Acts of 1984, being sections  
4 299.601, 299.603, 299.604, 299.605, 299.606, 299.607, 299.609,

1 and 299.610 of the Michigan Compiled Laws, are amended and  
2 sections 11a, 11b, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12g, 12h,  
3 12i, 12j, 12k, 12l, 12m, 12n, 12o, 12p, 12q, 12r, and 12s are  
4 added to read as follows:

5 TITLE

6 An act to provide for the identification, risk assessment,  
7 and priority evaluation of environmental contamination at certain  
8 sites in this state; to provide for response activity AT CERTAIN  
9 FACILITIES AND SITES; to prescribe certain powers and duties of  
10 the governor and certain state agencies and officials; to provide  
11 for the promulgation of rules; TO REQUIRE RECORD NOTICE REGARDING  
12 THE STATUS OF CERTAIN FACILITIES; to create ~~an environmental~~  
13 ~~response fund, a Michigan unclaimed bottle fund, and a long term~~  
14 ~~maintenance trust fund~~ CERTAIN FUNDS AND PROVIDE FOR THEIR  
15 EXPENDITURE; TO PROVIDE FOR PUBLIC PARTICIPATION; TO AUTHORIZE  
16 GRANTS; to create a long-term maintenance trust fund board and to  
17 prescribe its powers and duties; TO PROVIDE FOR JUDICIAL REVIEW;  
18 and to provide certain remedies and penalties.

19 Sec. 1. The legislature hereby finds and declares:

20 (a) That there exist in this state certain ~~sites~~  
21 FACILITIES containing hazardous substances ~~which~~ THAT pose a  
22 danger to the public health, safety, ~~and~~ OR welfare, ~~and~~ OR  
23 to the environment of this state.

24 (b) That there is a need to provide for a method of elimi-  
25 nating the danger of environmental contamination caused by the  
26 existence of hazardous substances at ~~those~~ sites WITHIN THE  
27 STATE.

1 (c) That it is the purpose of this act to provide for  
2 appropriate response activity to eliminate the environmental con-  
3 tamination caused by the presence of hazardous substances at  
4 ~~those~~ sites WITHIN THE STATE.

5 (D) THAT THERE IS A NEED FOR ADDITIONAL ADMINISTRATIVE AND  
6 JUDICIAL REMEDIES TO SUPPLEMENT EXISTING STATUTORY AND COMMON LAW  
7 REMEDIES.

8 (E) THAT THE RESPONSIBILITY FOR THE COST OF RESPONSE ACTIVI-  
9 TIES PERTAINING TO A RELEASE OR THREAT OF RELEASE AND REPAIRING  
10 INJURY, DESTRUCTION, OR LOSS TO NATURAL RESOURCES CAUSED BY A  
11 RELEASE OR THREAT OF RELEASE SHOULD NOT BE PLACED UPON THE PUBLIC  
12 EXCEPT WHEN FUNDS CANNOT BE COLLECTED FROM, OR A RESPONSE ACTIV-  
13 ITY CANNOT BE UNDERTAKEN BY, A PERSON LIABLE UNDER THIS ACT.

14 (F) THAT TO THE EXTENT POSSIBLE, CONSISTENT WITH REQUIRE-  
15 MENTS UNDER THIS ACT AND RULES PROMULGATED UNDER THIS ACT,  
16 RESPONSE ACTIVITIES SHALL BE UNDERTAKEN BY PERSONS LIABLE UNDER  
17 THIS ACT.

18 (G) THAT THIS ACT IS INTENDED TO PROVIDE REMEDIES FOR FACIL-  
19 ITIES POSING ANY THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE  
20 OR TO THE ENVIRONMENT, REGARDLESS OF WHETHER THE RELEASE OR  
21 THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE OCCURRED BEFORE OR  
22 AFTER THE EFFECTIVE DATE OF THIS ACT, AND FOR THIS PURPOSE THIS  
23 ACT SHALL BE GIVEN RETROACTIVE APPLICATION.

24 (H) THAT MONEY SHOULD BE APPROPRIATED BY THE LEGISLATURE  
25 FROM THE GENERAL FUND AND FUNDS GENERATED FROM THE SALE OF BONDS  
26 FOR RESPONSE ACTIVITIES TAKING INTO CONSIDERATION THE ORDER THAT  
27 SITES ARE ON THE LIST DESCRIBED IN SECTION 6(1)(D).

1 (I) THAT A SITE THAT IS OWNED BY THE FEDERAL GOVERNMENT, THE  
2 STATE, OR A LOCAL UNIT OF GOVERNMENT SHOULD NOT BE TREATED DIF-  
3 FERENTLY IN TERMS OF THE EXPENDITURE OF MONEY FOR RESPONSE ACTIV-  
4 ITIES THAN ANY OTHER SITE ON THE LIST.

5 (J) THAT IF A PERSON THAT MAY BE LIABLE UNDER SECTION 12 IS  
6 THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE, OR A LOCAL  
7 UNIT OF GOVERNMENT, THIS ACT SHOULD BE ENFORCED BY THE ATTORNEY  
8 GENERAL AND THE DEPARTMENT IN THE SAME MANNER AS IT WOULD BE FOR  
9 ANY OTHER PERSON THAT MAY BE LIABLE UNDER SECTION 12.

10 (K) THAT PRIOR TO EXPENDING MONEY TO UNDERTAKE REMEDIAL  
11 ACTION AT A SITE, THE DEPARTMENT SHOULD ASSURE A PRIVATE OR  
12 PUBLIC FUNDING SOURCE, OR A COMBINATION OF FUNDING SOURCES, THAT  
13 IS SUFFICIENT TO ASSURE THAT THE RESPONSE ACTIVITIES AT THE SITE  
14 PROCEED WITHOUT INTERRUPTIONS CAUSED BY INSUFFICIENT FINANCIAL  
15 RESOURCES UNTIL THE SITE MEETS OR EXCEEDS THE STANDARDS ESTAB-  
16 LISHED BY THE DEPARTMENT FOR THAT SITE.

17 Sec. 3. As used in this act:

18 (A) "ACT OF GOD" MEANS AN UNANTICIPATED GRAVE NATURAL  
19 DISASTER OR OTHER NATURAL PHENOMENON OF AN EXCEPTIONAL, INEVITA-  
20 BLE, AND IRRESISTIBLE CHARACTER, THE EFFECTS OF WHICH COULD NOT  
21 HAVE BEEN PREVENTED OR AVOIDED BY THE EXERCISE OF DUE CARE OR  
22 FORESIGHT.

23 (B) ~~-(a)-~~ "Attorney general" means the department of the  
24 attorney general.

25 (C) "DEPARTMENT" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
26 NATURAL RESOURCES OR HIS OR HER DESIGNEE.

1 (D) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
2 NATURAL RESOURCES.

3 (E) ~~(b)~~ "Directors" means the directors or their designees  
4 of the departments of natural resources, public health, agricul-  
5 ture, AND state police. ~~, and the toxic substance control~~  
6 ~~commission.~~

7 ~~(c) "Environment" means any surface water, ground water,~~  
8 ~~drinking water supply, land surface, subsurface strata, or ambi-~~  
9 ~~ent air within the state.~~

10 (F) "DISPOSAL" MEANS THE DISCHARGE, DEPOSIT, INJECTION,  
11 DUMPING, SPILLING, LEAKING, OR PLACING OF ANY HAZARDOUS SUBSTANCE  
12 INTO OR ON ANY LAND OR WATER SO THAT THE HAZARDOUS SUBSTANCE OR  
13 ANY CONSTITUENT OF THE HAZARDOUS SUBSTANCE MAY ENTER THE ENVIRON-  
14 MENT OR BE EMITTED INTO THE AIR OR DISCHARGED INTO ANY GROUNDWA-  
15 TER OR SURFACE WATER.

16 (G) "ENFORCEMENT COSTS" MEANS COURT EXPENSES, REASONABLE  
17 ATTORNEY FEES OF THE ATTORNEY GENERAL, AND OTHER REASONABLE  
18 EXPENSES OF AN EXECUTIVE DEPARTMENT THAT ARE INCURRED IN RELATION  
19 TO ENFORCEMENT UNDER THIS ACT OR RULES PROMULGATED UNDER THIS  
20 ACT, OR BOTH.

21 (H) "ENVIRONMENT" OR "NATURAL RESOURCES" MEANS ANY LAND,  
22 SURFACE WATER, GROUNDWATER, SUBSURFACE, STRATA, AIR, FISH, WILD-  
23 LIFE, OR BIOTA WITHIN THE STATE.

24 (I) ~~(d)~~ "Environmental contamination" means the release of  
25 a hazardous substance, or the potential release of a discarded  
26 hazardous substance, in a quantity, which is or may become

1 injurious to the environment, or to the public health, safety, or  
2 welfare.

3 (J) ~~(e)~~ "Evaluation" means those activities including but  
4 not limited to investigation, studies, sampling, analysis,  
5 ~~alternate response activity plans~~ DEVELOPMENT OF FEASIBILITY  
6 STUDIES, and administrative efforts, ~~which~~ THAT are needed to  
7 determine the nature, extent, and impact of a release OR THREAT  
8 OF RELEASE AND NECESSARY RESPONSE ACTIVITIES.

9 (K) "FACILITY" MEANS ANY AREA, PLACE, OR PROPERTY WHERE A  
10 HAZARDOUS SUBSTANCE HAS BEEN RELEASED, DEPOSITED, STORED, DIS-  
11 POSED OF, OR OTHERWISE COMES TO BE LOCATED.

12 (L) "FEASIBILITY STUDY" MEANS A PROCESS FOR DEVELOPING,  
13 EVALUATING, AND SELECTING APPROPRIATE RESPONSE ACTIVITIES.

14 (M) ~~(f)~~ "Fund" means the environmental response fund  
15 established in section 9.

16 (N) ~~(g)~~ "Hazardous substance" means ~~a~~ 1 OR MORE OF THE  
17 FOLLOWING:

18 (i) A chemical or other material which is or may become  
19 injurious to the public health, safety, or welfare or to the  
20 environment.

21 (ii) "HAZARDOUS SUBSTANCE" AS DEFINED IN THE COMPREHENSIVE  
22 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980,  
23 PUBLIC LAW 96-510, 42 U.S.C. 9601 TO 9626, 9651 TO 9652, 9653 TO  
24 9660, 9661 AND 9671 TO 9675.

25 (iii) "HAZARDOUS WASTE" AS DEFINED IN THE HAZARDOUS WASTE  
26 MANAGEMENT ACT, ACT NO. 64 OF THE PUBLIC ACTS OF 1979, BEING  
27 SECTIONS 299.501 TO 299.551 OF THE MICHIGAN COMPILED LAWS.

1       (iv) "PETROLEUM" AS DEFINED IN THE LEAKING UNDERGROUND  
2 STORAGE TANK ACT, ACT NO. 478 OF THE PUBLIC ACTS OF 1988, BEING  
3 SECTIONS 299.831 TO 299.850 OF THE MICHIGAN COMPILED LAWS.

4       (o) "INTERIM RESPONSE ACTIVITY" MEANS THE CLEANUP OR REMOVAL  
5 OF A RELEASED HAZARDOUS SUBSTANCE OR THE TAKING OF OTHER ACTIONS,  
6 PRIOR TO THE IMPLEMENTATION OF A REMEDIAL ACTION, AS MAY BE NEC-  
7 ESSARY TO PREVENT, MINIMIZE, OR MITIGATE INJURY TO THE PUBLIC  
8 HEALTH, SAFETY, OR WELFARE, OR TO THE ENVIRONMENT. INTERIM  
9 RESPONSE ACTIVITY ALSO INCLUDES, BUT IS NOT LIMITED TO, MEASURES  
10 TO LIMIT ACCESS, REPLACEMENT OF WATER SUPPLIES, AND TEMPORARY  
11 RELOCATION OF PEOPLE AS DETERMINED TO BE NECESSARY BY THE  
12 DEPARTMENT. IN ADDITION, INTERIM RESPONSE ACTIVITY MEANS THE  
13 TAKING OF OTHER ACTIONS AS MAY BE NECESSARY TO PREVENT, MINIMIZE,  
14 OR MITIGATE THE THREATENED RELEASE OF A HAZARDOUS SUBSTANCE.

15       (p) "LOCAL UNIT OF GOVERNMENT" MEANS A COUNTY, CITY, TOWN-  
16 SHIP, OR VILLAGE.

17       (q) "OPERATOR" MEANS A PERSON WHO IS IN CONTROL OF OR  
18 RESPONSIBLE FOR THE OPERATION OF A FACILITY. OPERATOR DOES NOT  
19 INCLUDE ANY OF THE FOLLOWING:

20       (i) A PERSON WHO, WITHOUT PARTICIPATING IN THE MANAGEMENT OF  
21 THE PROPERTY, HOLDS INDICIA OF OWNERSHIP PRIMARILY TO PROTECT THE  
22 PERSON'S SECURITY INTEREST IN THE PROPERTY.

23       (ii) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED  
24 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH BANK-  
25 RUPTCY, TAX DELINQUENCY, ABANDONMENT, OR OTHER CIRCUMSTANCES IN  
26 WHICH THE GOVERNMENT INVOLUNTARILY ACQUIRES TITLE OR CONTROL BY  
27 VIRTUE OF ITS FUNCTION AS SOVEREIGN. IN CASE OF THIS INVOLUNTARY

1 ACQUISITION BY THE STATE OR A LOCAL UNIT OF GOVERNMENT, OPERATOR  
2 MEANS A PERSON WHO WAS IN CONTROL OF OR RESPONSIBLE FOR OPERATION  
3 OF THE PROPERTY IMMEDIATELY BEFORE THE STATE OR LOCAL UNIT OF  
4 GOVERNMENT ACQUIRED OWNERSHIP OR CONTROL. THE EXCLUSION PROVIDED  
5 IN THIS SUBPARAGRAPH SHALL NOT APPLY TO THE STATE OR A LOCAL UNIT  
6 OF GOVERNMENT THAT CAUSED THE RELEASE OR THREAT OF A RELEASE OF A  
7 HAZARDOUS SUBSTANCE FROM THE FACILITY.

8 (iii) THE OPERATOR OF AN UNDERGROUND STORAGE TANK SYSTEM, AS  
9 DEFINED IN THE LEAKING UNDERGROUND STORAGE TANK ACT, ACT NO. 478  
10 OF THE PUBLIC ACTS OF 1988, BEING SECTIONS 299.831 TO 299.850 OF  
11 THE MICHIGAN COMPILED LAWS, FROM WHICH THERE IS A RELEASE OR  
12 THREAT OF RELEASE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

13 (A) THE OPERATOR REPORTED THE RELEASE OR THREAT OF RELEASE  
14 TO THE DEPARTMENT OF STATE POLICE, FIRE MARSHALL DIVISION, WITHIN  
15 24 HOURS AFTER CONFIRMATION OF THE RELEASE OR THREAT OF RELEASE.

16 (B) THE RELEASE OR THREAT OF RELEASE AT THE FACILITY IS  
17 SOLELY THE RESULT OF A RELEASE OR THREAT OF RELEASE OF A REGU-  
18 LATED SUBSTANCE AS DEFINED IN ACT NO. 478 OF THE PUBLIC ACTS OF  
19 1988, FROM AN UNDERGROUND STORAGE TANK SYSTEM.

20 (C) THE OPERATOR IS IN COMPLIANCE WITH THE REQUIREMENTS OF  
21 ACT NO. 478 OF THE PUBLIC ACTS OF 1988, AND ANY PROMULGATED RULES  
22 OR ANY ORDER, AGREEMENT, OR JUDGMENT ISSUED OR ENTERED INTO PUR-  
23 SUANT TO THAT ACT.

24 (R) "OWNER" MEANS A PERSON WHO HOLDS A LEGAL, EQUITABLE, OR  
25 POSSESSORY INTEREST OF ANY KIND IN PROPERTY ON WHICH A FACILITY  
26 IS LOCATED. OWNER DOES NOT INCLUDE ANY OF THE FOLLOWING:

1 (i) A PERSON WHO, WITHOUT PARTICIPATING IN THE MANAGEMENT OF  
2 THE PROPERTY, HOLDS INDICIA OF OWNERSHIP PRIMARILY TO PROTECT THE  
3 PERSON'S SECURITY INTEREST IN THE PROPERTY.

4 (ii) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED  
5 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH BANK-  
6 RUPTCY, TAX DELINQUENCY, ABANDONMENT, OR OTHER CIRCUMSTANCES IN  
7 WHICH THE GOVERNMENT INVOLUNTARILY ACQUIRES TITLE OR CONTROL BY  
8 VIRTUE OF ITS FUNCTION AS SOVEREIGN. IN CASE OF THIS INVOLUNTARY  
9 ACQUISITION BY THE STATE OR A LOCAL UNIT OF GOVERNMENT, OWNER  
10 MEANS ANY PERSON WHO OWNED OR CONTROLLED ACTIVITIES AT THE PROP-  
11 ERTY IMMEDIATELY BEFORE THE STATE OR LOCAL UNIT OF GOVERNMENT  
12 ACQUIRED OWNERSHIP OR CONTROL. THE EXCLUSION PROVIDED IN THIS  
13 SUBPARAGRAPH SHALL NOT APPLY TO THE STATE OR A LOCAL UNIT OF GOV-  
14 ERNMENT THAT CAUSED THE RELEASE OR THREAT OF A RELEASE OF A HAZ-  
15 ARDOUS SUBSTANCE FROM THE FACILITY.

16 (iii) A PERSON WHO SATISFIES ALL OF THE FOLLOWING:

17 (A) THE RELEASE WAS CAUSED SOLELY BY A THIRD PARTY, WHO IS  
18 NOT AN EMPLOYEE OR AGENT OF THE PERSON, OR WHOSE ACTION WAS NOT  
19 ASSOCIATED WITH A CONTRACTUAL RELATIONSHIP WITH THE PERSON.

20 (B) THE HAZARDOUS SUBSTANCE WAS NOT DEPOSITED, STORED, OR  
21 DISPOSED OF ON THAT PERSON'S PROPERTY.

22 (C) THE PERSON AT THE TIME OF TRANSFER OF THE PROPERTY DIS-  
23 CLOSURES ANY KNOWLEDGE OR INFORMATION CONCERNING THE GENERAL NATURE  
24 AND EXTENT OF THE RELEASE AS REQUIRED IN SECTION 12K.

25 (iv) THE OWNER OF AN UNDERGROUND STORAGE TANK SYSTEM, AS  
26 DEFINED IN THE LEAKING UNDERGROUND STORAGE TANK ACT, ACT NO. 478  
27 OF THE PUBLIC ACTS OF 1988, BEING SECTIONS 299.831 TO 299.850 OF

1 THE MICHIGAN COMPILED LAWS, FROM WHICH THERE IS A RELEASE OR  
2 THREAT OF RELEASE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

3 (A) THE OWNER REPORTED THE RELEASE OR THREAT OF RELEASE TO  
4 THE DEPARTMENT OF STATE POLICE, FIRE MARSHALL DIVISION, WITHIN 24  
5 HOURS AFTER CONFIRMATION OF THE RELEASE OR THREAT OF RELEASE.

6 (B) THE RELEASE OR THREAT OF RELEASE AT THE FACILITY IS  
7 SOLELY THE RESULT OF A RELEASE OR THREAT OF RELEASE OF A REGU-  
8 LATED SUBSTANCE AS DEFINED IN ACT NO. 478 OF THE PUBLIC ACTS OF  
9 1988 FROM AN UNDERGROUND STORAGE TANK SYSTEM.

10 (C) THE OWNER IS IN COMPLIANCE WITH THE REQUIREMENTS OF ACT  
11 NO. 478 OF THE PUBLIC ACTS OF 1988, AND ANY PROMULGATED RULES OR  
12 ANY ORDER, AGREEMENT, OR JUDGMENT ISSUED OR ENTERED PURSUANT TO  
13 THAT ACT.

14 (v) A PERSON WHO, WITHOUT PARTICIPATING IN THE MANAGEMENT OF  
15 THE PROPERTY, HOLDS AN EASEMENT INTEREST IN A PORTION OF THE  
16 PROPERTY FOR AN OIL OR GAS PIPELINE OR FOR THE PURPOSE OF PROVID-  
17 ING A PUBLIC SERVICE, INCLUDING, BUT NOT LIMITED TO, UTILITIES,  
18 SEWERS, AND ROADS AND OTHER PROPERTY ACQUIRED FOR DEDICATION AS A  
19 PLAT. THE EXCLUSION PROVIDED IN THIS SUBPARAGRAPH SHALL NOT  
20 APPLY TO A PERSON WHO HOLDS AN EASEMENT IF THAT PERSON CONTRIB-  
21 UTED TO THE RELEASE OR THREAT OF RELEASE OF A HAZARDOUS SUB-  
22 STANCE, OR IF EQUIPMENT OWNED OR OPERATED BY THAT PERSON CONTRIB-  
23 UTED TO THE RELEASE.

24 (S) ~~-(h)-~~ "Person" means an individual, sole proprietorship,  
25 partnership, ~~association,~~ JOINT VENTURE, TRUST, FIRM, JOINT  
26 STOCK COMPANY, corporation, INCLUDING A GOVERNMENT CORPORATION,  
27 ASSOCIATION, LOCAL UNIT OF GOVERNMENT, COMMISSION, the state,

1 ~~or~~ a political subdivision of the state, AN INTERSTATE BODY,  
2 THE FEDERAL GOVERNMENT, A POLITICAL SUBDIVISION OF THE FEDERAL  
3 GOVERNMENT, OR ANY OTHER LEGAL ENTITY.

4 (T) ~~(i)~~ "Release" includes, but is not limited to, any  
5 spilling, leaking, pumping, pouring, emitting, emptying, dis-  
6 charging, injecting, escaping, leaching, dumping, or disposing of  
7 a hazardous substance into the environment, OR THE ABANDONMENT OR  
8 DISCARDING OF BARRELS, CONTAINERS, AND OTHER CLOSED RECEPTACLES  
9 CONTAINING A HAZARDOUS SUBSTANCE. RELEASE DOES NOT INCLUDE ANY  
10 OF THE FOLLOWING:

11 (i) A RELEASE THAT RESULTS IN EXPOSURE TO PERSONS SOLELY  
12 WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM THAT THESE PERSONS  
13 MAY ASSERT AGAINST THEIR EMPLOYERS.

14 (ii) EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE,  
15 ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION  
16 ENGINE.

17 (iii) A RELEASE OF SOURCE, BY-PRODUCT, OR SPECIAL NUCLEAR  
18 MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN  
19 THE ATOMIC ENERGY ACT OF 1954, CHAPTER 1073, 68 STAT. 919, IF  
20 SUCH RELEASE IS SUBJECT TO REQUIREMENTS WITH RESPECT TO FINANCIAL  
21 PROTECTION ESTABLISHED BY THE NUCLEAR REGULATORY COMMISSION UNDER  
22 SECTION 170 OF THE ATOMIC ENERGY ACT OF 1954, CHAPTER 1073, 71  
23 STAT. 576, 42 U.S.C. 2210, OR, ANY RELEASE OF SOURCE BY-PRODUCT,  
24 OR SPECIAL NUCLEAR MATERIAL FROM ANY PROCESSING SITE DESIGNATED  
25 UNDER SECTION 102(a)(1) TITLE I OR 302(a) OF TITLE III OF THE  
26 URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978, 42 U.S.C.  
27 7912 AND 7942.

1        (iv) IF APPLIED ACCORDING TO LABEL DIRECTIONS AND ACCORDING  
2 TO GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES, THE  
3 APPLICATION OF A FERTILIZER, SOIL CONDITIONER, OR A PESTICIDE, OR  
4 A COMBINATION OF THESE SUBSTANCES. AS USED IN THIS SUBPARAGRAPH,  
5 FERTILIZER AND SOIL CONDITIONER HAVE THE MEANING GIVEN TO THESE  
6 TERMS IN THE FERTILIZER ACT OF 1975, ACT NO. 198 OF THE PUBLIC  
7 ACTS OF 1975, BEING SECTIONS 286.751 TO 286.767, AND PESTICIDE  
8 HAS THE MEANING GIVEN TO THAT TERM IN THE PESTICIDE CONTROL ACT,  
9 ACT NO. 171 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 286.551 TO  
10 286.581 OF THE MICHIGAN COMPILED LAWS.

11        ~~(j) "Response activity" means an activity necessary to pro-~~  
12 ~~tect the public health, safety, welfare, and the environment, and~~  
13 ~~includes but is not limited to, evaluation, cleanup, removal,~~  
14 ~~containment, isolation, treatment, monitoring, maintenance,~~  
15 ~~replacement of water supplies, temporary relocation of people as~~  
16 ~~determined to be necessary by the governor or the governor's des-~~  
17 ~~ignee, and reimbursement for certain expenses as provided for in~~  
18 ~~section 11.~~

19        (U) "REMEDIAL ACTION" INCLUDES, BUT IS NOT LIMITED TO,  
20 CLEANUP, REMOVAL, CONTAINMENT, ISOLATION, DESTRUCTION, OR TREAT-  
21 MENT OF A HAZARDOUS SUBSTANCE RELEASED OR THREATENED TO BE  
22 RELEASED INTO THE ENVIRONMENT, MONITORING, MAINTENANCE, OR THE  
23 TAKING OF OTHER ACTIONS THAT MAY BE NECESSARY TO PREVENT, MINI-  
24 MIZE, OR MITIGATE INJURY TO THE PUBLIC HEALTH, SAFETY, OR WEL-  
25 FARE, OR TO THE ENVIRONMENT.

26        (V) "RESPONSE ACTIVITY" MEANS EVALUATION, INTERIM RESPONSE  
27 ACTIVITY, REMEDIAL ACTION, OR THE TAKING OF OTHER ACTIONS

1 NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR  
2 THE ENVIRONMENT, OR THE NATURAL RESOURCES. RESPONSE ACTIVITY  
3 ALSO INCLUDES HEALTH ASSESSMENTS OR HEALTH EFFECT STUDIES CARRIED  
4 OUT UNDER THE SUPERVISION, OR WITH THE APPROVAL OF, THE DEPART-  
5 MENT OF PUBLIC HEALTH, AND ENFORCEMENT ACTIONS RELATED TO ANY OF  
6 THE RESPONSE ACTIVITY.

7 (W) "RESPONSE ACTIVITY COSTS" OR "COSTS OF RESPONSE  
8 ACTIVITY" MEANS ALL COSTS INCURRED IN TAKING OR CONDUCTING A  
9 RESPONSE ACTIVITY, INCLUDING ENFORCEMENT COSTS.

10 (X) "RULE" MEANS A RULE PROMULGATED PURSUANT TO THE ADMINIS-  
11 TRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF  
12 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED  
13 LAWS.

14 (Y) ~~(k)~~ "Site" means the location of ~~an~~ environmental  
15 contamination.

16 (Z) "THREATENED RELEASE" OR "THREAT OF RELEASE" MEANS ANY  
17 CIRCUMSTANCE THAT MAY REASONABLY BE ANTICIPATED TO POSE A POTEN-  
18 TIAL OF A RELEASE.

19 Sec. 4. The ~~governor or the governor's designee~~  
20 DEPARTMENT shall seek federal assistance for ~~evaluation and~~  
21 response activities required at ~~sites~~ FACILITIES in this  
22 state.

23 Sec. 5. The ~~governor or the governor's designee~~  
24 DEPARTMENT shall coordinate all activities required under this  
25 act and shall promulgate rules ~~pursuant to Act No. 306 of the~~  
26 ~~Public Acts of 1969, as amended, being sections 24.201 to 24.315~~  
27 ~~of the Michigan Compiled Laws,~~ TO REFLECT AND EFFECTUATE THE

1 POWERS AND DUTIES OF THE DEPARTMENT UNDER THIS ACT AND AS  
2 necessary to carry out the requirements of this act.

3 Sec. 6. (1) The ~~governor or the governor's designee~~  
4 DEPARTMENT pursuant to section 5 shall DO ALL OF THE FOLLOWING:

5 (a) ~~Annually~~ UPON DISCOVERY OF A SITE, identify and evalu-  
6 ate the ~~known sites in the state~~ SITE for the purpose of  
7 assigning TO THE SITE A priority SCORE for ~~evaluation and~~  
8 response ~~actions~~ ACTIVITIES. UPON ASSIGNMENT TO THE SITE OF A  
9 PRIORITY SCORE FOR RESPONSE ACTIVITY, THE SITE SHALL RETAIN THE  
10 SAME SCORE ASSIGNMENT UNLESS A SUBSTANTIAL BODY OF DATA IS PRO-  
11 VIDED TO OR AVAILABLE TO THE DEPARTMENT INDICATING TO THE DEPART-  
12 MENT THAT A SUBSTANTIAL CHANGE IN THE SCORE IS WARRANTED, AND A  
13 PERSON REQUESTS RESCORING FOR A SITE DURING THE ANNUAL PUBLIC  
14 COMMENT PERIOD FOLLOWING THE PUBLICATION OF THE LIST, OR THE  
15 DEPARTMENT DETERMINES THAT RESCORING IS APPROPRIATE.

16 (b) Develop ~~a~~ 1 OR MORE numerical risk assessment ~~model~~  
17 MODELS for assessing the relative present and potential hazards  
18 posed to the public health, safety, or welfare, or to the envi-  
19 ronment by each site identified pursuant to subdivision (a). The  
20 model shall provide a fair and objective site specific numerical  
21 score designating the relative risk posed to the public health,  
22 safety, or welfare, or to the environment of each site.

23 (c) ~~Submit the~~ INCLUDE IN RULES PROMULGATED UNDER THIS ACT  
24 THE numerical risk assessment model. ~~for public hearings.~~ The  
25 numerical risk assessment model shall be reviewed annually by the  
26 ~~governor or the governor's designee who may make recommendations~~  
27 ~~for change~~ DEPARTMENT TO IDENTIFY POTENTIAL IMPROVEMENTS IN THE

1 MODEL. The procedure to be used for changing the numerical risk  
2 assessment model developed pursuant to this section shall be  
3 included in rules promulgated under this act.

4 (d) Submit to the legislature in November of each year  
5 ~~2 listings. One listing shall identify in order of relative~~  
6 ~~risk all known sites requiring further evaluation and any interim~~  
7 ~~response activity. The other listing shall, in order of relative~~  
8 ~~risk, identify sites where response activities are to be under-~~  
9 ~~taken by the state. The 2 listings shall be strictly derived~~  
10 ~~from the numerical risk assessment model provided for in this~~  
11 ~~section.~~ A LIST THAT DOES ALL OF THE FOLLOWING:

12 (i) INCLUDES ALL SITES.

13 (ii) CATEGORIZES SITES ACCORDING TO THE RESPONSE ACTIVITY AT  
14 THE SITE AT THE TIME OF LISTING AND ACCORDING TO CATEGORIES  
15 ESTABLISHED BY RULES.

16 (iii) INDICATES WHETHER THE OWNER OF A SITE IS THE FEDERAL  
17 GOVERNMENT, THE STATE, OR A LOCAL UNIT OF GOVERNMENT.

18 (E) MAINTAIN AND MAKE AVAILABLE TO THE PUBLIC UPON REQUEST  
19 RECORDS REGARDING SITES WHERE REMEDIAL ACTIONS HAVE BEEN COM-  
20 PLETED, INCLUDING SITES WHERE LAND USE RESTRICTIONS HAVE BEEN  
21 IMPOSED, IF THE RECORDS ARE NOT OTHERWISE PROTECTED FROM DISCLO-  
22 SURE BY LAW.

23 (F) ~~(e)~~ Submit the ~~2 listings provided for under subdivi-~~  
24 ~~sion (d)~~ LIST for public hearings geographically dispersed  
25 throughout the state. ~~, which~~ THESE hearings shall be com-  
26 pleted at least 30 days before the governor's annual budget  
27 recommendations to the legislature.

1 (G) REPORT AT LEAST ANNUALLY TO THE LEGISLATURE AND THE  
2 GOVERNOR THOSE SITES THAT HAVE BEEN REMOVED FROM THE LIST PURSU-  
3 ANT TO THIS SECTION AND RULES PROMULGATED UNDER THIS ACT AND THE  
4 SOURCE OF THE FUNDS USED TO UNDERTAKE THE RESPONSE ACTIVITY AT  
5 EACH OF THE SITES.

6 (2) FOLLOWING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
7 ADDED THIS SUBSECTION, IF THE DEPARTMENT HAS INFORMATION IDENTI-  
8 FYING THE OWNER OF PROPERTY THAT MAY BE LISTED AS A SITE, THE  
9 DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE OWNER OF  
10 THE PROPERTY IN WRITING PRIOR TO INCLUDING THE SITE ON THE LIST.  
11 THIS SUBSECTION SHALL NOT BE CONSTRUED TO PROVIDE A DEFENSE TO  
12 LIABILITY.

13 (3) A SITE SHALL BE REMOVED FROM THE LIST WHEN THE  
14 DEPARTMENT'S REVIEW OF A SITE SHOWS THAT THE SITE DOES NOT MEET  
15 THE CRITERIA SPECIFIED IN RULES PROMULGATED UNDER THIS ACT. A  
16 SITE SHALL NOT BE REMOVED FROM THIS LIST UNTIL ANY NECESSARY  
17 RESPONSE ACTIVITY THAT MEETS THE STANDARDS SPECIFIED IN RULES  
18 PROMULGATED UNDER THIS ACT IS COMPLETE.

19 (4) A PERSON MAY REQUEST THAT A SITE BE REMOVED FROM THE  
20 LIST BY SUBMITTING A PETITION TO THE DEPARTMENT. A PETITION  
21 SHALL INCLUDE ALL OF THE FOLLOWING INFORMATION:

22 (A) A DESCRIPTION AND HISTORY OF THE SITE.

23 (B) A DESCRIPTION OF THE NATURE AND EXTENT OF THE ENVIRON-  
24 MENTAL CONTAMINATION THAT EXISTED AT THE SITE AT THE TIME THE  
25 SITE WAS INCLUDED ON THE LIST.

26 (C) A DESCRIPTION OF THE RESPONSE ACTIVITY UNDERTAKEN TO  
27 REMEDY THE RELEASE OR THREAT OF A RELEASE, CONSISTENT WITH RULES

1 PROMULGATED UNDER THIS ACT, OR THE INVESTIGATION CONDUCTED THAT  
2 SUPPORTS THE PERSON'S PETITION THAT THE SITE SHOULD BE REMOVED  
3 FROM THE LIST WITHOUT FURTHER RESPONSE ACTIVITY.

4 (D) AN ANALYSIS OF THE EFFECTIVENESS OF THE RESPONSE ACTIV-  
5 ITY UNDERTAKEN TO REMEDIATE THE RELEASE OR THREAT OF RELEASE.  
6 THE ANALYSIS SHALL INCLUDE SITE SPECIFIC ANALYTICAL DATA THAT  
7 DOCUMENTS THE EFFECTIVENESS OF THE RESPONSE ACTIVITY.

8 (E) OTHER SITE-SPECIFIC INFORMATION REQUIRED BY THE  
9 DEPARTMENT.

10 (5) A PERSON SEEKING THE REMOVAL OF A SITE FROM THE LIST  
11 SHALL PREPARE AND SUBMIT TO THE DEPARTMENT THE DOCUMENTATION  
12 REQUIRED BY SUBSECTION (4). IF RESPONSE ACTIVITIES HAVE BEEN  
13 CONDUCTED BY THE DEPARTMENT AT THE SITE, THE DEPARTMENT SHALL  
14 PREPARE THE DOCUMENTATION REQUIRED BY SUBSECTION (4).

15 (6) WITHIN 30 DAYS AFTER RECEIPT OF THE PETITION, THE  
16 DEPARTMENT SHALL DETERMINE WHETHER A PETITION SUBMITTED UNDER  
17 SUBSECTION (4) IS ADMINISTRATIVELY COMPLETE. WITHIN 60 DAYS  
18 AFTER A DETERMINATION THAT A PETITION IS ADMINISTRATIVELY COM-  
19 PLETE, THE PETITIONER SHALL BE NOTIFIED BY THE DEPARTMENT OF THE  
20 DEPARTMENT'S INTENT TO REMOVE THE SITE FROM THE LIST, OR THE  
21 PETITIONER SHALL BE NOTIFIED THAT THE PETITION FOR REMOVAL OF THE  
22 SITE FROM THE LIST DOES NOT MEET THE CRITERIA FOR REMOVAL OF THE  
23 SITE FROM THE LIST AS DETERMINED BY RULE. REMOVAL OF SITES FROM  
24 THE LIST SHALL BE ACCOMPLISHED AS PART OF THE PROCESS DESCRIBED  
25 IN RULES PROMULGATED UNDER THIS ACT. HOWEVER, IF THE DEPARTMENT  
26 CONCLUDES PURSUANT TO SUBSECTION (3) THAT THE CIRCUMSTANCES  
27 WARRANT REMOVAL OF THE SITE FROM THE LIST BEFORE OR AT THE NEXT

1 REGULARLY SCHEDULED HEARING TO BE HELD IN ACCORDANCE WITH RULES  
2 PROMULGATED UNDER THIS ACT, THE DEPARTMENT SHALL PREPARE A NOTICE  
3 OF INTENT TO REMOVE THE SITE FROM THE LIST. A NOTICE OF INTENT  
4 SHALL INCLUDE INFORMATION CONSIDERED APPROPRIATE BY THE DEPART-  
5 MENT AND SHALL BE PUBLISHED IN AT LEAST 1 NEWSPAPER OF GENERAL  
6 CIRCULATION THAT SERVES THE AREA OF THE SITE AND BE PROVIDED TO  
7 THE LOCAL UNIT OF GOVERNMENT THAT SERVES THE AREA IN WHICH THE  
8 SITE IS LOCATED. PUBLIC COMMENT ON THE NOTICE OF INTENT TO  
9 REMOVE THE SITE FROM THE SITE LIST SHALL BE ACCEPTED FOR A PERIOD  
10 OF NOT LESS THAN 30 DAYS FROM THE DATE OF PUBLICATION. THE  
11 DEPARTMENT MAY HOLD A PUBLIC HEARING ON THE PROPOSED ACTION.

12 (7) THE DEPARTMENT SHALL MAKE A FINAL DETERMINATION WHETHER  
13 TO INCLUDE THE SITE ON THE NEXT LIST. THE DEPARTMENT SHALL CON-  
14 sider ANY COMMENTS RECEIVED IN RESPONSE TO THE NOTICE DESCRIBED  
15 IN SUBSECTION (6).

16 (8) THE DEPARTMENT SHALL NOTIFY THE PERSON WHO REQUESTED  
17 THAT THE SITE BE REMOVED FROM THE LIST OF THE DECISION WITHIN 45  
18 DAYS OF THE END OF THE PUBLIC COMMENT PERIOD PROVIDED FOR IN THE  
19 NOTICE PUBLISHED PURSUANT TO THE PROVISIONS OF SUBSECTION (6).

20 (9) AS USED IN THIS SECTION "LIST" MEANS THE LIST DESCRIBED  
21 IN SUBSECTION (1)(D).

22 Sec. 7. (1) The governor shall include in his or her annual  
23 budget recommendations to the legislature a recommended level of  
24 funding to provide for ~~further evaluation of those sites identi-~~  
25 ~~fied and submitted to the legislature under section 6 and the~~  
26 ~~implementation of any interim response activity. The governor~~  
27 ~~shall identify the order of priority by which the evaluation of~~

1 ~~sites and the implementation of any interim response activity~~  
2 ~~shall proceed.~~ THE ACTIVITIES NECESSARY TO IMPLEMENT THIS ACT.

3 ~~(2) The governor shall include in his or her annual budget~~  
4 ~~recommendations to the legislature a recommended level of funding~~  
5 ~~to provide for response activities at those sites identified and~~  
6 ~~submitted to the legislature pursuant to section 6. The governor~~  
7 ~~shall identify the order in which recommended response activities~~  
8 ~~shall proceed.~~

9 (2) ~~(3)~~ The governor's recommendations under this section  
10 shall be accompanied by a site specific description of the extent  
11 of known or suspected environmental contamination, the recom-  
12 mended ~~responses~~ RESPONSE ACTIVITIES to be undertaken, and an  
13 estimate of cost of those ~~responses~~ RESPONSE ACTIVITIES.

14 ~~(4) The governor shall include in his or her recommenda-~~  
15 ~~tions to the legislature under subsections (2) and (3) a level of~~  
16 ~~response activity beyond which further response activity would~~  
17 ~~not, in the opinion of the governor and upon the advice of the~~  
18 ~~directors, result in any further significant reduction of risk to~~  
19 ~~the public health, safety, or welfare or to the environment. The~~  
20 ~~governor's recommendation under this subsection shall contain the~~  
21 ~~numerical score which would be given to the site on a reassess-~~  
22 ~~ment of that site after completion of the response activity rec-~~  
23 ~~ommended by the governor, using the numerical risk assessment~~  
24 ~~model developed pursuant to section 6(b) of this act.~~

25 ~~(5) This section shall not take effect until January 1,~~  
26 ~~1983.~~

1       Sec. 9. (1) An environmental response fund is established  
2 in the department of the treasury. The environmental response  
3 fund shall be administered by the ~~governor or the governor's~~  
4 ~~designee~~ DEPARTMENT.

5       (2) The fund shall receive as revenue any money from any  
6 source, as appropriated by the legislature AND THE INTEREST AND  
7 EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.

8       (3) IN ADDITION TO THE MONEY RECEIVED UNDER SUBSECTION (2),  
9 THE FUND SHALL RECEIVE AS REVENUE MONEY COLLECTED BY THE ATTORNEY  
10 GENERAL IN ACTIONS FILED UNDER THIS ACT, COLLECTED BY THE STATE  
11 UNDER THIS ACT, OR COLLECTED BY A PERSON UNDER SECTION 12(J).

12       (4) AN UNEXPENDED BALANCE WITHIN THE FUND AT THE CLOSE OF  
13 THE FISCAL YEAR SHALL BE CARRIED FORWARD TO THE FOLLOWING FISCAL  
14 YEAR.

15       Sec. 10. (1) Money required to pay for ~~evaluation and~~  
16 response activities recommended under this act and to reimburse  
17 state departments and agencies for expenditures for those pur-  
18 poses shall be appropriated from the ~~environmental response~~  
19 fund and any other source the legislature considers necessary to  
20 carry out the requirements of this act.

21       (2) Money from the ~~environmental response~~ fund shall be  
22 appropriated only for ~~evaluation and~~ response activities at  
23 ~~sites which~~ FACILITIES THAT have been subjected to the risk  
24 assessment process described in section 6.

25       (3) The ~~environmental response~~ fund may be used for match,  
26 operation, and maintenance purposes as required under the  
27 comprehensive environmental response, compensation, and liability

1 act of 1980, PUBLIC LAW 96-510, ~~94 Stat. 2767~~ 42 U.S.C. 9601 TO  
2 9626, 9651 TO 9652, 9653 TO 9660, 9661, AND 9671 TO 9675 AND  
3 UNDER SUBTITLE I OF THE SOLID WASTE DISPOSAL ACT, TITLE II OF  
4 PUBLIC LAW 89-272, 42 U.S.C. 6991 TO 6991i.

5 (4) The governor shall recommend an annual appropriation for  
6 the fund in his or her annual budget recommendations to the  
7 legislature.

8 ~~(5) This section shall not take effect until January 1,~~  
9 ~~1983.~~

10 SEC. 11A. (1) THIS SECTION ONLY APPLIES TO A FACILITY WHERE  
11 2 OR MORE PERSONS THAT MAY BE LIABLE UNDER SECTION 12 ARE IDENTI-  
12 FIED BY THE DEPARTMENT.

13 (2) AFTER THE DEPARTMENT APPROVES A REMEDIAL ACTION PLAN FOR  
14 A FACILITY PURSUANT TO THIS ACT AND ANY RULES PROMULGATED UNDER  
15 THIS ACT, THE DEPARTMENT SHALL NOTIFY IN WRITING EACH IDENTIFIED  
16 PERSON THAT MAY BE LIABLE UNDER SECTION 12 AND THE ORPHAN SHARE  
17 ADMINISTRATION OF THE APPROVAL OF THE REMEDIAL ACTION PLAN FOR  
18 THE FACILITY. THE DEPARTMENT SHALL ALSO SEND THE ORPHAN SHARE  
19 ADMINISTRATION A LIST OF THE NAMES AND ADDRESSES OF ALL IDENTI-  
20 FIED PERSONS THAT MAY BE LIABLE UNDER SECTION 12, AND IF  
21 REQUESTED BY THE ORPHAN SHARE ADMINISTRATION, THE DEPARTMENT  
22 SHALL AT ANY TIME PROVIDE THE ORPHAN SHARE ADMINISTRATION WITH  
23 ALL INFORMATION IN THE POSSESSION OF THE DEPARTMENT THAT IS  
24 RELATED TO THE RELEASE. UPON THE REQUEST OF THE ORPHAN SHARE  
25 ADMINISTRATION, THE ALLOCATION PROCESS MAY COMMENCE PRIOR TO THE  
26 APPROVAL OF THE REMEDIAL ACTION PLAN. A PERSON THAT MAY BE  
27 LIABLE UNDER SECTION 12 MAY PETITION THE ORPHAN SHARE

1 ADMINISTRATION TO COMMENCE THE ALLOCATION PROCESS PRIOR TO THE  
2 APPROVAL OF THE REMEDIAL ACTION PLAN.

3       (3) NOT LATER THAN 7 DAYS AFTER RECEIPT OF THE NOTICE OF  
4 APPROVAL OF A REMEDIAL ACTION PLAN FOR THE FACILITY, THE ORPHAN  
5 SHARE ADMINISTRATION SHALL NOTIFY EACH OF THE PERSONS THAT MAY BE  
6 LIABLE UNDER SECTION 12 IN WRITING OF THE OPPORTUNITY TO PARTICI-  
7 PATE IN AN ALLOCATION PROCESS. A PERSON THAT MAY BE LIABLE UNDER  
8 SECTION 12 THAT INTENDS TO PARTICIPATE IN THE ALLOCATION PROCESS  
9 SHALL NOTIFY THE ORPHAN SHARE ADMINISTRATION IN WRITING WITHIN 14  
10 DAYS OF RECEIVING NOTICE FROM THE ORPHAN SHARE ADMINISTRATION.

11       (4) IF, WITHIN THE 14-DAY PERIOD DURING WHICH A PERSON THAT  
12 MAY BE LIABLE UNDER SECTION 12 MAY INDICATE THEIR INTENTION TO  
13 PARTICIPATE IN THE ALLOCATION PROCESS, 1 OR MORE OF THE PERSONS  
14 THAT MAY BE LIABLE UNDER SECTION 12 IDENTIFIED IN REGARD TO A  
15 FACILITY NOTIFY THE ORPHAN SHARE ADMINISTRATION THAT THE PERSON  
16 INTENDS TO PARTICIPATE IN THE ALLOCATION PROCESS, THE ORPHAN  
17 SHARE ADMINISTRATION SHALL DEVELOP A SCHEDULE AND PLAN TO FACILI-  
18 TATE NEGOTIATIONS TO DETERMINE THE PERCENTAGE SHARE OF RESPONSE  
19 COSTS OF EACH PERSON THAT MAY BE LIABLE UNDER SECTION 12 AND ANY  
20 ORPHAN SHARE. THE NEGOTIATIONS SHALL BE COMPLETED WITHIN 21 DAYS  
21 AFTER THE LAST DAY ON WHICH PERSONS THAT MAY BE LIABLE UNDER  
22 SECTION 12 MAY NOTIFY THE ORPHAN SHARE ADMINISTRATION OF THE  
23 INTENT TO PARTICIPATE, UNLESS ALL OF THE PARTICIPANTS AGREE TO  
24 EXTEND THE NEGOTIATIONS. AN EXTENSION OF THE NEGOTIATIONS SHALL  
25 NOT RESULT IN AN EXTENSION OF THE TIME LIMITATIONS PROVIDED IN  
26 SUBSECTIONS (7) AND (9).

1       (5) IF, DURING THE NEGOTIATION PERIOD PROVIDED IN  
2 SUBSECTION (4), ALL OF THE PERSONS THAT MAY BE LIABLE UNDER  
3 SECTION 12 PARTICIPATING IN THE ALLOCATION PROCESS AND THE ORPHAN  
4 SHARE ADMINISTRATION AGREE IN WRITING TO A COMPLETE PERCENTAGE  
5 ALLOCATION OF RESPONSE COSTS RELATED TO THE FACILITY, THE ORPHAN  
6 SHARE ADMINISTRATION SHALL, WITHIN 3 DAYS OF REACHING THE AGREE-  
7 MENT, SEND A COPY OF THE AGREEMENT TO THE DIRECTOR AND THE ATTOR-  
8 NEY GENERAL.

9       (6) THE ATTORNEY GENERAL ON BEHALF OF THE STATE MAY ENTER  
10 INTO A LEGALLY ENFORCEABLE CONSENT JUDGMENT WITH 1 OR MORE OF THE  
11 PARTICIPANTS IN THE ALLOCATION PROCESS PROVIDING FOR IMPLEMENTA-  
12 TION OF THE REMEDIAL ACTION PLAN, PAYMENT OF RESPONSE COSTS, AND  
13 RESOLUTION OF OTHER POTENTIAL LIABILITY UNDER THIS ACT, INCLUDING  
14 LIABILITY FOR DAMAGES AND CIVIL FINES.

15       (7) IF, WITHIN THE NEGOTIATION PERIOD PROVIDED IN  
16 SUBSECTION (4), ALL OF THE PERSONS THAT MAY BE LIABLE UNDER  
17 SECTION 12 AND THE ORPHAN SHARE ADMINISTRATION DO NOT AGREE IN  
18 WRITING TO A COMPLETE PERCENTAGE ALLOCATION OF RESPONSE COSTS  
19 RELATED TO THE SITE, THE ORPHAN SHARE ADMINISTRATION SHALL CON-  
20 VENE AN ALLOCATION REVIEW PANEL TO DETERMINE AN ALLOCATION OF THE  
21 PERCENTAGE SHARE OF RESPONSE COSTS OF EACH PERSON THAT MAY BE  
22 LIABLE UNDER SECTION 12 INCLUDING THE ORPHAN SHARE, IF ANY.  
23 REGARDLESS OF WHEN THE ALLOCATION PROCESS COMMENCES, THE ALLOCA-  
24 TION REVIEW PANEL SHALL BE CONVENED NO LATER THAN 50 DAYS AFTER  
25 NOTIFICATION OF THE PERSONS THAT MAY BE LIABLE UNDER SECTION 12  
26 OF THE APPROVAL OF THE REMEDIAL ACTION PLAN FOR A FACILITY. THE  
27 ALLOCATION REVIEW PANEL SHALL CONSIST OF 3 MEMBERS SELECTED IN

1 THE PROCESS ESTABLISHED BY THE ORPHAN SHARE ADMINISTRATION  
2 PURSUANT TO THE MICHIGAN ENVIRONMENTAL ASSURANCE CORPORATION  
3 ACT. IN SELECTING THE MEMBERS FOR AN ALLOCATION REVIEW PANEL,  
4 THE ORPHAN SHARE ADMINISTRATION SHALL DETERMINE THAT A MEMBER  
5 SELECTED FOR A PANEL DOES NOT HAVE A PERSONAL OR FINANCIAL INTER-  
6 EST IN THE OUTCOME OF THE ALLOCATION PROCESS.

7 (8) ACCORDING TO THE PROCEDURES ESTABLISHED BY THE ORPHAN  
8 SHARE ADMINISTRATION AS PROVIDED IN THE MICHIGAN ENVIRONMENTAL  
9 ASSURANCE CORPORATION ACT, EACH OF THE PARTICIPATING PERSONS THAT  
10 MAY BE LIABLE UNDER SECTION 12 AND THE ORPHAN SHARE ADMINISTRA-  
11 TION MAY SUBMIT TO THE PANEL DOCUMENTATION AND OTHER INFORMATION  
12 AS CONSIDERED RELEVANT BY A PERSON THAT MAY BE LIABLE UNDER  
13 SECTION 12 OR THE ORPHAN SHARE ADMINISTRATION. IN ADDITION, THE  
14 DIRECTOR MAY SUBMIT TO THE PANEL INFORMATION RELATED TO THE  
15 FACILITY OR ALLOCATION PROCESS THAT THE DIRECTOR CONSIDERS  
16 RELEVANT.

17 (9) NOT LATER THAN 90 DAYS AFTER NOTIFICATION OF THE PERSONS  
18 THAT MAY BE LIABLE UNDER SECTION 12 OF APPROVAL OF THE REMEDIAL  
19 ACTION PLAN FOR A FACILITY, THE ALLOCATION REVIEW PANEL SHALL  
20 ISSUE A WRITTEN DETERMINATION ALLOCATING THE PERCENTAGE SHARE OF  
21 RESPONSE COSTS OF EACH PERSON THAT MAY BE LIABLE UNDER SECTION 12  
22 AND THE ORPHAN SHARE, IF ANY. IN REACHING A DETERMINATION, THE  
23 ALLOCATION REVIEW PANEL SHALL DO ALL OF THE FOLLOWING:

24 (A) CONSIDER EACH OF THE FOLLOWING AS THESE ITEMS RELATE TO  
25 EACH PERSON THAT MAY BE LIABLE UNDER SECTION 12 AND THE ORPHAN  
26 SHARE, IF ANY:

1       (i) THE VOLUME OF HAZARDOUS SUBSTANCES TRANSPORTED TO THE  
2 FACILITY. FOR PURPOSES OF DETERMINING VOLUME, A SHIPMENT OF A  
3 HAZARDOUS SUBSTANCE SHALL BE COUNTED 1 TIME WHEN ALLOCATING A  
4 PERCENTAGE SHARE OF RESPONSE COSTS BETWEEN A GENERATOR AND A  
5 TRANSPORTER OF A HAZARDOUS SUBSTANCE.

6       (ii) THE ANTICIPATED IMPACT OF THE HAZARDOUS SUBSTANCE ON  
7 THE COST OF RESPONSE ACTIVITY AT THE FACILITY.

8       (iii) THE DEGREE OF CARE EXERCISED IN THE DISPOSAL OR TREAT-  
9 MENT, OR BOTH OF THE HAZARDOUS SUBSTANCE BY EACH PERSON THAT MAY  
10 BE LIABLE UNDER SECTION 12.

11       (iv) THE MANNER IN WHICH THE FACILITY WAS OPERATED AND THE  
12 DEGREE OF CARE EXERCISED BY THE OWNER OR OPERATOR.

13       (v) THE DEGREE OF INVOLVEMENT IN FACILITY OPERATIONS.

14       (vi) WHETHER ALL APPLICABLE PERMITS AND LICENSES REQUIRED BY  
15 LAW WERE OBTAINED AND COMPLIED WITH.

16       (vii) THE DEGREE OF COOPERATION BY THE PERSON WITH FEDERAL,  
17 STATE, OR LOCAL OFFICIALS TO PREVENT, MINIMIZE, RESPOND TO, OR  
18 REMEDY THE RELEASE OR THREAT OF RELEASE.

19       (viii) ANY OTHER AGGRAVATING OR MITIGATING FACTOR THAT THE  
20 ALLOCATION REVIEW PANEL DETERMINES TO BE RELEVANT.

21       (B) CONSIDER THE QUALITY OF DOCUMENTATION AND OTHER INFORMA-  
22 TION SUBMITTED.

23       (C) IF INFORMATION GAPS EXIST, MAKE REASONABLE EXTRAPOLA-  
24 TIONS FROM THE AVAILABLE INFORMATION AS CONSIDERED ADVISABLE BY  
25 THE ALLOCATION REVIEW PANEL.

26       (10) A COPY OF THE WRITTEN DETERMINATION OF THE ALLOCATION  
27 REVIEW PANEL SHALL BE FORWARDED BY THE PANEL TO THE DIRECTOR, THE

1 ATTORNEY GENERAL, AND TO EACH OF THE PARTICIPANTS IN THE  
2 ALLOCATION PROCESS. WITHIN 10 DAYS OF RECEIPT OF THE DETERMINA-  
3 TION OF THE ALLOCATION REVIEW PANEL, EACH PARTICIPANT SHALL  
4 NOTIFY THE ORPHAN SHARE ADMINISTRATION OF THE PARTICIPANT'S  
5 ACCEPTANCE OR REJECTION OF THE PANEL'S DETERMINATION. THE ORPHAN  
6 SHARE ADMINISTRATION SHALL NOTIFY THE ALLOCATION REVIEW PANEL,  
7 THE DIRECTOR, AND THE ATTORNEY GENERAL OF THE PARTICIPANTS'  
8 DECISION.

9 (11) THE ORPHAN SHARE ADMINISTRATION MAY REJECT THE ALLOCA-  
10 TION REVIEW PANEL'S DETERMINATION IF IT BELIEVES THAT THE PERCENTAGE  
11 COST OF RESPONSE ACTIVITY ALLOCATED TO THE ORPHAN SHARES BY  
12 THE PANEL CREATES A SUBSTANTIAL RISK TO THE FISCAL INTEGRITY OF  
13 THE FUND. IF THE ORPHAN SHARE ADMINISTRATION REJECTS THE ALLOCA-  
14 TION REVIEW PANEL'S DETERMINATION IT MAY NEGOTIATE WITH OTHER  
15 PARTICIPATING PERSONS THAT MAY BE LIABLE UNDER SECTION 12 TO  
16 ATTEMPT TO ARRIVE AT AN ALTERNATIVE PERCENTAGE ALLOCATION OF  
17 RESPONSE COSTS THAT IS AGREEABLE TO ALL OF THE PARTICIPANTS. THE  
18 ORPHAN SHARE ADMINISTRATION AND THE OTHER PARTICIPATING PERSONS  
19 THAT MAY BE LIABLE UNDER SECTION 12 HAVE NO LONGER THAN 7 DAYS TO  
20 ATTEMPT TO ARRIVE AT AN ALTERNATIVE ALLOCATION.

21 (12) THE ATTORNEY GENERAL ON BEHALF OF THE STATE MAY ENTER  
22 INTO A LEGALLY ENFORCEABLE CONSENT JUDGMENT WITH 1 OR MORE OF THE  
23 PARTICIPANTS IN THE ALLOCATION PROCESS WHO ARE IN AGREEMENT WITH  
24 THE DETERMINATION OF THE ALLOCATION REVIEW PANEL OR WHO ENTER  
25 INTO A NEGOTIATED AGREEMENT PURSUANT TO SUBSECTION (11) PROVIDING  
26 FOR IMPLEMENTATION OF THE REMEDIAL ACTION PLAN, PAYMENT OF

1 RESPONSE COSTS, AND RESOLUTION OF OTHER POTENTIAL LIABILITY UNDER  
2 THIS ACT, INCLUDING LIABILITY FOR DAMAGES AND CIVIL FINES.

3 (13) THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE  
4 AUTHORITY OF THE DEPARTMENT OR THE ATTORNEY GENERAL AT ANY TIME  
5 TO ENTER INTO AN AGREEMENT IN THE PUBLIC INTEREST TO RESOLVE IN  
6 WHOLE OR IN PART THE LIABILITY OF A PERSON UNDER THIS ACT.

7 (14) ANY ALLOCATION OF PERCENTAGE SHARES OF RESPONSE COSTS  
8 UNDER THIS SECTION SHALL NOT BE ADMISSIBLE AS EVIDENCE IN ANY  
9 PROCEEDING, AND A COURT SHALL NOT HAVE JURISDICTION TO REVIEW AN  
10 ALLOCATION OR THE PROCEDURES USED TO DETERMINE AN ALLOCATION.  
11 ALLOCATION OF PERCENTAGE SHARE OF RESPONSE COSTS OR THE PROCE-  
12 DURES USED TO DETERMINE AN ALLOCATION SHALL NOT CONSTITUTE AN  
13 APPORTIONMENT OR OTHER STATEMENT ON THE DIVISIBILITY OF HARM OR  
14 CAUSATION.

15 (15) THE LIABILITY UNDER THIS ACT OF A PERSON THAT MAY BE  
16 LIABLE UNDER SECTION 12 THAT ACCEPTS AND PAYS ITS ALLOCATED SHARE  
17 OF RESPONSE ACTIVITY COSTS AS DETERMINED THROUGH A VOLUNTARY  
18 ALLOCATION AGREEMENT PURSUANT TO SUBSECTION (5) OR BY THE ALLOCA-  
19 TION REVIEW PANEL PURSUANT TO SUBSECTION (9), AND WHO ENTERS INTO  
20 A LEGALLY ENFORCEABLE CONSENT JUDGMENT WITH THE ATTORNEY GENERAL  
21 ON BEHALF OF THE STATE THAT PROVIDES FOR IMPLEMENTATION OF THE  
22 REMEDIAL ACTION PLAN AND PAYMENT OF ALL STATE RESPONSE ACTIVITY  
23 COSTS BY THE SETTLING PERSONS SHALL, WITH RESPECT TO MATTERS COV-  
24 ERED BY THE CONSENT JUDGMENT, BE LIMITED TO THAT ALLOCATED SHARE  
25 OF RESPONSE ACTIVITY COSTS.

26 (16) IF A PERSON THAT MAY BE LIABLE UNDER SECTION 12  
27 PARTICIPATES IN THE ALLOCATION PROCESS SET FORTH IN THIS

1 SUBSECTION, THE DIRECTOR AND THE ATTORNEY GENERAL MAY NOT  
2 COMMENCE AN ACTION UNDER SECTION 12F OR 12H AGAINST THE PARTICI-  
3 PATING PERSON FOR A PERIOD OF 120 DAYS AFTER THE PERSONS THAT MAY  
4 BE LIABLE UNDER SECTION 12 HAVE BEEN NOTIFIED OF THE APPROVAL OF  
5 A REMEDIAL ACTION PLAN. IF THE DIRECTOR AND THE ATTORNEY GENERAL  
6 DETERMINE THAT THE PARTIES ARE BARGAINING IN GOOD FAITH AND THAT  
7 AN EXTENSION OF THIS MORATORIUM WOULD FACILITATE AN AGREEMENT  
8 WITH THE PERSONS THAT MAY BE LIABLE UNDER SECTION 12 FOR TAKING  
9 RESPONSE ACTIVITY, THEY MAY EXTEND THE MORATORIUM FOR AN ADDI-  
10 TIONAL PERIOD OF UP TO 30 DAYS.

11 (17) NOTWITHSTANDING SUBSECTION (16), THIS SECTION SHALL NOT  
12 LIMIT THE DEPARTMENT'S AUTHORITY TO UNDERTAKE RESPONSE ACTIVITY  
13 AT ANY TIME OR THE ATTORNEY GENERAL'S AUTHORITY TO UNDERTAKE  
14 ENFORCEMENT ACTION AGAINST ANY PERSON THAT MAY BE LIABLE UNDER  
15 SECTION 12 THAT DOES NOT PARTICIPATE IN THE ALLOCATION PROCESS.

16 (18) WHEN THE ALLOCATION PROCESS IS COMPLETED, THE ORPHAN  
17 SHARE ADMINISTRATION SHALL CONTRIBUTE THE PERCENTAGE OF COSTS  
18 ASSIGNED TO THE ORPHAN SHARE PLUS THE PERCENTAGE SHARE ASSIGNED  
19 TO IDENTIFIED PERSONS THAT MAY BE LIABLE UNDER SECTION 12 THAT  
20 REFUSE TO PARTICIPATE IN THE ALLOCATION PROCESS, OR REMEDIAL  
21 ACTION, OR PAY ON THE BASIS OF THEIR ALLOCATED SHARE. THIS SUB-  
22 SECTION SHALL APPLY WHETHER THE REMEDIATION IS PERFORMED BY THE  
23 PARTIES THAT MAY BE RESPONSIBLE UNDER SECTION 12 PURSUANT TO A  
24 SETTLEMENT. THE ATTORNEY GENERAL MAY FILE AN ACTION UNDER  
25 SECTION 12H TO RECOVER ALL COSTS INCURRED BY THE ORPHAN SHARE  
26 ADMINISTRATION FROM PARTIES WHO REFUSE TO PARTICIPATE IN THE

1 ALLOCATION PROCESS OR IN THE REMEDIAL ACTION ON THE BASIS OF  
2 THEIR ALLOCATED SHARE.

3 (19) THE ORPHAN SHARE ADMINISTRATION MAY ESTABLISH A LOAN  
4 PROGRAM TO PROVIDE LOANS TO SMALL BUSINESSES THAT ARE POTENTIALLY  
5 RESPONSIBLE PARTIES. A LOAN SHALL BE PROVIDED TO ASSIST A SMALL  
6 BUSINESS IN FULFILLING ITS RESPONSIBILITIES UNDER A CONSENT  
7 AGREEMENT. AS USED IN THIS SUBSECTION, "SMALL BUSINESS" MEANS A  
8 BUSINESS CONCERN INCORPORATED OR DOING BUSINESS IN THIS STATE,  
9 INCLUDING THE AFFILIATES OF THE BUSINESS CONCERN, THAT IS INDE-  
10 PENDENTLY OWNED AND OPERATED AND EMPLOYS FEWER THAN 25 FULL-TIME  
11 EMPLOYEES OR THAT HAS A NET WORTH OF LESS THAN \$1,000,000.00.

12 (20) AS USED IN THIS SECTION:

13 (A) "ALLOCATION PROCESS" MEANS A VOLUNTARY SYSTEM FOR DETER-  
14 MINING THE PERCENTAGE SHARE OF RESPONSE COSTS PURSUANT TO THIS  
15 SECTION OF EACH PERSON THAT MAY BE LIABLE UNDER SECTION 12 AND  
16 THE ORPHAN SHARE, IF ANY.

17 (B) "ALLOCATION REVIEW PANEL" OR "PANEL" MEANS THE ALLOCA-  
18 TION REVIEW PANEL APPOINTED BY THE ORPHAN SHARE ADMINISTRATION.

19 (C) "FUND" MEANS THE MICHIGAN ENVIRONMENTAL ASSURANCE FUND  
20 CREATED IN THE MICHIGAN ENVIRONMENTAL ASSURANCE CORPORATION ACT.

21 (D) "ORPHAN SHARE" MEANS THE PERCENTAGE SHARE OF RESPONSE  
22 COSTS FOR A FACILITY THAT THE ORPHAN SHARE ADMINISTRATION AGREES  
23 OR THE ALLOCATION REVIEW PANEL DETERMINES IS NOT REASONABLY ALLO-  
24 CABLE TO ANY PERSON THAT MAY BE LIABLE UNDER SECTION 12 USING THE  
25 CRITERIA IN SUBSECTION (9).

1 (E) "ORPHAN SHARE ADMINISTRATION" MEANS A PERSON APPOINTED  
2 PURSUANT TO THE MICHIGAN ENVIRONMENTAL ASSURANCE CORPORATION ACT  
3 TO PAY FOR THE ORPHAN SHARE.

4 (F) "REMEDIAL ACTION PLAN" MEANS A WORK PLAN FOR PERFORMING  
5 REMEDIAL ACTION UNDER THIS ACT.

6 (G) "RESPONSE COSTS" MEANS ALL COSTS INCURRED IN TAKING OR  
7 CONDUCTING A RESPONSE ACTIVITY, ENFORCEMENT COSTS, AND ALL COSTS  
8 INCURRED BY THE ORPHAN SHARE ADMINISTRATION FOR THE SERVICES OF  
9 THE ALLOCATION REVIEW PANEL.

10 SEC. 11B. (1) THE STATE MAY, IN ITS DISCRETION, PROVIDE A  
11 PERSON WITH A COVENANT NOT TO SUE CONCERNING ANY LIABILITY TO THE  
12 STATE UNDER THIS ACT, INCLUDING FUTURE LIABILITY, RESULTING FROM  
13 A RELEASE OR THREATENED RELEASE ADDRESSED BY REMEDIAL ACTION,  
14 WHETHER THAT ACTION IS ON A FACILITY OR OFF A FACILITY, IF EACH  
15 OF THE FOLLOWING IS MET:

16 (A) THE COVENANT NOT TO SUE IS IN THE PUBLIC INTEREST.

17 (B) THE COVENANT NOT TO SUE WOULD EXPEDITE RESPONSE ACTION  
18 CONSISTENT WITH RULES PROMULGATED UNDER THIS ACT.

19 (C) THERE IS FULL COMPLIANCE WITH A CONSENT AGREEMENT UNDER  
20 THIS ACT FOR RESPONSE TO THE RELEASE OR THREATENED RELEASE  
21 CONCERNED.

22 (D) THE RESPONSE ACTION HAS BEEN APPROVED BY THE  
23 DEPARTMENT.

24 (2) THE STATE SHALL PROVIDE A PERSON TO WHOM THE DEPARTMENT  
25 IS AUTHORIZED UNDER SUBSECTION (1) TO ISSUE A COVENANT NOT TO SUE  
26 FOR THE PORTION OF REMEDIAL ACTION DESCRIBED IN SUBDIVISION (A)  
27 OR (B) WITH A COVENANT NOT TO SUE WITH RESPECT TO FUTURE

1 LIABILITY TO THE STATE UNDER THIS ACT FOR A FUTURE RELEASE OR  
2 THREATENED RELEASE FROM THE FACILITY, AND A PERSON PROVIDED THE  
3 COVENANT NOT TO SUE SHALL NOT BE LIABLE TO THE STATE UNDER  
4 SECTION 12 WITH RESPECT TO THAT RELEASE OR THREATENED RELEASE AT  
5 A FUTURE TIME. THE PORTION OF REMEDIAL ACTION TO WHICH THE COVE-  
6 NANT NOT TO SUE PERTAINS IS 1 OF THE FOLLOWING:

7 (A) THE TRANSPORT AND SECURE DISPOSITION OFF SITE OF HAZARD-  
8 OUS SUBSTANCES IN A FACILITY MEETING THE REQUIREMENTS OF  
9 SECTIONS 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), AND (v)  
10 AND 3005(c) OF THE SOLID WASTE DISPOSAL ACT, TITLE II OF PUBLIC  
11 LAW 89-272, 42 U.S.C. 6924 AND 6925, IF THE DEPARTMENT HAS  
12 REQUIRED OFF-SITE DISPOSITION AND HAS REJECTED PROPOSED REMEDIAL  
13 ACTION THAT IS CONSISTENT WITH THE RULES PROMULGATED UNDER THIS  
14 ACT THAT DOES NOT INCLUDE OFF-SITE DISPOSITION.

15 (B) THE TREATMENT OF HAZARDOUS SUBSTANCES SO AS TO DESTROY,  
16 ELIMINATE, OR PERMANENTLY IMMOBILIZE THE HAZARDOUS CONSTITUENTS  
17 OF THE SUBSTANCES, SO THAT, IN THE JUDGMENT OF THE DEPARTMENT,  
18 THE SUBSTANCES NO LONGER PRESENT ANY CURRENT OR CURRENTLY FORE-  
19 SEEABLE FUTURE SIGNIFICANT RISK TO THE PUBLIC HEALTH, SAFETY, OR  
20 WELFARE, OR TO THE ENVIRONMENT, NO BY-PRODUCT OF THE TREATMENT OR  
21 DESTRUCTION PROCESS PRESENTS ANY SIGNIFICANT HAZARD TO THE PUBLIC  
22 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT, AND ALL  
23 BY-PRODUCTS ARE THEMSELVES TREATED, DESTROYED, OR CONTAINED IN A  
24 MANNER THAT ASSURES THAT THE BY-PRODUCTS DO NOT PRESENT ANY CUR-  
25 RENT OR CURRENTLY FORESEEABLE FUTURE SIGNIFICANT RISK TO THE  
26 PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT.

1       (3) A COVENANT NOT TO SUE CONCERNING FUTURE LIABILITY TO THE  
2 STATE SHALL NOT TAKE EFFECT UNTIL THE DEPARTMENT CERTIFIES THAT  
3 REMEDIAL ACTION HAS BEEN COMPLETED IN ACCORDANCE WITH THE  
4 REQUIREMENTS OF THIS ACT AT THE FACILITY THAT IS THE SUBJECT OF A  
5 COVENANT.

6       (4) IN ASSESSING THE APPROPRIATENESS OF A COVENANT NOT TO  
7 SUE GRANTED UNDER SUBSECTION (1) AND ANY CONDITION TO BE INCLUDED  
8 IN A COVENANT NOT TO SUE UNDER SUBSECTION (1) OR (2), THE STATE  
9 SHALL CONSIDER WHETHER THE COVENANT OR CONDITION IS IN THE PUBLIC  
10 INTEREST ON THE BASIS OF FACTORS SUCH AS THE FOLLOWING:

11       (A) THE EFFECTIVENESS AND RELIABILITY OF THE REMEDY, IN  
12 LIGHT OF THE OTHER ALTERNATIVE REMEDIES CONSIDERED FOR THE FACIL-  
13 ITY CONCERNED.

14       (B) THE NATURE OF THE RISKS REMAINING AT THE FACILITY.

15       (C) THE EXTENT TO WHICH PERFORMANCE STANDARDS ARE INCLUDED  
16 IN THE ORDER OR DECREE.

17       (D) THE EXTENT TO WHICH THE RESPONSE ACTION PROVIDES A COM-  
18 PLETE REMEDY FOR THE FACILITY, INCLUDING A REDUCTION IN THE HAZ-  
19 ARDOUS NATURE OF THE SUBSTANCES AT THE FACILITY.

20       (E) THE EXTENT TO WHICH THE TECHNOLOGY USED IN THE RESPONSE  
21 ACTION IS DEMONSTRATED TO BE EFFECTIVE.

22       (F) WHETHER THE FUND OR OTHER SOURCES OF FUNDING WOULD BE  
23 AVAILABLE FOR ANY ADDITIONAL REMEDIAL ACTIONS THAT MIGHT EVENTU-  
24 ALLY BE NECESSARY AT THE FACILITY.

25       (G) WHETHER REMEDIAL ACTION WILL BE CARRIED OUT, IN WHOLE OR  
26 IN SIGNIFICANT PART, BY PERSONS RESPONSIBLE UNDER SECTION 12.

1 (5) A COVENANT NOT TO SUE UNDER THIS SECTION SHALL BE  
2 SUBJECT TO THE SATISFACTORY PERFORMANCE BY A PERSON OF ITS  
3 OBLIGATIONS UNDER THE AGREEMENT CONCERNED.

4 (6) EXCEPT FOR THE PORTION OF THE REMEDIAL ACTION THAT IS  
5 SUBJECT TO A COVENANT NOT TO SUE UNDER SUBSECTION (2) OR UNDER  
6 SECTION 11A, A COVENANT NOT TO SUE A PERSON CONCERNING FUTURE  
7 LIABILITY TO THE STATE SHALL INCLUDE AN EXCEPTION TO THE COVENANT  
8 THAT ALLOWS THE STATE TO SUE THAT PERSON CONCERNING FUTURE  
9 LIABILITY RESULTING FROM THE RELEASE OR THREATENED RELEASE THAT  
10 IS THE SUBJECT OF THE COVENANT IF THE LIABILITY ARISES OUT OF  
11 CONDITIONS THAT ARE UNKNOWN AT THE TIME THE DEPARTMENT CERTIFIES  
12 UNDER SUBSECTION (3) THAT REMEDIAL ACTION HAS BEEN COMPLETED AT  
13 THE FACILITY CONCERNED.

14 (7) IN EXTRAORDINARY CIRCUMSTANCES, THE STATE MAY DETERMINE,  
15 AFTER ASSESSMENT OF RELEVANT FACTORS SUCH AS THOSE REFERRED TO IN  
16 SUBSECTION (4) AND VOLUME, TOXICITY, MOBILITY, STRENGTH OF EVI-  
17 DENCE, ABILITY TO PAY, LITIGATIVE RISKS, PUBLIC INTEREST CONSID-  
18 ERATIONS, PRECEDENTIAL VALUE, AND INEQUITIES AND AGGRAVATING FAC-  
19 TORS, NOT TO INCLUDE THE EXCEPTION IN SUBSECTION (6) IF OTHER  
20 TERMS, CONDITIONS, OR REQUIREMENTS OF THE AGREEMENT CONTAINING  
21 THE COVENANT NOT TO SUE ARE SUFFICIENT TO PROVIDE ALL REASONABLE  
22 ASSURANCES THAT THE PUBLIC HEALTH AND THE ENVIRONMENT WILL BE  
23 PROTECTED FROM ANY FUTURE RELEASES AT OR FROM THE FACILITY.

24 (8) THE STATE IS AUTHORIZED TO INCLUDE ANY PROVISIONS PRO-  
25 VIDING FOR FUTURE ENFORCEMENT ACTION UNDER SECTION 12F OR 12H  
26 THAT IN THE DISCRETION OF THE DEPARTMENT ARE NECESSARY AND

1 APPROPRIATE TO ASSURE PROTECTION OF THE PUBLIC HEALTH, SAFETY,  
2 WELFARE, AND THE ENVIRONMENT.

3 SEC. 12. (1) NOTWITHSTANDING ANY OTHER PROVISION OR RULE OF  
4 LAW AND SUBJECT ONLY TO THE DEFENSES SET FORTH IN SECTION 12A, IF  
5 THERE IS A RELEASE OR THREATENED RELEASE FROM A FACILITY THAT  
6 CAUSES THE INCURRENCE OF RESPONSE ACTIVITY COSTS, THE FOLLOWING  
7 PERSONS SHALL BE LIABLE UNDER THIS SECTION:

8 (A) THE OWNER OR OPERATOR OF THE FACILITY.

9 (B) A PERSON WHO AT THE TIME OF DISPOSAL OF A HAZARDOUS SUB-  
10 STANCE OWNED OR OPERATED THE FACILITY.

11 (C) A PERSON NOT INCLUDED IN SUBDIVISION (A) OR (B) WHO  
12 SINCE THE TIME OF DISPOSAL OF A HAZARDOUS SUBSTANCE OWNED OR  
13 OPERATED THE FACILITY.

14 (D) A PERSON WHO BY CONTRACT, AGREEMENT, OR OTHERWISE  
15 ARRANGED FOR DISPOSAL OR TREATMENT, OR ARRANGED WITH A TRANS-  
16 PORTER FOR TRANSPORT FOR DISPOSAL OR TREATMENT, OF A HAZARDOUS  
17 SUBSTANCE OWNED OR POSSESSED BY THE PERSON, BY ANY OTHER PERSON,  
18 AT THE FACILITY OWNED OR OPERATED BY ANOTHER PERSON AND CONTAIN-  
19 ING THE HAZARDOUS SUBSTANCE.

20 (E) A PERSON WHO ACCEPTS OR ACCEPTED ANY HAZARDOUS SUBSTANCE  
21 FOR TRANSPORT TO THE FACILITY SELECTED BY THAT PERSON.

22 (2) A PERSON DESCRIBED IN SUBSECTION (1) SHALL BE LIABLE FOR  
23 ALL OF THE FOLLOWING:

24 (A) ALL COSTS OF RESPONSE ACTIVITY INCURRED BY THE STATE NOT  
25 INCONSISTENT WITH RULES RELATING TO THE SELECTION AND IMPLEMENTA-  
26 TION OF RESPONSE ACTIVITY PROMULGATED UNDER THIS ACT.

1 (B) ANY OTHER NECESSARY COSTS OF RESPONSE ACTIVITY INCURRED  
2 BY ANY OTHER PERSON CONSISTENT WITH RULES RELATING TO THE  
3 SELECTION AND IMPLEMENTATION OF RESPONSE ACTIVITY PROMULGATED  
4 UNDER THIS ACT.

5 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,  
6 OR LOSS OF NATURAL RESOURCES, INCLUDING THE REASONABLE COSTS OF  
7 ASSESSING THE INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE  
8 RELEASE.

9 (3) THE COSTS OF RESPONSE ACTIVITY RECOVERABLE UNDER SUBSEC-  
10 TION (2) SHALL ALSO INCLUDE:

11 (A) ALL COSTS OF RESPONSE ACTIVITY REASONABLY INCURRED BY  
12 THE STATE PRIOR TO THE PROMULGATION OF RULES RELATING TO THE  
13 SELECTION AND IMPLEMENTATION OF RESPONSE ACTIVITY UNDER THIS  
14 ACT. A PERSON CHALLENGING THE RECOVERY OF THESE COSTS SHALL HAVE  
15 THE BURDEN OF ESTABLISHING THAT THE COSTS WERE NOT REASONABLY  
16 INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE TIME THE  
17 COSTS WERE INCURRED.

18 (B) ANY OTHER NECESSARY COSTS OF RESPONSE ACTIVITY REASON-  
19 ABLY INCURRED BY ANY OTHER PERSON PRIOR TO THE PROMULGATION OF  
20 RULES RELATING TO THE SELECTION AND IMPLEMENTATION OF RESPONSE  
21 ACTIVITY UNDER THIS ACT. A PERSON SEEKING RECOVERY OF THESE  
22 COSTS HAS THE BURDEN OF ESTABLISHING THAT THE COSTS WERE REASON-  
23 ABLY INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE TIME  
24 THE COSTS WERE INCURRED.

25 (4) THE AMOUNTS RECOVERABLE IN AN ACTION UNDER THIS SECTION  
26 SHALL INCLUDE INTEREST ON THE AMOUNTS RECOVERABLE UNDER  
27 SUBSECTION (2)(A), (B), AND (C). THIS INTEREST SHALL ACCRUE FROM

1 THE DATE PAYMENT IS DEMANDED IN WRITING, OR THE DATE OF THE  
2 EXPENDITURE OR DAMAGE, WHICHEVER IS LATER. THE RATE OF INTEREST  
3 ON THE OUTSTANDING UNPAID BALANCE OF THE AMOUNTS RECOVERABLE  
4 UNDER THIS SECTION SHALL BE THE SAME RATE AS IS SPECIFIED IN  
5 SECTION 6013(5) OF THE REVISED JUDICATURE ACT OF 1961, ACT  
6 NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 600.6013 OF THE  
7 MICHIGAN COMPILED LAWS.

8 (5) IF THE DIRECTOR DETERMINES THAT THERE MAY BE AN IMMINENT  
9 AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR WELFARE OR  
10 THE ENVIRONMENT BECAUSE OF AN ACTUAL OR THREATENED RELEASE FROM A  
11 FACILITY, THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST ANY  
12 PERSON DESCRIBED IN SUBSECTION (1) OR ANY OTHER APPROPRIATE  
13 PERSON TO SECURE THE RELIEF THAT MAY BE NECESSARY TO ABATE THE  
14 DANGER OR THREAT. THE COURT HAS JURISDICTION TO GRANT SUCH  
15 RELIEF AS THE PUBLIC INTEREST AND THE EQUITIES OF THE CASE MAY  
16 REQUIRE.

17 SEC. 12A. (1) A PERSON SHALL NOT BE LIABLE UNDER SECTION 12  
18 IF THAT PERSON ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE  
19 THAT THE RELEASE OR THREAT OF RELEASE WAS CAUSED SOLELY BY:

20 (A) AN ACT OF GOD.

21 (B) AN ACT OF WAR.

22 (C) AN ACT OR OMISSION OF A THIRD PARTY OTHER THAN AN  
23 EMPLOYEE OR AGENT OF THE PERSON THAT MAY BE LIABLE UNDER  
24 SECTION 12, OR OTHER THAN ONE WHOSE ACT OR OMISSION OCCURS IN  
25 CONNECTION WITH A CONTRACTUAL RELATIONSHIP, EXISTING DIRECTLY OR  
26 INDIRECTLY, WITH THE PERSON THAT MAY BE LIABLE UNDER SECTION 12

1 IF THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 ESTABLISHES BY  
2 A PREPONDERANCE OF THE EVIDENCE BOTH OF THE FOLLOWING:

3 (i) THAT HE OR SHE EXERCISED DUE CARE WITH RESPECT TO THE  
4 HAZARDOUS SUBSTANCE, TAKING INTO CONSIDERATION THE CHARACTERIS-  
5 TICS OF THE HAZARDOUS SUBSTANCE, IN LIGHT OF ALL RELEVANT FACTS  
6 AND CIRCUMSTANCES.

7 (ii) THAT HE OR SHE TOOK PRECAUTIONS AGAINST FORESEEABLE  
8 ACTS OR OMISSIONS OF A THIRD PARTY AND THE CONSEQUENCES THAT  
9 FORESEEABLY COULD RESULT FROM THOSE ACTS OR OMISSIONS.

10 (D) ANY COMBINATION OF SUBDIVISION (A), (B), OR (C).

11 (2) THE TERM CONTRACTUAL RELATIONSHIP, AS USED IN SUBSECTION  
12 (1)(C), INCLUDES, BUT IS NOT LIMITED TO, LAND CONTRACTS, DEEDS,  
13 OR OTHER INSTRUMENTS TRANSFERRING TITLE OR POSSESSION, UNLESS  
14 BOTH OF THE FOLLOWING ARE ESTABLISHED:

15 (A) THE REAL PROPERTY ON WHICH THE FACILITY IS LOCATED WAS  
16 ACQUIRED BY THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 AFTER  
17 THE DISPOSAL OR PLACEMENT OF THE HAZARDOUS SUBSTANCE ON, IN, OR  
18 AT THE PROPERTY.

19 (B) THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 BY A PRE-  
20 PONDERANCE OF THE EVIDENCE PROVES 1 OR MORE OF THE FOLLOWING:

21 (i) AT THE TIME THE PERSON THAT MAY BE LIABLE UNDER  
22 SECTION 12 ACQUIRED THE PROPERTY, THAT PERSON DID NOT KNOW AND  
23 HAD NO REASON TO KNOW THAT A HAZARDOUS SUBSTANCE THAT IS THE  
24 SUBJECT OF THE RELEASE OR THREAT OF A RELEASE WAS DISPOSED OF ON,  
25 IN, OR AT THE FACILITY.

26 (ii) THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 IS A  
27 STATE OR LOCAL UNIT OF GOVERNMENT THAT ACQUIRES THE PROPERTY BY

1 PURCHASE, GIFT, TRANSFER, DEDICATION, OR CONDEMNATION, AND THE  
2 STATE OR LOCAL UNIT OF GOVERNMENT DOES ALL OF THE FOLLOWING:

3 (A) CONDUCTS A VISUAL INSPECTION OF THE PROPERTY AND REVIEWS  
4 THE OWNERSHIP AND USE HISTORY OF THE PROPERTY TO DETERMINE  
5 WHETHER A PROBABILITY EXISTS THAT THE PROPERTY IS A FACILITY. IF  
6 THE VISUAL INSPECTION OR THE OWNERSHIP AND USE HISTORY, OR BOTH,  
7 SHOW THAT THERE MAY BE A RELEASE OR THREAT OF RELEASE, THE GOV-  
8 ERNMENT ENTITY SHALL CONDUCT, OR CAUSE TO BE CONDUCTED, AN ENVI-  
9 RONMENTAL ASSESSMENT OF THE PROPERTY THAT INCLUDES AN ON-SITE  
10 EVALUATION OF THE NATURE AND EXTENT, IF ANY, OF THE RELEASE OR  
11 THREAT OF RELEASE, AND AN INSPECTION OF ALL PERMANENT STRUCTURES  
12 ON THE PROPERTY FOR THE PRESENCE OF A HAZARDOUS SUBSTANCE.

13 (B) PRIOR TO FINAL ACQUISITION, IF THE ENVIRONMENTAL ASSESS-  
14 MENT REQUIRED IN SUBDIVISION (A) DISCLOSES A RELEASE OR THREAT OF  
15 RELEASE, A REPORT OF THE FINDINGS AND CONCLUSIONS SHALL BE SUB-  
16 MITTED TO THE GOVERNING BODY OF THE UNIT OF GOVERNMENT AND THE  
17 DEPARTMENT. THE REPORT SHALL BE AVAILABLE FOR PUBLIC INSPECTION,  
18 AND ITS AVAILABILITY NOTICED TO THE GENERAL PUBLIC.

19 (iii) THE PERSON THAT MAY BE LIABLE UNDER SECTION 12  
20 ACQUIRED THE PROPERTY BY INHERITANCE.

21 (3) IN ADDITION TO ESTABLISHING 1 OR MORE OF THE CIRCUM-  
22 STANCES DESCRIBED IN SUBSECTION (2)(B)(i), (ii), OR (iii), THE  
23 PERSON THAT MAY BE LIABLE UNDER SECTION 12 SHALL ESTABLISH THAT  
24 HE OR SHE HAS SATISFIED THE REQUIREMENTS OF SUBSECTION (1)(C)(i)  
25 AND (ii).

26 (4) TO ESTABLISH THAT THE PERSON THAT MAY BE LIABLE UNDER  
27 SECTION 12 HAD NO REASON TO KNOW, AS REQUIRED UNDER SUBSECTION

1 (2)(B)(i), THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 SHALL  
2 HAVE UNDERTAKEN, AT THE TIME OF ACQUISITION, ALL APPROPRIATE  
3 INQUIRY INTO THE PREVIOUS OWNERSHIP AND USES OF THE PROPERTY CON-  
4 SISTENT WITH GOOD COMMERCIAL OR CUSTOMARY PRACTICE IN AN EFFORT  
5 TO MINIMIZE LIABILITY. FOR PURPOSES OF THE PRECEDING SENTENCE,  
6 THE COURT SHALL TAKE INTO ACCOUNT ANY SPECIALIZED KNOWLEDGE OR  
7 EXPERIENCE ON THE PART OF THE PERSON THAT MAY BE LIABLE UNDER  
8 SECTION 12, THE RELATIONSHIP OF THE PURCHASE PRICE TO THE VALUE  
9 OF THE PROPERTY IF UNCONTAMINATED BY A HAZARDOUS SUBSTANCE, COM-  
10 MONLY KNOWN OR REASONABLY ASCERTAINABLE INFORMATION ABOUT THE  
11 PROPERTY, THE OBVIOUSNESS OF THE PRESENCE OR LIKELY PRESENCE OF A  
12 RELEASE OR THREAT OF RELEASE AT THE PROPERTY, AND THE ABILITY TO  
13 DETECT A RELEASE OR THREAT OF RELEASE BY APPROPRIATE INSPECTION.

14 (5) THIS SECTION SHALL NOT DIMINISH THE LIABILITY OF A PRE-  
15 VIOUS OWNER OR OPERATOR OF A FACILITY WHO WOULD OTHERWISE BE  
16 LIABLE UNDER THIS ACT. NOTWITHSTANDING THIS SECTION, IF THE  
17 PERSON THAT MAY BE LIABLE UNDER SECTION 12 OBTAINED ACTUAL KNOWL-  
18 EDGE OF THE RELEASE OR THREAT OF RELEASE AT THE FACILITY WHEN  
19 THAT PERSON OWNED THE REAL PROPERTY AND THEN TRANSFERRED OWNER-  
20 SHIP OF THE PROPERTY TO ANOTHER PERSON WITHOUT DISCLOSING THIS  
21 KNOWLEDGE, THE PERSON THAT MAY BE LIABLE UNDER SECTION 12 SHALL  
22 BE LIABLE UNDER SECTION 12 AND A DEFENSE UNDER THIS SECTION SHALL  
23 NOT BE AVAILABLE TO THAT PERSON. NOTHING IN THIS SECTION SHALL  
24 AFFECT THE LIABILITY UNDER THIS ACT OF A PERSON THAT MAY BE  
25 LIABLE UNDER SECTION 12 WHO, BY AN ACT OR OMISSION, CAUSED OR  
26 CONTRIBUTED TO THE RELEASE OR THREAT OF RELEASE THAT IS THE  
27 SUBJECT OF A RESPONSE ACTIVITY AT THE FACILITY.

1       (6) THE STATE OR A LOCAL UNIT OF GOVERNMENT SHALL NOT BE  
2 LIABLE UNDER THIS ACT FOR COSTS OR DAMAGES AS A RESULT OF ACTIONS  
3 TAKEN IN RESPONSE TO A RELEASE OR THREAT OF RELEASE GENERATED BY  
4 OR FROM A FACILITY OWNED BY ANOTHER PERSON. THIS SUBSECTION  
5 SHALL NOT PRECLUDE LIABILITY FOR COSTS OR DAMAGES AS A RESULT OF  
6 GROSS NEGLIGENCE, INCLUDING RECKLESS, WILLFUL, OR WANTON MISCON-  
7 DUCT, OR INTENTIONAL MISCONDUCT BY THE STATE OR LOCAL UNIT OF  
8 GOVERNMENT.

9       (7) A COMMERCIAL LENDING INSTITUTION THAT WITHOUT PARTICI-  
10 PATING IN THE MANAGEMENT OF A FACILITY ACQUIRES A PROPERTY THAT  
11 IS A FACILITY FOR THE PURPOSE OF REALIZING ON A SECURITY INTEREST  
12 SHALL NOT BE LIABLE UNDER THIS ACT, IF 1 OR MORE OF THE FOLLOWING  
13 IS TRUE:

14       (A) THE PROPERTY IS A RESIDENTIAL PROPERTY.

15       (B) THE PROPERTY IS AN AGRICULTURAL PROPERTY, AND THE  
16 RELEASE OR THREATENED RELEASED OCCURRED AS A RESULT OF THE APPLI-  
17 CATION OF A FERTILIZER, SOIL CONDITIONER, OR PESTICIDE, OR A COM-  
18 BINATION OF THESE SUBSTANCES, IF APPLIED ACCORDING TO LABEL  
19 DIRECTIONS AND ACCORDING TO GENERALLY ACCEPTED AGRICULTURAL AND  
20 MANAGEMENT PRACTICES.

21       (C) THE COMMERCIAL LENDING INSTITUTION ACQUIRED OWNERSHIP OR  
22 CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH A COURT ORDER OR  
23 OTHER INVOLUNTARY CIRCUMSTANCE.

24       SEC. 12B. (1) IF 2 OR MORE PERSONS ACTING INDEPENDENTLY  
25 CAUSE A RELEASE OR THREAT OF RELEASE THAT RESULTS IN RESPONSE  
26 ACTIVITY COSTS, OR DAMAGES FOR INJURY TO, DESTRUCTION OF, OR LOSS  
27 OF NATURAL RESOURCES, AND THERE IS A REASONABLE BASIS FOR

1 DIVISION OF HARM ACCORDING TO CONTRIBUTION OF EACH PERSON, EACH  
2 PERSON IS SUBJECT TO LIABILITY UNDER SECTION 12 ONLY FOR THE POR-  
3 TION OF THE TOTAL HARM THAT THE PERSON CAUSED. HOWEVER, A PERSON  
4 SEEKING TO LIMIT ITS LIABILITY ON THE GROUND THAT THE ENTIRE HARM  
5 IS CAPABLE OF DIVISION SHALL HAVE THE BURDEN OF PROOF AS TO THE  
6 DIVISIBILITY OF THE HARM AND AS TO THE APPORTIONMENT OF  
7 LIABILITY.

8 (2) IF 2 OR MORE PERSONS CAUSE OR CONTRIBUTE TO AN INDIVISI-  
9 BLE HARM THAT RESULTS IN RESPONSE ACTIVITY COSTS, OR DAMAGES FOR  
10 INJURY TO, DESTRUCTION OF, OR LOSS OF NATURAL RESOURCES, EACH  
11 PERSON IS SUBJECT TO LIABILITY UNDER SECTION 12 FOR THE ENTIRE  
12 HARM.

13 (3) A PERSON MAY SEEK CONTRIBUTION FROM ANY OTHER PERSON WHO  
14 IS LIABLE OR MAY BE LIABLE UNDER SECTION 12 DURING OR FOLLOWING A  
15 CIVIL ACTION BROUGHT UNDER THIS ACT. NOTHING IN THIS SUBSECTION  
16 SHALL DIMINISH THE RIGHT OF A PERSON TO BRING AN ACTION FOR CON-  
17 TRIBUTION IN THE ABSENCE OF A CIVIL ACTION BY THE STATE UNDER  
18 THIS ACT. THE COURT SHALL CONSIDER ALL OF THE FOLLOWING FACTORS  
19 IN ALLOCATING RESPONSE ACTIVITY COSTS AND DAMAGES AMONG LIABLE  
20 PERSONS:

21 (A) EACH PERSON'S RELATIVE DEGREE OF RESPONSIBILITY IN CAUS-  
22 ING THE RELEASE OR THREAT OF RELEASE.

23 (B) THE PRINCIPLES OF EQUITY PERTAINING TO CONTRIBUTION.

24 (C) THE DEGREE OF INVOLVEMENT OF AND CARE EXERCISED BY THE  
25 PERSON IN THE INVOLVEMENT OF THE PERSON WITH THE HAZARDOUS  
26 SUBSTANCE.

1 (D) THE DEGREE OF COOPERATION BY THE PERSON WITH FEDERAL,  
2 STATE, OR LOCAL OFFICIALS TO PREVENT, MINIMIZE, RESPOND TO, OR  
3 REMEDY THE RELEASE OR THREAT OF RELEASE.

4 (E) WHETHER EQUITY REQUIRES THAT THE LIABILITY OF SOME OF  
5 THE PERSONS SHOULD CONSTITUTE A SINGLE SHARE.

6 (4) IF, IN AN ACTION FOR CONTRIBUTION UNDER SUBSECTION (3),  
7 THE COURT DETERMINES THAT ALL OR PART OF A PERSON'S SHARE OF  
8 LIABILITY IS UNCOLLECTIBLE FROM THAT PERSON, THEN THE COURT MAY  
9 REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG THE OTHER PERSONS  
10 ACCORDING TO THE FACTORS LISTED IN SUBSECTION (3). A PERSON  
11 WHOSE SHARE IS DETERMINED TO BE UNCOLLECTIBLE SHALL CONTINUE TO  
12 BE SUBJECT TO CONTRIBUTION AND TO ANY CONTINUING LIABILITY TO THE  
13 STATE.

14 (5) A PERSON THAT HAS RESOLVED ITS LIABILITY TO THE STATE IN  
15 AN ADMINISTRATIVE OR JUDICIALLY APPROVED SETTLEMENT SHALL NOT BE  
16 LIABLE FOR CLAIMS FOR CONTRIBUTION REGARDING MATTERS ADDRESSED IN  
17 THE SETTLEMENT. THE SETTLEMENT DOES NOT DISCHARGE ANY OF THE  
18 OTHER PERSONS LIABLE UNDER SECTION 12 UNLESS THE TERMS OF THE  
19 SETTLEMENT PROVIDE FOR THIS DISCHARGE, BUT THE POTENTIAL LIABIL-  
20 ITY OF THE OTHER PERSONS IS REDUCED BY THE AMOUNT OF THE  
21 SETTLEMENT.

22 (6) IF THE STATE OBTAINS LESS THAN COMPLETE RELIEF FROM A  
23 PERSON THAT HAS RESOLVED ITS LIABILITY TO THE STATE IN AN ADMIN-  
24 ISTRATIVE OR JUDICIALLY APPROVED SETTLEMENT UNDER THIS ACT, THE  
25 STATE MAY BRING AN ACTION AGAINST ANY OTHER PERSON LIABLE UNDER  
26 SECTION 12 THAT HAS NOT RESOLVED ITS LIABILITIES.

1 (7) A PERSON THAT HAS RESOLVED ITS LIABILITY TO THE STATE  
2 FOR SOME OR ALL OF A RESPONSE ACTIVITY IN AN ADMINISTRATIVE OR  
3 JUDICIALLY APPROVED SETTLEMENT MAY SEEK CONTRIBUTION FROM ANY  
4 PERSON THAT IS NOT A PARTY TO THE SETTLEMENT DESCRIBED IN SUBSEC-  
5 TION (5).

6 (8) IN AN ACTION FOR CONTRIBUTION UNDER THIS SECTION, THE  
7 RIGHTS OF ANY PERSON THAT HAS RESOLVED ITS LIABILITY TO THE STATE  
8 SHALL BE SUBORDINATE TO THE RIGHTS OF THE STATE, IF THE STATE  
9 FILES AN ACTION UNDER THIS ACT.

10 SEC. 12C. (1) AN INDEMNIFICATION, HOLD HARMLESS, OR SIMILAR  
11 AGREEMENT OR CONVEYANCE SHALL NOT BE EFFECTIVE TO TRANSFER FROM A  
12 PERSON WHO MAY BE LIABLE TO THE STATE FOR EVALUATION OR RESPONSE  
13 ACTIVITY COSTS OR DAMAGES FOR A RELEASE OR THREAT OF RELEASE  
14 UNDER SECTION 12 TO ANY OTHER PERSON THE LIABILITY IMPOSED UNDER  
15 THIS ACT. THIS SECTION SHALL NOT BAR AN AGREEMENT TO INSURE,  
16 HOLD HARMLESS, OR INDEMNIFY A PARTY TO THE AGREEMENT FOR LIABIL-  
17 ITY UNDER THIS ACT.

18 (2) THIS ACT SHALL NOT BAR A CAUSE OF ACTION THAT A PERSON  
19 SUBJECT TO LIABILITY UNDER THIS ACT, OR A GUARANTOR, HAS OR WOULD  
20 HAVE, BY REASON OF SUBROGATION OR OTHERWISE AGAINST ANY PERSON.

21 SEC. 12D. (1) TO DETERMINE THE NEED FOR RESPONSE ACTIVITY,  
22 OR SELECTING OR TAKING A RESPONSE ACTIVITY OR OTHERWISE ENFORCING  
23 THIS ACT OR A RULE PROMULGATED UNDER THIS ACT, THE DIRECTORS OR  
24 THEIR AUTHORIZED REPRESENTATIVES MAY UPON REASONABLE NOTICE  
25 REQUIRE A PERSON TO FURNISH ANY INFORMATION THAT THE PERSON MAY  
26 HAVE RELATING TO ANY OF THE FOLLOWING:

1 (A) THE IDENTIFICATION, NATURE, AND QUANTITY OF MATERIALS  
2 THAT HAVE BEEN OR ARE GENERATED, TREATED, STORED, HANDLED, OR  
3 DISPOSED OF AT A FACILITY OR TRANSPORTED TO A FACILITY.

4 (B) THE NATURE OR EXTENT OF A RELEASE OR THREATENED RELEASE  
5 AT OR FROM A FACILITY.

6 (C) INFORMATION RELATING TO THE ABILITY OF A PERSON TO PAY  
7 FOR OR PERFORM RESPONSE ACTIVITY.

8 (2) UPON REASONABLE NOTICE, A PERSON REQUIRED TO FURNISH  
9 INFORMATION PURSUANT TO SUBSECTION (1) SHALL EITHER:

10 (A) GRANT THE DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES  
11 ACCESS AT ALL REASONABLE TIMES TO ANY PLACE, PROPERTY, OR LOCA-  
12 TION TO INSPECT AND COPY THE RELATED INFORMATION.

13 (B) COPY AND FURNISH TO THE DIRECTORS OR THEIR AUTHORIZED  
14 REPRESENTATIVES THE RELATED INFORMATION.

15 (3) IF THERE IS A REASONABLE BASIS TO BELIEVE THAT THERE MAY  
16 BE A RELEASE OR THREAT OF RELEASE, THE DIRECTORS OR THEIR AUTHO-  
17 RIZED REPRESENTATIVES SHALL HAVE THE RIGHT TO ENTER AT ALL REA-  
18 SONABLE TIMES ANY PUBLIC OR PRIVATE PROPERTY FOR ANY OF THE FOL-  
19 LOWING PURPOSES:

20 (A) IDENTIFYING A SITE.

21 (B) INVESTIGATING THE EXISTENCE, ORIGIN, NATURE, OR EXTENT  
22 OF A RELEASE OR THREATENED RELEASE.

23 (C) INSPECTING, TESTING, TAKING PHOTOGRAPHS OR VIDEOTAPES,  
24 OR SAMPLING OF ANY OF THE FOLLOWING: SOILS, AIR, SURFACE WATER,  
25 GROUNDWATER, SUSPECTED HAZARDOUS SUBSTANCES, OR ANY CONTAINERS OR  
26 LABELS OF SUSPECTED HAZARDOUS SUBSTANCES.

1 (D) DETERMINING THE NEED FOR OR SELECTING ANY RESPONSE  
2 ACTIVITY.

3 (E) TAKING OR MONITORING IMPLEMENTATION OF ANY RESPONSE  
4 ACTIVITY.

5 (4) A PERSON WHO ENTERS PUBLIC OR PRIVATE PROPERTY PURSUANT  
6 TO SUBSECTION (3) SHALL PRESENT CREDENTIALS, MAKE A REASONABLE  
7 EFFORT TO CONTACT THE PERSON IN CHARGE OF THE FACILITY OR THAT  
8 PERSON'S DESIGNEE, AND, UPON REQUEST, DESCRIBE THE NATURE OF THE  
9 ACTIVITIES AUTHORIZED UNDER SUBSECTION (3) TO BE UNDERTAKEN. THE  
10 PERSON IN CHARGE OR HIS OR HER AGENT MAY ACCOMPANY THE DIRECTORS  
11 OR THEIR AUTHORIZED REPRESENTATIVES DURING THE ACTIVITIES AUTHO-  
12 RIZED UNDER SUBSECTION (3) THAT TAKE PLACE AND MAY PARTICIPATE IN  
13 THE COLLECTION OF ANY SPLIT SAMPLES ON THE PROPERTY. THE ABSENCE  
14 OR UNAVAILABILITY OF THE PERSON IN CHARGE OR THAT PERSON'S AGENT  
15 SHALL NOT DELAY OR LIMIT THE AUTHORITY OF THE DIRECTORS OR THEIR  
16 AUTHORIZED REPRESENTATIVES TO ENTER THE PROPERTY OR PROCEED WITH  
17 THE ACTIVITIES AUTHORIZED UNDER SUBSECTION (3).

18 (5) IF THE DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES  
19 OBTAIN ANY SAMPLES, BEFORE LEAVING THE PROPERTY THEY SHALL GIVE  
20 TO THE PERSON IN CHARGE OF THE PROPERTY FROM WHICH THE SAMPLES  
21 WERE OBTAINED A RECEIPT DESCRIBING THE SAMPLE AND, IF REQUESTED,  
22 A PORTION OF EACH SAMPLE. A COPY OF THE RESULTS OF ANY ANALYSIS  
23 OF THE SAMPLES SHALL UPON REQUEST BE FURNISHED PROMPTLY TO THE  
24 PERSON IN CHARGE. A COPY OF ANY PHOTOGRAPH OR VIDEOTAPE TAKEN  
25 PURSUANT TO SUBSECTION (3)(C) SHALL UPON REQUEST BE FURNISHED  
26 PROMPTLY TO THE PERSON IN CHARGE.

1 (6) ALL INSPECTIONS AND INVESTIGATIONS UNDERTAKEN BY THE  
2 DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES UNDER THIS SECTION  
3 SHALL BE COMPLETED WITH REASONABLE PROMPTNESS.

4 (7) FOR THE PURPOSES OF ENFORCING THE INFORMATION GATHERING  
5 AND ENTRY AUTHORITY PROVIDED IN THIS SECTION, THE ATTORNEY GENER-  
6 AL, ON BEHALF OF THE STATE, MAY DO EITHER OF THE FOLLOWING:

7 (A) PETITION THE COURT OF APPROPRIATE JURISDICTION FOR A  
8 WARRANT AUTHORIZING ACCESS TO PROPERTY OR INFORMATION PURSUANT TO  
9 THIS SECTION.

10 (B) COMMENCE A CIVIL ACTION TO COMPEL COMPLIANCE WITH A  
11 REQUEST FOR INFORMATION OR ENTRY PURSUANT TO THIS SECTION, TO  
12 AUTHORIZE INFORMATION GATHERING AND ENTRY PROVIDED FOR IN THIS  
13 SECTION, AND TO ENJOIN INTERFERENCE WITH THE EXERCISE OF THE  
14 AUTHORITY PROVIDED IN THIS SECTION.

15 (8) IN A CIVIL ACTION BROUGHT PURSUANT TO SUBSECTION (7),  
16 WHERE THERE IS A REASONABLE BASIS TO BELIEVE THERE MAY BE A  
17 RELEASE OR A THREATENED RELEASE, THE COURT SHALL IN THE CASE OF  
18 INTERFERENCE OR NONCOMPLIANCE WITH INFORMATION REQUESTS PURSUANT  
19 TO SUBSECTION (1), OR WITH ENTRY OR INSPECTION REQUESTS PURSUANT  
20 TO SUBSECTION (3), ENJOIN INTERFERENCE WITH AND DIRECT COMPLIANCE  
21 WITH THE REQUESTS UNLESS THE DEFENDANT ESTABLISHES THAT, UNDER  
22 THE CIRCUMSTANCES OF THE CASE, THE REQUEST IS ARBITRARY AND  
23 CAPRICIOUS, AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORD-  
24 ANCE WITH LAW.

25 (9) IN A CIVIL ACTION BROUGHT PURSUANT TO SUBSECTION (7)  
26 WHERE THERE IS A REASONABLE BASIS TO BELIEVE THERE MAY BE A  
27 RELEASE OR A THREATENED RELEASE, THE COURT MAY ASSESS A CIVIL

1 FINE NOT TO EXCEED \$25,000.00 FOR EACH DAY OF NONCOMPLIANCE  
2 AGAINST ANY PERSON WHO UNREASONABLY FAILS TO COMPLY WITH THE PRO-  
3 VISIONS OF SUBSECTION (1), (2), OR (3).

4 (10) INFORMATION OBTAINED BY THE DIRECTORS OR THEIR AUTHO-  
5 RIZED REPRESENTATIVES AS AUTHORIZED UNDER SUBSECTION (1) OR (2)  
6 SHALL BE AVAILABLE TO THE PUBLIC TO THE EXTENT PROVIDED BY THE  
7 FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF  
8 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED  
9 LAWS. A PERSON WHO PROVIDES INFORMATION PURSUANT TO  
10 SUBSECTION (1) OR (2), OR THE PERSON IN CHARGE OF A FACILITY AT  
11 WHICH PHOTOGRAPHS OR VIDEOTAPES ARE TAKEN PURSUANT TO  
12 SUBSECTION (3), MAY DESIGNATE THE INFORMATION THAT THE PERSON  
13 BELIEVES TO BE ENTITLED TO PROTECTION AS IF THEY WERE EXEMPT FROM  
14 DISCLOSURE AS BEING EITHER TRADE SECRETS OR INFORMATION OF A PER-  
15 SONAL NATURE UNDER SECTION 13(1)(A) OR (G) OF THE FREEDOM OF  
16 INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING  
17 SECTION 15.243 OF THE MICHIGAN COMPILED LAWS, AND SUBMIT THAT  
18 SPECIFICALLY DESIGNATED INFORMATION SEPARATELY FROM OTHER INFOR-  
19 MATION REQUIRED TO BE PROVIDED UNDER THIS SECTION.

20 (11) NOTWITHSTANDING SUBSECTION (10), THE FOLLOWING INFORMA-  
21 TION OBTAINED BY THE DIRECTORS OR THEIR AUTHORIZED REPRESENTA-  
22 TIVES AS REQUIRED BY THIS SECTION SHALL BE AVAILABLE TO THE  
23 PUBLIC:

24 (A) THE TRADE NAME, COMMON NAME, OR GENERIC CLASS OR CATE-  
25 GORY OF THE HAZARDOUS SUBSTANCE.

26 (B) THE PHYSICAL PROPERTIES OF A HAZARDOUS SUBSTANCE,  
27 INCLUDING ITS BOILING POINT, MELTING POINT, FLASH POINT, SPECIFIC

1 GRAVITY, VAPOR DENSITY, SOLUBILITY IN WATER, AND VAPOR PRESSURE  
2 AT 20 DEGREES CELSIUS.

3 (C) THE HAZARDS TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR  
4 THE ENVIRONMENT POSED BY A HAZARDOUS SUBSTANCE, INCLUDING PHYSI-  
5 CAL HAZARDS, SUCH AS EXPLOSION, AND POTENTIAL ACUTE AND CHRONIC  
6 HEALTH HAZARDS.

7 (D) THE POTENTIAL ROUTES OF HUMAN EXPOSURE TO THE HAZARDOUS  
8 SUBSTANCE AT THE FACILITY BEING INVESTIGATED, ENTERED, OR  
9 INSPECTED UNDER THIS SECTION.

10 (E) THE LOCATION OF DISPOSAL OF ANY WASTE STREAM RELEASED OR  
11 THREATENED TO BE RELEASED FROM THE FACILITY.

12 (F) MONITORING DATA OR ANALYSIS OF MONITORING DATA PERTAIN-  
13 ING TO DISPOSAL ACTIVITIES RELATED TO THE FACILITY.

14 (G) HYDROGEOLOGIC DATA.

15 (H) GROUNDWATER MONITORING DATA.

16 (12) AS USED IN THIS SECTION, "INFORMATION" INCLUDES, BUT IS  
17 NOT LIMITED TO, DOCUMENTS, MATERIALS, RECORDS, PHOTOGRAPHS, AND  
18 VIDEOTAPES.

19 SEC. 12E. (1) AN OWNER OR OPERATOR OF A FACILITY WHO  
20 OBTAINS INFORMATION THAT THERE MAY BE A RELEASE AT THAT FACILITY  
21 SHALL IMMEDIATELY TAKE APPROPRIATE ACTION, CONSISTENT WITH APPLI-  
22 CABLE LAWS AND RULES PROMULGATED BY THE DEPARTMENT, TO DO ALL OF  
23 THE FOLLOWING:

24 (A) CONFIRM THE EXISTENCE OF THE RELEASE.

25 (B) DETERMINE THE NATURE AND EXTENT OF THE RELEASE.

26 (C) REPORT THE RELEASE TO THE DEPARTMENT WITHIN 24 HOURS  
27 AFTER OBTAINING KNOWLEDGE OF THE RELEASE. THE REQUIREMENTS OF

1 THIS SUBDIVISION SHALL APPLY TO REPORTABLE QUANTITIES OF  
2 HAZARDOUS SUBSTANCES ESTABLISHED PURSUANT TO 40 C.F.R. 302.4  
3 (1989), UNLESS THE DEPARTMENT ESTABLISHES THROUGH ADMINISTRATIVE  
4 RULES ALTERNATE OR ADDITIONAL REPORTABLE QUANTITIES AS NECESSARY  
5 TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE  
6 ENVIRONMENT.

7 (D) IMMEDIATELY STOP OR PREVENT THE RELEASE AT THE SOURCE.

8 (E) IMMEDIATELY IDENTIFY AND ELIMINATE ANY THREAT OF FIRE OR  
9 EXPLOSION OR ANY DIRECT CONTACT HAZARDS.

10 (F) IMMEDIATELY INITIATE REMOVAL OF A HAZARDOUS SUBSTANCE  
11 THAT IS IN A LIQUID PHASE, THAT IS NOT DISSOLVED IN WATER, AND  
12 THAT HAS BEEN RELEASED.

13 (2) A PERSON WHO HOLDS AN EASEMENT INTEREST IN A PORTION OF  
14 A PROPERTY FOR THE PURPOSE OF PROVIDING A PUBLIC SERVICE, INCLUD-  
15 ING, BUT NOT LIMITED TO, UTILITIES, SEWERS, AND ROADS, WHO KNOWS  
16 OR SHOULD HAVE KNOWN THAT THERE MAY BE A RELEASE OR THREAT OF  
17 RELEASE ON, OR IN CLOSE PROXIMITY TO, THE EASEMENT SHALL REPORT  
18 THE RELEASE OR THREAT OF RELEASE TO THE DEPARTMENT WITHIN 24  
19 HOURS.

20 (3) AN OWNER OR OPERATOR OF A FACILITY OR A PERSON NOTIFIED  
21 BY THE DEPARTMENT AS POTENTIALLY LIABLE PURSUANT TO SECTION 12,  
22 UPON WRITTEN REQUEST BY THE DEPARTMENT, SHALL TAKE THE FOLLOWING  
23 ADDITIONAL ACTIONS:

24 (A) PROVIDE A PLAN FOR AND UNDERTAKE INTERIM RESPONSE  
25 ACTIVITIES.

26 (B) PROVIDE A PLAN FOR AND UNDERTAKE EVALUATION ACTIVITIES.

1 (C) TAKE ANY OTHER RESPONSE ACTIVITY DETERMINED BY THE  
2 DEPARTMENT TO BE TECHNICALLY SOUND AND NECESSARY TO PROTECT THE  
3 PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT.

4 (D) SUBMIT TO THE DEPARTMENT FOR APPROVAL A REMEDIAL ACTION  
5 PLAN THAT, WHEN IMPLEMENTED, WILL ACHIEVE THE CLEANUP LEVELS  
6 SPECIFIED IN RULES PROMULGATED UNDER THIS ACT.

7 (E) IMPLEMENT AN APPROVED REMEDIAL ACTION PLAN IN ACCORDANCE  
8 WITH A SCHEDULE APPROVED BY THE DEPARTMENT.

9 (4) UPON A DETERMINATION BY THE DEPARTMENT THAT A PERSON HAS  
10 COMPLETED ALL RESPONSE ACTIVITY AT A FACILITY PURSUANT TO AN  
11 APPROVED REMEDIAL ACTION PLAN PREPARED AND IMPLEMENTED IN COMPLI-  
12 ANCE WITH RULES PROMULGATED UNDER THIS ACT, THE DEPARTMENT, UPON  
13 REQUEST OF A PERSON, SHALL EXECUTE AND PRESENT A DOCUMENT STATING  
14 THAT ALL RESPONSE ACTIVITIES REQUIRED IN THE APPROVED REMEDIAL  
15 ACTION PLAN HAVE BEEN COMPLETED.

16 (5) THIS SECTION SHALL NOT LIMIT THE AUTHORITY OF THE  
17 DEPARTMENT TO TAKE OR CONDUCT RESPONSE ACTIVITIES PURSUANT TO  
18 THIS ACT OR TO LIMIT THE LIABILITY OF A PERSON PURSUANT TO  
19 SECTION 12.

20 SEC. 12F. (1) THE DEPARTMENT MAY REQUIRE A PERSON THAT MAY  
21 BE LIABLE UNDER SECTION 12 TO TAKE RESPONSE ACTIVITIES AS DETER-  
22 MINED BY THE DEPARTMENT TO BE NECESSARY AND APPROPRIATE TO PRO-  
23 TECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT.

24 (2) WHEN THE DIRECTOR DETERMINES THAT THERE MAY BE AN IMMI-  
25 NENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, WELFARE,  
26 OR THE ENVIRONMENT BECAUSE OF AN ACTUAL OR THREATENED RELEASE  
27 FROM A FACILITY, THE DIRECTOR MAY ISSUE ADMINISTRATIVE ORDERS AS

1 MAY BE NECESSARY TO PROTECT THE PUBLIC HEALTH, WELFARE, AND THE  
2 ENVIRONMENT. THE DIRECTOR MAY ISSUE ADMINISTRATIVE ORDERS UNDER  
3 THIS SECTION TO A PERSON IDENTIFIED BY THE DEPARTMENT AS A PERSON  
4 THAT MAY BE LIABLE UNDER SECTION 12 REQUIRING THAT PERSON TO PER-  
5 FORM RESPONSE ACTIVITY RELATING TO A FACILITY FOR WHICH THAT  
6 PERSON MAY BE LIABLE, OR TO PROVIDE RECORD NOTICE AS REQUIRED  
7 UNDER SECTION 12K, OR TO TAKE ANY OTHER ACTION REQUIRED BY THIS  
8 ACT. AN ORDER ISSUED UNDER THIS SECTION SHALL STATE WITH REASON-  
9 ABLE SPECIFICITY THE BASIS FOR ISSUANCE OF THE ORDER AND SPECIFY  
10 A REASONABLE TIME FOR COMPLIANCE. THE ADMINISTRATIVE ORDER MAY  
11 REQUIRE RESPONSE ACTIVITY AS THE DEPARTMENT DETERMINES MAY BE  
12 NECESSARY.

13 (3) WITHIN 30 DAYS AFTER ISSUANCE OF AN ADMINISTRATIVE ORDER  
14 UNDER THIS SECTION, A PERSON TO WHOM THE ORDER WAS ISSUED SHALL  
15 INDICATE IN WRITING WHETHER IT INTENDS TO COMPLY WITH THE ORDER.

16 (4) A PERSON THAT, WITHOUT SUFFICIENT CAUSE, VIOLATES OR  
17 FAILS TO PROPERLY COMPLY WITH AN ADMINISTRATIVE ORDER ISSUED  
18 UNDER THIS SECTION SHALL BE LIABLE FOR EITHER OR BOTH OF THE  
19 FOLLOWING:

20 (A) A CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY IN  
21 WHICH THE VIOLATION OCCURS OR THE FAILURE TO COMPLY CONTINUES. A  
22 FINE IMPOSED UNDER THIS SUBSECTION SHALL BE BASED UPON THE SERI-  
23 OUSNESS OF THE VIOLATION AND ANY GOOD FAITH EFFORTS BY THE VIOLA-  
24 TOR TO COMPLY WITH THE ADMINISTRATIVE ORDER.

25 (B) FOR EXEMPLARY DAMAGES IN AN AMOUNT EQUAL TO 3 TIMES THE  
26 AMOUNT OF ANY COSTS OF RESPONSE ACTIVITY INCURRED BY THE STATE AS  
27 A RESULT OF A FAILURE TO COMPLY WITH AN ADMINISTRATIVE ORDER.

1           (5) A PERSON TO WHOM AN ADMINISTRATIVE ORDER WAS ISSUED  
2 UNDER THIS SECTION AND WHO COMPLIED WITH THE TERMS OF THE ORDER  
3 WHO BELIEVES THAT THE ORDER WAS ARBITRARY AND CAPRICIOUS OR  
4 UNLAWFUL MAY PETITION THE DEPARTMENT, WITHIN 60 DAYS AFTER COM-  
5 PLETION OF THE REQUIRED ACTION, FOR REIMBURSEMENT FROM THE FUND  
6 FOR THE REASONABLE COSTS OF THE ACTION PLUS INTEREST AT THE RATE  
7 DESCRIBED IN SECTION 12(4) AND OTHER NECESSARY COSTS INCURRED IN  
8 SEEKING REIMBURSEMENT UNDER THIS SUBSECTION. IF THE DEPARTMENT  
9 REFUSES TO GRANT ALL OR PART OF THE PETITION, THE PETITIONER MAY,  
10 WITHIN 30 DAYS OF RECEIPT OF THE REFUSAL, FILE AN ACTION AGAINST  
11 THE DEPARTMENT IN THE COURT OF CLAIMS SEEKING THIS RELIEF. TO  
12 OBTAIN REIMBURSEMENT, THE PETITIONER SHALL ESTABLISH BY A PREPON-  
13 DERANCE OF THE EVIDENCE THAT THE PETITIONER IS NOT LIABLE UNDER  
14 SECTION 12 OR THAT THE ACTION ORDERED WAS ARBITRARY AND CAPRI-  
15 CIOUS OR UNLAWFUL, AND IN EITHER INSTANCE THAT COSTS FOR WHICH  
16 THE PETITIONER SEEKS REIMBURSEMENT ARE REASONABLE IN LIGHT OF THE  
17 ACTION REQUIRED BY AND UNDERTAKEN PURSUANT TO THE RELEVANT ORDER.

18           SEC. 12G. (1) THE DEPARTMENT MAY TAKE RESPONSE ACTIVITY OR  
19 APPROVE OF RESPONSE ACTIVITY PROPOSED BY A PERSON NOT INCONSIS-  
20 TENT WITH ANY RULES PROMULGATED UNDER THIS ACT RELATING TO THE  
21 SELECTION AND IMPLEMENTATION OF RESPONSE ACTIVITY AS THE DEPART-  
22 MENT CONCLUDES IS NECESSARY AND APPROPRIATE TO PROTECT THE PUBLIC  
23 HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT.

24           (2) REMEDIAL ACTION UNDERTAKEN UNDER SUBSECTION (1) SHALL AT  
25 A MINIMUM ACCOMPLISH ALL OF THE FOLLOWING:

26           (A) ASSURE THE PROTECTION OF THE PUBLIC HEALTH, SAFETY,  
27 WELFARE, OR THE ENVIRONMENT.

1 (B) ATTAIN A DEGREE OF CLEANUP AND CONTROL OF HAZARDOUS  
2 SUBSTANCES THAT COMPLIES WITH ALL APPLICABLE OR RELEVANT AND  
3 APPROPRIATE REQUIREMENTS, RULES, CRITERIA, LIMITATIONS, AND STANDARDS OF STATE AND FEDERAL ENVIRONMENTAL LAW.

5 (C) BE CONSISTENT WITH ANY CLEANUP STANDARDS INCORPORATED IN  
6 ANY RULES PROMULGATED UNDER THIS ACT.

7 (3) THE COST EFFECTIVENESS OF ALTERNATIVE MEANS OF COMPLYING  
8 WITH THIS SECTION SHALL BE CONSIDERED BY THE DEPARTMENT ONLY IN  
9 SELECTING AMONG ALTERNATIVES THAT MEET ALL OF THE CRITERIA OF  
10 SUBSECTION (2).

11 (4) REMEDIAL ACTIONS THAT PERMANENTLY AND SIGNIFICANTLY  
12 REDUCE THE VOLUME, TOXICITY, OR MOBILITY OF THE HAZARDOUS SUB-  
13 STANCES ARE TO BE PREFERRED.

14 (5) THE DEPARTMENT SHALL ENCOURAGE THE USE OF INNOVATIVE  
15 CLEANUP TECHNOLOGIES. BEFORE JULY 1, 1995, THE DEPARTMENT SHALL  
16 UNDERTAKE 3 PILOT PROJECTS TO DEMONSTRATE INNOVATIVE CLEANUP  
17 TECHNOLOGIES AT FACILITIES WHERE MONEY FROM THE FUND IS USED.

18 (6) BEFORE APPROVAL OF A PROPOSED PLAN FOR REMEDIAL ACTION  
19 AT A FACILITY INCLUDED ON THE LIST PURSUANT TO SECTION 6 THAT IS  
20 NOT AN INTERIM RESPONSE ACTIVITY IF MONEY FROM THE FUND IS TO BE  
21 USED OR AS SPECIFIED IN RULES PROMULGATED UNDER THIS ACT, THE  
22 DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

23 (A) PUBLISH A NOTICE AND BRIEF SUMMARY OF THE RECOMMENDED  
24 PLAN.

25 (B) PROVIDE FOR PUBLIC REVIEW AND COMMENT PERTINENT TO DOCUMENTS  
26 RELATING TO THE REMEDIAL ACTION PLAN, INCLUDING, IF

1 APPLICABLE, THE FEASIBILITY STUDY THAT OUTLINES ALTERNATIVE  
2 REMEDIAL ACTION MEASURES CONSIDERED.

3 (C) PROVIDE AN OPPORTUNITY FOR A PUBLIC MEETING AT OR NEAR  
4 THE FACILITY WHEN EITHER OF THE FOLLOWING OCCURS:

5 (i) THE DEPARTMENT DETERMINES THAT THERE IS A SIGNIFICANT  
6 PUBLIC INTEREST OR THAT FOR ANY OTHER REASON A PUBLIC MEETING IS  
7 APPROPRIATE.

8 (ii) A LOCAL UNIT OF GOVERNMENT IN WHICH THE FACILITY IS  
9 LOCATED, BY A MAJORITY VOTE OF ITS GOVERNING BODY, REQUESTS A  
10 PUBLIC MEETING.

11 (D) PROVIDE A DOCUMENT THAT SUMMARIZES THE MAJOR ISSUES  
12 RAISED BY THE PUBLIC AND HOW THEY ARE TO BE ADDRESSED BY THE  
13 FINAL APPROVED PLAN.

14 (7) FOR PURPOSES OF THIS SECTION, PUBLICATION SHALL INCLUDE,  
15 AT A MINIMUM, PUBLICATION IN A MAJOR LOCAL NEWSPAPER OF GENERAL  
16 CIRCULATION. IN ADDITION, THE ADMINISTRATIVE RECORD SHALL BE  
17 MADE AVAILABLE BY THE DEPARTMENT FOR INSPECTION BY MEMBERS OF THE  
18 PUBLIC AT OR NEAR THE FACILITY AND IN LANSING.

19 (8) THE DEPARTMENT SHALL PREPARE A SUMMARY DOCUMENT THAT  
20 EXPLAINS THE REASONS FOR THE SELECTION OR APPROVAL OF A REMEDIAL  
21 ACTION PLAN. IN ADDITION, THE DEPARTMENT SHALL COMPILE AN ADMIN-  
22 ISTRATIVE RECORD OF THE DECISION PROCESS THAT RESULTS IN THE  
23 SELECTION OF A REMEDIAL ACTION PLAN. THE ADMINISTRATIVE RECORD  
24 SHALL CONTAIN ALL OF THE FOLLOWING:

25 (A) REMEDIAL INVESTIGATION DATA REGARDING THE FACILITY.

26 (B) IF APPLICABLE, A FEASIBILITY STUDY AND POTENTIAL  
27 REMEDIAL ACTIONS.

1 (C) IF APPLICABLE, A SUMMARY DOCUMENT THAT EXPLAINS THE  
2 REASONS WHY A REMEDIAL INVESTIGATION OR FEASIBILITY STUDY WAS NOT  
3 CONDUCTED.

4 (D) APPLICABLE COMMENTS AND INFORMATION RECEIVED FROM THE  
5 PUBLIC, IF ANY.

6 (E) IF APPLICABLE, A DOCUMENT THAT SUMMARIZES THE SIGNIFI-  
7 CANT CONCERNS RAISED BY THE MEMBERS OF THE PUBLIC AND HOW THEY  
8 ARE TO BE ADDRESSED.

9 (F) OTHER INFORMATION DETERMINED BY THE DEPARTMENT TO BE  
10 APPROPRIATE TO THE FACILITY.

11 (9) IF COMMENTS OR INFORMATION ARE SUBMITTED FOR INCLUSION  
12 IN THE ADMINISTRATIVE RECORD THAT ARE NOT INCLUDED IN THE ADMIN-  
13 ISTRATIVE RECORD, A BRIEF EXPLANATION OF WHY THE INFORMATION WAS  
14 NOT CONSIDERED RELEVANT SHALL BE SENT TO THE PARTY BY THE DEPART-  
15 MENT AND INCLUDED IN THE RECORD.

16 SEC. 12H. (1) IN ADDITION TO OTHER RELIEF AUTHORIZED BY  
17 LAW, THE ATTORNEY GENERAL MAY, ON BEHALF OF THE STATE, COMMENCE A  
18 CIVIL ACTION SEEKING 1 OR MORE OF THE FOLLOWING:

19 (A) TEMPORARY OR PERMANENT INJUNCTIVE RELIEF NECESSARY TO  
20 PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT  
21 FROM THE RELEASE OR THREAT OF RELEASE.

22 (B) RECOVERY OF STATE RESPONSE ACTIVITY COSTS PURSUANT TO  
23 SECTION 12.

24 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,  
25 OR LOSS OF NATURAL RESOURCES RESULTING FROM THE RELEASE OR THREAT  
26 OF RELEASE, INCLUDING THE REASONABLE COSTS OF ASSESSING THE

1 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE RELEASE OR THREAT  
2 OF RELEASE.

3 (D) A DECLARATORY JUDGMENT ON LIABILITY FOR FUTURE RESPONSE  
4 COSTS AND DAMAGES.

5 (E) A CIVIL FINE OF NOT MORE THAN \$10,000.00 FOR EACH DAY OF  
6 VIOLATION OF THIS ACT OR A RULE PROMULGATED UNDER THIS ACT. A  
7 FINE IMPOSED UNDER THIS SUBDIVISION SHALL BE BASED UPON THE SERI-  
8 OUSNESS OF THE VIOLATION AND ANY GOOD FAITH EFFORTS OF THE PERSON  
9 TO COMPLY WITH THIS ACT OR A RULE PROMULGATED UNDER THIS ACT.

10 (F) A CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY OF  
11 VIOLATION OF AN ADMINISTRATIVE OR JUDICIAL ORDER ISSUED PURSUANT  
12 TO SECTION 12F, INCLUDING EXEMPLARY DAMAGES PURSUANT TO  
13 SECTION 12F.

14 (G) ENFORCEMENT OF AN ADMINISTRATIVE ORDER ISSUED PURSUANT  
15 TO SECTION 12F.

16 (H) ENFORCEMENT OF INFORMATION GATHERING AND ENTRY AUTHORITY  
17 PURSUANT TO SECTION 12D.

18 (I) ANY OTHER RELIEF NECESSARY FOR THE ENFORCEMENT OF THIS  
19 ACT.

20 (2) IF AN ACTION IS BROUGHT UNDER THIS ACT BY A PLAINTIFF  
21 OTHER THAN THE ATTORNEY GENERAL, THE PLAINTIFF SHALL, AT THE TIME  
22 OF FILING, PROVIDE A COPY OF THE COMPLAINT TO THE ATTORNEY  
23 GENERAL.

24 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN ACTION  
25 BROUGHT UNDER THIS ACT MAY BE BROUGHT IN THE CIRCUIT COURT FOR  
26 THE COUNTY OF INGHAM, IN THE COUNTY IN WHICH THE DEFENDANT  
27 RESIDES, HAS A PLACE OF BUSINESS, OR IN WHICH THE REGISTERED

1 OFFICE OF A DEFENDANT CORPORATION IS LOCATED, OR IN THE COUNTY  
2 WHERE THE RELEASE OCCURRED.

3 (4) A STATE COURT SHALL NOT HAVE JURISDICTION TO REVIEW  
4 CHALLENGES TO A RESPONSE ACTIVITY SELECTED OR APPROVED BY THE  
5 DEPARTMENT UNDER THIS ACT, OR TO REVIEW AN ADMINISTRATIVE ORDER  
6 ISSUED UNDER THIS ACT IN ANY ACTION EXCEPT AN ACTION THAT IS 1 OF  
7 THE FOLLOWING:

8 (A) AN ACTION TO RECOVER RESPONSE COSTS, DAMAGES, OR FOR  
9 CONTRIBUTION.

10 (B) AN ACTION BY THE STATE TO ENFORCE AN ADMINISTRATIVE  
11 ORDER UNDER THIS ACT OR BY ANY OTHER PERSON UNDER  
12 SECTION 12J(1)(B) TO ENFORCE AN ADMINISTRATIVE ORDER OR TO  
13 RECOVER A FINE FOR VIOLATION OF AN ORDER.

14 (C) AN ACTION PURSUANT TO SECTION 12F(5) FOR REVIEW OF A  
15 DECISION BY THE DEPARTMENT DENYING OR LIMITING REIMBURSEMENT.

16 (D) AN ACTION PURSUANT TO SECTION 12J CHALLENGING A RESPONSE  
17 ACTIVITY SELECTED OR APPROVED BY THE DEPARTMENT, IF SUCH ACTION  
18 IS FILED AFTER THE COMPLETION OF THE RESPONSE ACTIVITY.

19 (E) AN ACTION BY THE STATE PURSUANT TO SECTION 12(5) TO  
20 COMPEL RESPONSE ACTIVITY.

21 (5) IN ANY JUDICIAL ACTION UNDER THIS ACT, JUDICIAL REVIEW  
22 OF ANY ISSUES CONCERNING THE SELECTION OR ADEQUACY OF A RESPONSE  
23 ACTIVITY TAKEN, ORDERED, OR AGREED TO BY THE STATE SHALL BE  
24 LIMITED TO THE ADMINISTRATIVE RECORD. IF THE COURT FINDS THAT  
25 THE RECORD IS INCOMPLETE OR INADEQUATE, THE COURT MAY CONSIDER  
26 SUPPLEMENTAL MATERIAL IN THE ACTION. IN CONSIDERING OBJECTIONS  
27 RAISED IN A JUDICIAL ACTION UNDER THIS ACT, THE COURT SHALL

1 UPHOLD THE STATE'S DECISION IN SELECTING A RESPONSE ACTIVITY  
2 UNLESS THE OBJECTING PARTY CAN DEMONSTRATE BASED ON THE ADMINIS-  
3 TRATIVE RECORD THAT THE DECISION WAS ARBITRARY AND CAPRICIOUS OR  
4 OTHERWISE NOT IN ACCORDANCE WITH LAW. IN REVIEWING ALLEGED PRO-  
5 CEDURAL ERRORS, THE COURT MAY DISALLOW COSTS OR DAMAGES ONLY TO  
6 THE EXTENT THE ERRORS WERE SO SERIOUS AND RELATED TO MATTERS OF  
7 SUCH CENTRAL IMPORTANCE THAT THE ACTIVITY WOULD HAVE BEEN SIGNIF-  
8 ICANTLY CHANGED HAD THE ERRORS NOT BEEN MADE.

9 (6) IN AN ACTION COMMENCED UNDER THIS ACT, ANY PERSON MAY  
10 INTERVENE AS A MATTER OF RIGHT IF THAT PERSON CLAIMS AN INTEREST  
11 RELATING TO THE SUBJECT MATTER OF THE ACTION AND IS SO SITUATED  
12 THAT THE DISPOSITION OF THE ACTION MAY, AS A PRACTICAL MATTER,  
13 IMPAIR OR IMPEDE THE PERSON'S ABILITY TO PROTECT THAT INTEREST,  
14 UNLESS THE COURT FINDS THE PERSON'S INTEREST IS ADEQUATELY REPRE-  
15 SENTED BY AN EXISTING PARTY.

16 SEC. 121. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE  
17 LIABILITY UNDER THIS ACT FOR EACH RELEASE OR THREAT OF RELEASE  
18 SHALL NOT EXCEED THE TOTAL OF ALL THE COSTS OF RESPONSE ACTIVI-  
19 TIES, FINES, AND EXEMPLARY DAMAGES, PLUS \$50,000,000.00 DAMAGES  
20 FOR INJURY TO, DESTRUCTION OF, OR LOSS OF NATURAL RESOURCES  
21 RESULTING FROM THE RELEASE OR THREAT OF RELEASE, INCLUDING THE  
22 REASONABLE COSTS OF ASSESSING THE INJURY, DESTRUCTION, OR LOSS  
23 RESULTING FROM THE RELEASE OR THREAT OF RELEASE.

24 (2) NOTWITHSTANDING THE LIMITATIONS IN SUBSECTION (1), THE  
25 LIABILITY OF A PERSON UNDER THIS ACT SHALL BE THE FULL AND TOTAL  
26 COSTS AND DAMAGES LISTED IN SUBSECTION (1), IN EITHER OF THE  
27 FOLLOWING CIRCUMSTANCES:

1 (A) THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS  
2 SUBSTANCE WAS THE RESULT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE PARTY.

4 (B) THE PRIMARY CAUSE OF THE RELEASE OR THREAT OF RELEASE  
5 WAS A KNOWING VIOLATION OF APPLICABLE SAFETY, CONSTRUCTION, OR  
6 OPERATING STANDARDS OR REGULATIONS.

7 SEC. 12J. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A  
8 PERSON WHOSE HEALTH OR ENJOYMENT OF THE ENVIRONMENT IS OR MAY BE  
9 ADVERSELY AFFECTED BY A RELEASE OR THREAT OF RELEASE, BY A VIOLATION OF THIS ACT, A RULE PROMULGATED OR ORDER ISSUED UNDER THIS  
10 ACT, OR BY THE FAILURE OF THE DIRECTORS TO PERFORM A NONDISCRETIONARY ACT OR DUTY UNDER THIS ACT, MAY COMMENCE A CIVIL ACTION  
11 AGAINST ANY OF THE FOLLOWING:

14 (A) A PERSON WHO MAY BE LIABLE UNDER SECTION 12 FOR INJUNCTIVE RELIEF NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR  
15 WELFARE, OR THE ENVIRONMENT FROM A RELEASE OR THREATENED  
16 RELEASE.

18 (B) A PERSON WHO IS ALLEGED TO BE IN VIOLATION OF THIS ACT  
19 OR A RULE PROMULGATED OR ORDER ISSUED UNDER THIS ACT.

20 (C) ONE OR MORE OF THE DIRECTORS IF IT IS ALLEGED THAT 1 OR  
21 MORE OF THE DIRECTORS FAILED TO PERFORM A NONDISCRETIONARY ACT OR  
22 DUTY UNDER THIS ACT.

23 (2) THE CIRCUIT COURT SHALL HAVE JURISDICTION IN ACTIONS  
24 BROUGHT UNDER SUBSECTION (1)(A) TO GRANT INJUNCTIVE RELIEF NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE  
25 ENVIRONMENT FROM A RELEASE OR THREATENED RELEASE. THE CIRCUIT  
26 COURT SHALL HAVE JURISDICTION IN ACTIONS BROUGHT UNDER SUBSECTION  
27

1 (1)(B) TO ENFORCE THIS ACT OR A RULE PROMULGATED OR ORDER ISSUED  
2 UNDER THIS ACT BY ORDERING SUCH ACTION AS MAY BE NECESSARY TO  
3 CORRECT THE VIOLATION, AND TO IMPOSE ANY CIVIL FINE PROVIDED FOR  
4 IN THIS ACT FOR THE VIOLATION. A CIVIL FINE RECOVERED UNDER THIS  
5 SECTION SHALL BE DEPOSITED IN THE FUND. THE CIRCUIT COURT SHALL  
6 HAVE JURISDICTION IN ACTIONS BROUGHT UNDER SUBSECTION (1)(C) TO  
7 ORDER 1 OR MORE OF THE DIRECTORS TO PERFORM THE NONDISCRETIONARY  
8 ACT OR DUTY CONCERNED.

9 (3) AN ACTION SHALL NOT BE FILED UNDER SUBSECTION (1)(A) OR  
10 (B) UNLESS ALL OF THE FOLLOWING CONDITIONS EXIST:

11 (A) THE PLAINTIFF HAS GIVEN AT LEAST 60 DAYS' NOTICE IN  
12 WRITING OF THE PLAINTIFF'S INTENT TO SUE, THE BASIS FOR THE SUIT,  
13 AND THE RELIEF TO BE REQUESTED TO EACH OF THE FOLLOWING:

14 (i) THE DEPARTMENT.

15 (ii) THE ATTORNEY GENERAL.

16 (iii) THE PROPOSED DEFENDANTS.

17 (B) THE STATE HAS NOT COMMENCED AND IS NOT DILIGENTLY PROSE-  
18 CUTING AN ACTION UNDER THIS ACT OR UNDER OTHER APPROPRIATE LEGAL  
19 AUTHORITY TO OBTAIN INJUNCTIVE RELIEF CONCERNING THE FACILITY OR  
20 TO REQUIRE COMPLIANCE WITH THIS ACT OR A RULE OR AN ORDER UNDER  
21 THIS ACT.

22 (4) AN ACTION SHALL NOT BE FILED UNDER SUBSECTION (1)(C)  
23 UNTIL THE PLAINTIFF HAS GIVEN IN WRITING AT LEAST 60 DAYS' NOTICE  
24 TO THE DIRECTORS OR OTHER OFFICER OF THE STATE OF THE PLAINTIFF'S  
25 INTENT TO SUE, THE BASIS FOR THE SUIT, AND THE RELIEF TO BE  
26 REQUESTED.

1 (5) IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT PURSUANT  
2 TO THIS SECTION, THE COURT MAY AWARD COSTS OF LITIGATION,  
3 INCLUDING REASONABLE ATTORNEY AND EXPERT WITNESS FEES TO THE PRE-  
4 VAILING OR SUBSTANTIALLY PREVAILING PARTY IF THE COURT DETERMINES  
5 THAT AN AWARD IS APPROPRIATE.

6 (6) THIS SECTION SHALL NOT AFFECT OR OTHERWISE IMPAIR THE  
7 RIGHTS OF ANY PERSON UNDER FEDERAL, STATE, OR COMMON LAW.

8 (7) AN ACTION UNDER SUBSECTION (1)(A) OR (B) SHALL BE  
9 BROUGHT IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE ALLEGED  
10 RELEASE, THREATENED RELEASE, OR OTHER VIOLATION OCCURRED. AN  
11 ACTION UNDER SUBSECTION (1)(C) SHALL BE BROUGHT IN THE CIRCUIT  
12 COURT FOR INGHAM COUNTY.

13 (8) AN OWNER OF RESIDENTIAL PROPERTY, THE VALUE OF WHICH IS  
14 DIMINISHED DUE TO ITS CLOSE PROXIMITY TO A SITE ON THE LIST  
15 REQUIRED UNDER SECTION 6, WHO IS NOT LIABLE PURSUANT TO  
16 SECTION 12 MAY COMMENCE A CIVIL ACTION AGAINST A PERSON THAT MAY  
17 BE LIABLE UNDER SECTION 12 TO COLLECT THE FOLLOWING DAMAGES:

18 (A) AN AMOUNT EQUAL TO THE AMOUNT THAT THE VALUE OF THE  
19 PROPERTY IS REDUCED DUE TO ITS PROXIMITY TO THE SITE.

20 (B) THE REASONABLE VALUE OF THE LOST USE AND ENJOYMENT OF  
21 THE PROPERTY DUE TO ITS PROXIMITY TO THE SITE.

22 (C) REASONABLE COSTS, INCLUDING EXPERT WITNESS AND ATTORNEY  
23 FEES.

24 (D) EXEMPLARY DAMAGES UP TO \$25,000.00.

25 (9) SUBSECTION (8) SHALL NOT BE CONSTRUED AS DIMINISHING ANY  
26 OTHER CAUSE OF ACTION A PERSON MAY HAVE UNDER THE LAW.

1        SEC. 12K. (1) A PERSON WHO HAS KNOWLEDGE OR INFORMATION OR  
2 IS ON NOTICE THROUGH A RECORDED INSTRUMENT THAT A PARCEL OF HIS  
3 OR HER REAL PROPERTY IS A FACILITY AT WHICH THERE HAS BEEN A  
4 RELEASE, IN A QUANTITY REQUIRED TO BE REPORTED PURSUANT TO  
5 SECTION 12E(1)(C), SHALL NOT TRANSFER AN INTEREST IN THAT REAL  
6 PROPERTY UNLESS HE OR SHE PROVIDES WRITTEN NOTICE TO THE PUR-  
7 CHASER OR OTHER PERSON TO WHOM THE PROPERTY IS TRANSFERRED THAT  
8 THE REAL PROPERTY IS SUCH A FACILITY AND DISCLOSES THE GENERAL  
9 NATURE AND EXTENT OF THE RELEASE. THE WRITTEN NOTICE PROVIDED BY  
10 THE TRANSFEROR SHALL BE A SEPARATE INSTRUMENT AND, IF THE INSTRU-  
11 MENT CONVEYING THE INTEREST IN REAL PROPERTY IS RECORDED, THE  
12 WRITTEN NOTICE SHALL BE RECORDED WITH THE REGISTER OF DEEDS IN  
13 THE SAME COUNTY.

14        (2) A CONTRACT OR TRANSFER ENTERED INTO IN VIOLATION OF THIS  
15 SECTION SHALL BE VOIDABLE AT THE OPTION OF THE PERSON TO WHOM THE  
16 PROPERTY IS TRANSFERRED IF THE PERSON IS ABLE TO DEMONSTRATE THAT  
17 IT IS NOT LIABLE UNDER SECTION 12A. IF A CONTRACT OR TRANSFER IS  
18 VOID PURSUANT TO THIS SECTION, A PERSON THAT LOANS OR OTHERWISE  
19 PROVIDES MONEY TO ENABLE THE PURCHASER OR OTHER PERSON TO WHOM  
20 THAT PROPERTY IS TRANSFERRED TO OBTAIN THE PROPERTY SHALL HAVE A  
21 CAUSE OF ACTION TO RESTORE IT TO THE CONDITION IT WOULD HAVE HELD  
22 IF THE TRANSACTION WAS NOT VOID.

23        (3) THE OWNER OF REAL PROPERTY FOR WHICH A NOTICE REQUIRED  
24 IN SUBSECTION (1) HAS BEEN RECORDED MAY, UPON COMPLETION OF ALL  
25 RESPONSE ACTIVITIES FOR THE FACILITY AS APPROVED BY THE DEPART-  
26 MENT, RECORD WITH THE REGISTER OF DEEDS FOR THE APPROPRIATE

1 COUNTY A CERTIFICATION THAT ALL RESPONSE ACTIVITY REQUIRED IN AN  
2 APPROVED REMEDIAL ACTION PLAN HAS BEEN COMPLETED.

3       SEC. 124. (1) ALL UNPAID COSTS AND DAMAGES FOR WHICH A  
4 PERSON IS LIABLE UNDER SECTION 12 SHALL CONSTITUTE A LIEN IN  
5 FAVOR OF THE STATE UPON A FACILITY OWNED BY THAT PERSON. UPON  
6 THE ORDER OF A COURT WITH JURISDICTION, ALL UNPAID COSTS AND DAM-  
7 AGES FOR WHICH A PERSON IS LIABLE UNDER SECTION 12 MAY CONSTITUTE  
8 A LIEN IN FAVOR OF THE STATE ON ANY OTHER REAL OR PERSONAL PROP-  
9 ERTY OR RIGHTS IN REAL OR PERSONAL PROPERTY OWNED BY THAT  
10 PERSON. A LIEN UNDER THIS SUBSECTION SHALL HAVE PRIORITY OVER  
11 ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS AND ENCUMBRANCES  
12 RECORDED BEFORE THE DATE THE LIEN UNDER THIS SUBSECTION IS  
13 RECORDED. A LIEN UNDER THIS SUBSECTION ARISES WHEN THE STATE  
14 FIRST INCURS COSTS FOR RESPONSE ACTIVITY AT THE FACILITY FOR  
15 WHICH THE PERSON IS RESPONSIBLE.

16       (2) IN ADDITION TO THE LIEN PROVIDED IN SUBSECTION (1), IF  
17 THE STATE INCURS COSTS FOR RESPONSE ACTIVITY THAT INCREASES THE  
18 MARKET VALUE OF REAL PROPERTY THAT IS THE LOCATION OF A RELEASE  
19 OR THREATENED RELEASE, THE INCREASE IN VALUE CAUSED BY THE STATE  
20 FUNDED RESPONSE ACTIVITY SHALL CONSTITUTE A LIEN IN FAVOR OF THE  
21 STATE UPON THE REAL PROPERTY. THIS LIEN SHALL HAVE PRIORITY OVER  
22 ALL OTHER LIENS OR ENCUMBRANCES THAT ARE OR HAVE BEEN RECORDED  
23 UPON THE PROPERTY.

24       (3) A LIEN PROVIDED IN SUBSECTION (1) OR (2) IS PERFECTED  
25 AGAINST REAL PROPERTY WHEN A NOTICE OF LIEN IS FILED BY THE  
26 DEPARTMENT WITH THE REGISTER OF DEEDS IN THE COUNTY IN WHICH THE  
27 REAL PROPERTY IS LOCATED. A LIEN UPON PERSONAL PROPERTY PROVIDED

1 IN SUBSECTION (1) IS PERFECTED WHEN A NOTICE OF LIEN IS FILED BY  
2 THE DEPARTMENT IN ACCORDANCE WITH APPLICABLE LAW AND REGULATION  
3 FOR THE PERFECTION OF A LIEN ON THAT TYPE OF PERSONAL PROPERTY.  
4 IN ADDITION, THE DEPARTMENT SHALL, AT THE TIME OF THE FILING OF  
5 THE NOTICE OF LIEN, PROVIDE A COPY OF THE NOTICE OF LIEN TO THE  
6 OWNER OF THAT PROPERTY BY CERTIFIED MAIL.

7 (4) A LIEN UNDER THIS SECTION SHALL CONTINUE UNTIL THE  
8 LIABILITY FOR THE COSTS AND DAMAGES IS SATISFIED OR RESOLVED OR  
9 BECOMES UNENFORCEABLE THROUGH THE OPERATION OF THE STATUTE OF  
10 LIMITATIONS PROVIDED IN SECTION 12Q.

11 (5) THE DEPARTMENT SHALL FILE A NOTICE OF RELEASE OF LIEN  
12 PURSUANT TO SUBSECTION (3) UPON SATISFACTION OF THE LIABILITY  
13 SECURED BY THE LIEN.

14 SEC. 12M. (1) THE DIRECTOR AND THE ATTORNEY GENERAL MAY  
15 ENTER INTO A CONSENT AGREEMENT WITH A PERSON LIABLE UNDER SECTION  
16 12 OR ANY GROUP OF PERSONS LIABLE UNDER SECTION 12 TO PERFORM A  
17 RESPONSE ACTIVITY IF THE DIRECTOR AND THE ATTORNEY GENERAL DETER-  
18 MINE THAT THE PERSONS LIABLE UNDER SECTION 12 WILL PROPERLY  
19 IMPLEMENT THE RESPONSE ACTIVITY, AND THAT THE CONSENT AGREEMENT  
20 IS IN THE PUBLIC INTEREST, WILL EXPEDITE EFFECTIVE RESPONSE  
21 ACTIVITY, AND WILL MINIMIZE LITIGATION. SUCH A CONSENT AGREEMENT  
22 MAY PROVIDE, AS DETERMINED APPROPRIATE BY THE DIRECTOR AND THE  
23 ATTORNEY GENERAL, FOR IMPLEMENTATION BY A PERSON OR ANY GROUP OF  
24 PERSONS LIABLE UNDER SECTION 12 OF ANY PORTION OF RESPONSE ACTIV-  
25 ITY AT THE FACILITY. A DECISION OF THE ATTORNEY GENERAL NOT TO  
26 ENTER INTO A CONSENT AGREEMENT UNDER THIS ACT IS NOT SUBJECT TO  
27 JUDICIAL REVIEW.

1 (2) WHENEVER PRACTICABLE AND IN THE PUBLIC INTEREST, AS  
2 DETERMINED BY THE DIRECTOR, THE DIRECTOR AND THE ATTORNEY GENERAL  
3 SHALL AS PROMPTLY AS POSSIBLE REACH A FINAL SETTLEMENT WITH A  
4 PERSON IN AN ADMINISTRATIVE OR CIVIL ACTION UNDER THIS ACT IF  
5 THIS SETTLEMENT INVOLVES ONLY A MINOR PORTION OF THE RESPONSE  
6 COSTS AT THE FACILITY CONCERNED AND, IN THE JUDGMENT OF THE  
7 DIRECTOR AND THE ATTORNEY GENERAL, THE CONDITIONS IN EITHER OF  
8 THE FOLLOWING ARE MET:

9 (A) BOTH OF THE FOLLOWING ARE MINIMAL IN COMPARISON TO OTHER  
10 HAZARDOUS SUBSTANCES AT THE FACILITY:

11 (i) THE AMOUNT OF THE HAZARDOUS SUBSTANCES CONTRIBUTED BY  
12 THAT PERSON TO THE FACILITY.

13 (ii) THE TOXIC OR OTHER HAZARDOUS EFFECTS OF THE SUBSTANCES  
14 CONTRIBUTED BY THAT PERSON TO THE FACILITY.

15 (B) EXCEPT AS PROVIDED IN SUBSECTION (3), THE PERSON MEETS  
16 ALL OF THE FOLLOWING CONDITIONS:

17 (i) THE PERSON IS THE OWNER OF THE REAL PROPERTY ON OR IN  
18 WHICH THE FACILITY IS LOCATED.

19 (ii) THE PERSON DID NOT CONDUCT OR PERMIT THE GENERATION,  
20 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY HAZARDOUS  
21 SUBSTANCE AT THE FACILITY.

22 (iii) THE PERSON DID NOT CONTRIBUTE TO THE RELEASE OR THREAT  
23 OF RELEASE OF A HAZARDOUS SUBSTANCE AT THE FACILITY THROUGH ANY  
24 ACTION OR OMISSION.

25 (3) A SETTLEMENT SHALL NOT BE MADE UNDER SUBSECTION (2)(B)  
26 IF THE PERSON PURCHASED THE REAL PROPERTY WITH ACTUAL OR  
27 CONSTRUCTIVE KNOWLEDGE THAT THE PROPERTY WAS USED FOR THE

1 GENERATION, TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF  
2 ANY HAZARDOUS SUBSTANCE.

3 (4) A SETTLEMENT UNDER SUBSECTION (2) MAY BE SET ASIDE IF  
4 INFORMATION OBTAINED AFTER THE SETTLEMENT INDICATES THAT THE  
5 PERSON SETTLING DOES NOT MEET THE CONDITIONS SET FORTH IN SUBSEC-  
6 TION (2)(A) OR (B).

7 SEC. 12N. (1) THE PENALTIES PROVIDED IN THIS SECTION ONLY  
8 APPLY TO A RELEASE THAT OCCURS AFTER THE EFFECTIVE DATE OF THIS  
9 SECTION.

10 (2) AN INDIVIDUAL WHO IN RECKLESS DISREGARD OF THE CONSE-  
11 QUENCES RELEASES OR CAUSES THE RELEASE OF A HAZARDOUS SUBSTANCE  
12 IN AN UNLAWFUL LOCATION OR IN AN UNLAWFUL MANNER, OTHER THAN IN  
13 COMPLIANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL REQUIREMENTS  
14 AND WITH ANY PERMIT OR LICENSE HELD BY THE INDIVIDUAL, WHEN THAT  
15 INDIVIDUAL KNEW OR SHOULD HAVE KNOWN THAT THE RELEASE COULD CAUSE  
16 PERSONAL INJURY OR PROPERTY DAMAGE, IS GUILTY OF A MISDEMEANOR,  
17 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF  
18 NOT MORE THAN \$25,000.00 PER DAY OF VIOLATION, OR BOTH. IF A  
19 CONVICTION OF AN INDIVIDUAL IS FOR A VIOLATION COMMITTED AFTER A  
20 PREVIOUS CONVICTION OF THAT INDIVIDUAL UNDER THIS SUBSECTION,  
21 THAT INDIVIDUAL SHALL BE GUILTY OF A FELONY, PUNISHABLE BY  
22 IMPRISONMENT FOR NOT MORE THAN 2 YEARS, OR A FINE OF NOT MORE  
23 THAN \$50,000.00 PER DAY OF VIOLATION, OR BOTH. AN ORGANIZATION  
24 THAT NEGLIGENTLY RELEASES OR CAUSES THE RELEASE OF A HAZARDOUS  
25 SUBSTANCE IN AN UNLAWFUL LOCATION OR IN AN UNLAWFUL MANNER, OTHER  
26 THAN IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL  
27 REQUIREMENTS AND WITH ANY PERMIT OR LICENSE HELD BY THE

1 ORGANIZATION, WHEN THAT ORGANIZATION KNEW OR REASONABLY SHOULD  
2 HAVE KNOWN THAT THE RELEASE COULD CAUSE PERSONAL INJURY OR PROP-  
3 ERTY DAMAGE, IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY A FINE OF  
4 NOT MORE THAN \$25,000.00 PER DAY OF VIOLATION. IF A CONVICTION  
5 OF AN ORGANIZATION IS FOR A VIOLATION COMMITTED AFTER A PREVIOUS  
6 CONVICTION OF THAT ORGANIZATION UNDER THIS SUBSECTION, THAT ORGA-  
7 NIZATION SHALL BE GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT  
8 MORE THAN \$50,000.00 PER DAY OF VIOLATION.

9 (3) A PERSON WHO KNOWINGLY RELEASES OR CAUSES THE RELEASE OF  
10 A HAZARDOUS SUBSTANCE IN AN UNLAWFUL LOCATION OR IN AN UNLAWFUL  
11 MANNER, OTHER THAN IN COMPLIANCE WITH APPLICABLE FEDERAL, STATE,  
12 AND LOCAL REQUIREMENTS AND WITH ANY PERMIT OR LICENSE HELD BY  
13 THAT PERSON, WHEN THAT PERSON KNEW OR REASONABLY SHOULD HAVE  
14 KNOWN THE RELEASE COULD CAUSE PERSONAL INJURY OR PROPERTY DAMAGE,  
15 IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE  
16 THAN 3 YEARS, OR A FINE OF NOT LESS THAN \$5,000.00 AND NOT MORE  
17 THAN \$50,000.00 PER DAY OF VIOLATION, OR BOTH. IF A CONVICTION  
18 OF A PERSON IS FOR A VIOLATION COMMITTED AFTER A PREVIOUS CONVIC-  
19 TION OF THAT PERSON UNDER THIS SUBSECTION, THAT PERSON SHALL BE  
20 GUILTY OF A FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN  
21 6 YEARS, OR A FINE OF NOT LESS THAN \$10,000.00 AND NOT MORE THAN  
22 \$100,000.00 PER DAY OF VIOLATION, OR BOTH.

23 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, AN  
24 INDIVIDUAL WHO RELEASES OR CAUSES THE RELEASE OF A HAZARDOUS SUB-  
25 STANCE IN A LOCATION OR MANNER THAT HE OR SHE KNOWS IS UNLAWFUL,  
26 OTHER THAN IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND  
27 LOCAL REQUIREMENTS AND WITH ANY PERMIT OR LICENSE HELD BY THAT

1 INDIVIDUAL, AND WHO KNOWS AT THAT TIME THAT HE OR SHE THEREBY  
2 PLACES ANOTHER PERSON IN IMMINENT DANGER OF DEATH OR SERIOUS  
3 BODILY INJURY, IS GUILTY OF A FELONY, PUNISHABLE BY IMPRISONMENT  
4 FOR NOT MORE THAN 15 YEARS, OR A FINE OF NOT LESS THAN \$25,000.00  
5 AND NOT MORE THAN \$250,000.00, OR BOTH. AN ORGANIZATION THAT  
6 RELEASES OR CAUSES THE RELEASE OF A HAZARDOUS SUBSTANCE IN A  
7 LOCATION OR MANNER THE ORGANIZATION KNEW WAS UNLAWFUL, OTHER THAN  
8 IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL  
9 REQUIREMENTS AND WITH ANY PERMIT OR LICENSE HELD BY THAT ORGANI-  
10 ZATION, AND THAT KNEW AT THAT TIME THAT THE ORGANIZATION THEREBY  
11 PLACED ANOTHER PERSON IN IMMINENT DANGER OF DEATH OR SERIOUS  
12 BODILY INJURY, IS GUILTY OF A FELONY AND SHALL BE PUNISHED BY THE  
13 IMPOSITION OF A FINE OF NOT LESS THAN \$100,000.00 AND NOT MORE  
14 THAN \$1,000,000.00. IF A CONVICTION OF THE ORGANIZATION IS FOR A  
15 VIOLATION COMMITTED AFTER A PREVIOUS CONVICTION OF THAT ORGANI-  
16 ZATION UNDER THIS SUBSECTION, THE ORGANIZATION IS GUILTY OF A  
17 FELONY AND SHALL BE PUNISHED BY THE IMPOSITION OF A FINE OF NOT  
18 LESS THAN \$200,000.00 OR MORE THAN \$2,000,000.00.

19 (5) FOR PURPOSES OF SUBSECTION (4) IN DETERMINING WHETHER A  
20 DEFENDANT WHO IS AN INDIVIDUAL KNEW THAT HIS OR HER CONDUCT  
21 PLACED ANOTHER PERSON IN IMMINENT DANGER OF DEATH OR SERIOUS  
22 BODILY INJURY, BOTH OF THE FOLLOWING APPLY:

23 (A) THE PERSON IS RESPONSIBLE ONLY FOR THE ACTUAL AWARENESS  
24 OR ACTUAL BELIEF THAT HE OR SHE POSSESSED.

25 (B) KNOWLEDGE POSSESSED BY A PERSON OTHER THAN THE DEFENDANT  
26 BUT NOT BY THE DEFENDANT HIMSELF OR HERSELF MAY NOT BE ATTRIBUTED  
27 TO THE DEFENDANT; EXCEPT THAT IN PROVING THE POSSESSION OF ACTUAL

1 KNOWLEDGE BY THE DEFENDANT, CIRCUMSTANTIAL EVIDENCE MAY BE USED,  
2 INCLUDING EVIDENCE THAT THE DEFENDANT TOOK AFFIRMATIVE STEPS TO  
3 SHIELD HIMSELF OR HERSELF FROM RELEVANT INFORMATION.

4 (6) IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER SUB-  
5 SECTION (4) THAT THE CONDUCT CHARGED WAS CONSENTED TO BY THE  
6 PERSON ENDANGERED AND THAT THE DANGER AND CONDUCT CHARGED WERE  
7 REASONABLY FORESEEABLE HAZARDS OF ANY OF THE FOLLOWING:

8 (A) AN OCCUPATION, A BUSINESS, OR A PROFESSION.

9 (B) MEDICAL TREATMENT OR MEDICAL OR SCIENTIFIC EXPERIMENTA-  
10 TION CONDUCTED BY PROFESSIONALLY APPROVED METHODS IF THE PERSON  
11 ENDANGERED HAD BEEN MADE AWARE OF THE RISKS INVOLVED PRIOR TO  
12 GIVING CONSENT.

13 (7) THE DEFENDANT MAY ESTABLISH AN AFFIRMATIVE DEFENSE UNDER  
14 SUBSECTION (6) BY A PREPONDERANCE OF THE EVIDENCE.

15 (8) A PERSON WHO KNOWINGLY MAKES A FALSE MATERIAL STATEMENT,  
16 REPRESENTATION, OR CERTIFICATION IN ANY APPLICATION, RECORD,  
17 REPORT, PLAN, OR OTHER DOCUMENT FILED OR REQUIRED TO BE MAIN-  
18 TAINED UNDER THIS ACT AND RULES PROMULGATED UNDER THIS ACT IS  
19 GUILTY OF A FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN  
20 2 YEARS, OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH. IF A  
21 CONVICTION OF A PERSON IS FOR A VIOLATION COMMITTED AFTER A PRE-  
22 VIOUS VIOLATION UNDER THIS SUBSECTION, THAT PERSON IS GUILTY OF A  
23 FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS, OR  
24 A FINE OF NOT LESS THAN \$10,000.00 AND NOT MORE THAN \$20,000.00,  
25 OR BOTH.

26 (9) A PERSON WHO KNOWINGLY FALSIFIES, TAMPERS WITH, OR  
27 RENDERS INACCURATE ANY MONITORING DEVICE OR METHOD REQUIRED TO BE

1 MAINTAINED UNDER THIS ACT OR A RULE PROMULGATED UNDER THIS ACT IS  
2 GUILTY OF A FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN  
3 2 YEARS, OR A FINE OF NOT LESS THAN \$5,000.00 AND NOT MORE THAN  
4 \$10,000.00, OR BOTH. IF A CONVICTION OF A PERSON IS FOR A VIOLA-  
5 TION COMMITTED AFTER A PREVIOUS VIOLATION UNDER THIS SUBSECTION,  
6 THAT PERSON IS GUILTY OF A FELONY, PUNISHABLE BY IMPRISONMENT FOR  
7 NOT MORE THAN 4 YEARS, OR A FINE OF NOT LESS THAN \$10,000.00 AND  
8 NOT MORE THAN \$20,000.00, OR BOTH.

9 (10) A SINGLE OPERATIONAL OCCURRENCE THAT LEADS TO SIMULTA-  
10 NEOUS VIOLATIONS OF MORE THAN 1 PROVISION OF ANY OF THE ACTS  
11 LISTED IN SUBSECTION (8) OR ANY RULE PROMULGATED UNDER THOSE ACTS  
12 SHALL BE TREATED AS A SINGLE VIOLATION.

13 (11) AS USED IN THIS SECTION:

14 (A) "ORGANIZATION" MEANS A LEGAL ENTITY ESTABLISHED OR ORGA-  
15 NIZED FOR ANY PURPOSE, AND INCLUDES A CORPORATION, COMPANY, ASSO-  
16 CIATION, FIRM, PARTNERSHIP, JOINT STOCK COMPANY, FOUNDATION,  
17 INSTITUTION, TRUST, SOCIETY, UNION, OR ANY OTHER ASSOCIATION.

18 (B) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT  
19 INVOLVES A SUBSTANTIAL RISK OF DEATH, UNCONSCIOUSNESS, EXTREME  
20 PHYSICAL PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT, OR PRO-  
21 TRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER,  
22 ORGAN, OR MENTAL FACULTY.

23 SEC. 120. (1) THE DEPARTMENT MAY PROMULGATE RULES TO ESTAB-  
24 LISH A GRANT PROGRAM TO PROVIDE GRANTS TO INDIVIDUALS WHO MAY BE  
25 ADVERSELY AFFECTED BY HAZARDOUS SUBSTANCES FROM A SITE THAT IS  
26 LISTED UNDER SECTION 6, AND WHO LIVE WITHIN 2 MILES OF THE LISTED  
27 SITE. THE GRANTS SHALL BE PROVIDED ONLY TO ENABLE INDIVIDUALS TO

1 OBTAIN EXPERT ADVICE AND TECHNICAL ASSISTANCE REGARDING THE  
2 RESPONSE ACTIVITIES AT SITES THAT AFFECT THEM. IN DETERMINING  
3 WHICH APPLICANTS RECEIVE GRANTS, THE DEPARTMENT SHALL CONSIDER  
4 THE POTENTIAL HEALTH IMPACTS OF THE SITE ON THE APPLICANT, THE  
5 COMPLEXITY AND SCOPE OF THE NECESSARY REMEDIAL ACTION AT THE  
6 SITE, AND THE ABILITY OF THE APPLICANT TO OBTAIN EXPERT ADVICE  
7 AND TECHNICAL ASSISTANCE IN THE ABSENCE OF THE GRANT.

8 (2) PERSONS THAT MAY BE LIABLE UNDER SECTION 12 SHALL NOT BE  
9 ELIGIBLE FOR GRANTS UNDER THIS SECTION.

10 (3) GRANTS SHALL BE PROVIDED UNDER THIS SECTION SUBJECT TO  
11 THE AVAILABILITY OF APPROPRIATIONS FROM THE GENERAL FUND.

12 SEC. 12P. THE GOVERNING BODY OF A LOCAL UNIT OF GOVERNMENT  
13 IN WHICH A FACILITY IS LOCATED MAY APPOINT 1 OR MORE INDIVIDUALS  
14 TO INSPECT A FACILITY ON BEHALF OF THE LOCAL UNIT OF GOVERNMENT.  
15 HOWEVER, INDIVIDUALS AUTHORIZED TO INSPECT A FACILITY SHALL BE  
16 GIVEN REASONABLE OPPORTUNITIES BY THE DEPARTMENT AND THE FACILITY  
17 OWNER OR OPERATOR TO INSPECT THE FACILITY BEFORE, DURING, AND  
18 AFTER MAJOR RESPONSE ACTIVITY. HOWEVER, INDIVIDUALS AUTHORIZED  
19 TO INSPECT A FACILITY SHALL AT ALL TIMES WHEN PRESENT AT THE  
20 FACILITY BE IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL  
21 SAFETY REGULATIONS, INCLUDING THE REQUIREMENTS OF THE SITE SPE-  
22 CIFIC HEALTH AND SAFETY PLAN.

23 SEC. 12Q. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE  
24 LIMITATION PERIOD FOR FILING ACTIONS UNDER THIS ACT SHALL BE AS  
25 FOLLOWS:

26 (A) FOR THE RECOVERY OF RESPONSE ACTIVITY COSTS AND NATURAL  
27 RESOURCES DAMAGES PURSUANT TO SECTION 12(2)(A), (B), OR (C),

1 WITHIN 6 YEARS OF INITIATION OF PHYSICAL ON-SITE CONSTRUCTION  
2 ACTIVITIES FOR THE REMEDIAL ACTION SELECTED OR APPROVED BY THE  
3 DEPARTMENT AT A FACILITY, EXCEPT AS PROVIDED IN SUBDIVISION (B).

4 (B) FOR 1 OR MORE SUBSEQUENT ACTIONS FOR RECOVERY OF  
5 RESPONSE ACTIVITY COSTS PURSUANT TO SECTION 12, AT ANY TIME  
6 DURING THE RESPONSE ACTIVITY, IF COMMENCED NOT LATER THAN 3 YEARS  
7 AFTER THE DATE OF COMPLETION OF ALL RESPONSE ACTIVITY AT THE  
8 FACILITY.

9 (C) FOR CIVIL FINES UNDER THIS ACT, WITHIN 3 YEARS AFTER  
10 DISCOVERY OF THE VIOLATION FOR WHICH THE CIVIL FINES ARE  
11 ASSESSED.

12 (2) FOR RECOVERY OF RESPONSE ACTIVITY COSTS AND NATURAL  
13 RESOURCES DAMAGES THAT ACCRUED PRIOR TO THE EFFECTIVE DATE OF  
14 THIS SECTION, THE LIMITATION PERIOD FOR FILING ACTIONS UNDER THIS  
15 ACT SHALL BE 3 YEARS FROM THAT EFFECTIVE DATE.

16 SEC. 12R. (1) A PERSON WHO IS A RESPONSE ACTIVITY CONTRAC-  
17 TOR FOR ANY RELEASE OR THREATENED RELEASE IS NOT LIABLE TO ANY  
18 PERSON FOR INJURIES, COSTS, DAMAGES, EXPENSES, OR OTHER LIABILI-  
19 TY, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INDEMNIFICATION OR  
20 CONTRIBUTION AND CLAIMS BY THIRD PARTIES FOR DEATH, PERSONAL  
21 INJURIES, ILLNESS, OR LOSS OF OR DAMAGES TO PROPERTY OR ECONOMIC  
22 LOSS THAT RESULT FROM THE RELEASE OF THREATENED RELEASE. THIS  
23 SUBSECTION SHALL NOT APPLY IF A RELEASE OR THREATENED RELEASE IS  
24 CAUSED BY CONDUCT OF THE RESPONSE ACTIVITY CONTRACTOR THAT IS  
25 NEGLIGENT, GROSSLY NEGLIGENT, OR THAT CONSTITUTES INTENTIONAL  
26 MISCONDUCT.

1       (2) THIS SECTION SHALL NOT AFFECT THE LIABILITY OF A PERSON  
2 UNDER ANY WARRANTY UNDER FEDERAL, STATE, OR COMMON LAW. THIS  
3 SUBSECTION SHALL NOT AFFECT THE LIABILITY OF AN EMPLOYER WHO IS A  
4 RESPONSE ACTIVITY CONTRACTOR TO ANY EMPLOYEE OF THE EMPLOYER  
5 UNDER LAW, INCLUDING ANY PROVISION OF ANY LAW RELATING TO  
6 WORKER'S COMPENSATION.

7       (3) AN EMPLOYEE OF THIS STATE OR A LOCAL UNIT OF GOVERNMENT  
8 WHO PROVIDES SERVICES RELATING TO A RESPONSE ACTIVITY WHILE  
9 ACTING WITHIN THE SCOPE OF HIS OR HER AUTHORITY AS A GOVERNMENTAL  
10 EMPLOYEE SHALL HAVE THE SAME EXEMPTION FROM LIABILITY AS IS PRO-  
11 VIDED TO THE RESPONSE ACTIVITY CONTRACTOR UNDER THIS SECTION.

12       (4) THE DEFENSE PROVIDED BY SECTION 12A(1)(C) IS NOT AVAIL-  
13 ABLE TO ANY PERSON THAT MAY BE LIABLE UNDER SECTION 12 WITH  
14 RESPECT TO ANY COSTS OR DAMAGES CAUSED BY ANY ACT OR OMISSION OF  
15 A RESPONSE ACTIVITY CONTRACTOR. EXCEPT AS PROVIDED IN THIS SEC-  
16 TION, NOTHING IN THIS SECTION SHALL AFFECT THE LIABILITY UNDER  
17 THIS ACT OR UNDER ANY OTHER FEDERAL OR STATE LAW OF ANY PERSON.

18       (5) THIS SECTION SHALL NOT AFFECT THE PLAINTIFF'S BURDEN OF  
19 ESTABLISHING LIABILITY UNDER THIS ACT.

20       (6) AS USED IN THIS SECTION:

21       (A) "RESPONSE ACTIVITY CONTRACT" MEANS A WRITTEN CONTRACT OR  
22 AGREEMENT ENTERED INTO BY A RESPONSE ACTIVITY CONTRACTOR WITH 1  
23 OR MORE OF THE FOLLOWING:

24       (i) THE DEPARTMENT.

25       (ii) THE DEPARTMENT OF PUBLIC HEALTH.

26       (iii) A PERSON THAT MAY BE LIABLE UNDER SECTION 12 THAT IS  
27 CARRYING OUT AN AGREEMENT UNDER THIS ACT.

1 (B) "RESPONSE ACTIVITY CONTRACTOR" MEANS 1 OR BOTH OF THE  
2 FOLLOWING:

3 (i) A PERSON WHO ENTERS INTO A RESPONSE ACTIVITY CONTRACT  
4 WITH RESPECT TO A RELEASE OR THREATENED RELEASE AND IS CARRYING  
5 OUT THE TERMS OF A CONTRACT.

6 (ii) A PERSON WHO IS RETAINED OR HIRED BY A PERSON DESCRIBED  
7 IN SUBPARAGRAPH (i) TO PROVIDE ANY SERVICE RELATING TO A RESPONSE  
8 ACTIVITY.

9 SEC. 12S. BY JULY 1, 1993 THE LEGISLATURE SHALL COMPLETE AN  
10 EVALUATION OF THE OPERATION AND EFFECTIVENESS OF THE AMENDATORY  
11 ACT THAT ADDED THIS SECTION TO RECOMMEND WHAT, IF ANY, FURTHER  
12 LEGISLATIVE ACTION IS APPROPRIATE. THE MAJORITY LEADER OF THE  
13 SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL DES-  
14 IGNATE THE MEMBERS OF THE LEGISLATURE WHO SHALL PREPARE OR PRO-  
15 VIDE FOR THE PREPARATION OF THE EVALUATION REQUIRED BY THIS  
16 SECTION.

17 Section 2. Sections 8 and 11 of Act No. 307 of the Public  
18 Acts of 1982, being sections 299.608 and 299.611 of the Michigan  
19 Compiled Laws, are repealed.

20 Section 3. Section 11a of Act No. 307 of the Public Acts of  
21 1982, as added by this amendatory act, shall take effect when the  
22 Michigan environmental assurance corporation act, Senate Bill  
23 No. 981, and its funding mechanism, House Bill No. 5808, are  
24 enacted into law and the Michigan environmental assurance corpo-  
25 ration files with the secretary of state a certification that the  
26 Michigan environmental assurance corporation is funded and  
27 prepared to undertake its responsibilities under section 11a.