

SENATE BILL No. 375

April 26, 1989, Introduced by Senators POLLACK, MILLER, IRWIN, CHERRY, SEDERBURG, FAUST and O'BRIEN and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend the title and sections 1, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

section 3 as amended and section 11 as added by Act No. 388 of the Public Acts of 1984, being sections 299.601, 299.603, 299.604, 299.605, 299.606, 299.607, 299.608, 299.609, 299.610, and 299.611 of the Michigan Compiled Laws; and to add sections 12, 12a, 12b, 12c, 12d, 12e, 12f, 12g, 12h, 12i, 12j, 12k, 12l, and 12m.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 3, 4, 5, 6, 7, 8, 9,
2 10, and 11 of Act No. 307 of the Public Acts of 1982, section 3
3 as amended and section 11 as added by Act No. 388 of the Public
4 Acts of 1984, being sections 299.601, 299.603, 299.604, 299.605,

1 299.606, 299.607, 299.608, 299.609, 299.610, and 299.611 of the
2 Michigan Compiled Laws, are amended and sections 12, 12a, 12b,
3 12c, 12d, 12e, 12f, 12g, 12h, 12i, 12j, 12k, 12l, and 12m 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; to pre-
9 scribe certain powers and duties of the governor AND OTHER PER-
10 SONS AND STATE OFFICERS AND AGENCIES; to provide for the promul-
11 gation of rules; TO REQUIRE RECORD NOTICE REGARDING THE STATUS OF
12 CERTAIN SITES; to create an environmental response fund AND TO
13 PROVIDE FOR ITS EXPENDITURE; TO PROVIDE FOR JUDICIAL REVIEW; and
14 to provide certain remedies and penalties.

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

16 (a) That there exist in this state certain sites containing
17 hazardous substances which pose a danger to the public health,
18 safety, ~~and~~ OR welfare, ~~and~~ OR to the environment OR THE NAT-
19 URAL RESOURCES of this state.

20 (b) That there is a need to provide for a method of elimi-
21 nating the danger of environmental contamination caused by the
22 existence of hazardous substances at those sites.

23 (c) That it is the purpose of this act to provide for appro-
24 priate response activity to eliminate the environmental contami-
25 nation caused by the presence of hazardous substances at those
26 sites.

1 (D) THAT THERE IS A NEED FOR ADDITIONAL ADMINISTRATIVE AND
2 JUDICIAL REMEDIES TO SUPPLEMENT EXISTING STATUTORY AND COMMON LAW
3 REMEDIES.

4 (E) THAT THE RESPONSIBILITY FOR THE COST OF RESPONSE ACTIVI-
5 TIES PERTAINING TO ENVIRONMENTAL CONTAMINATION AND REPAIRING
6 INJURY, DESTRUCTION, OR LOSS TO NATURAL RESOURCES CAUSED BY ENVI-
7 RONMENTAL CONTAMINATION SHOULD NOT BE PLACED UPON THE PUBLIC
8 EXCEPT WHEN FUNDS CANNOT BE COLLECTED FROM OR A RESPONSE ACTIVITY
9 CANNOT BE UNDERTAKEN BY A RESPONSIBLE PARTY.

10 (F) THAT TO THE EXTENT POSSIBLE, CONSISTENT WITH REQUIRE-
11 MENTS UNDER THIS ACT AND RULES PROMULGATED UNDER THIS ACT,
12 RESPONSE ACTIVITIES SHALL BE UNDERTAKEN BY RESPONSIBLE PARTIES
13 BASED UPON AGREEMENTS WITH THE STATE.

14 Sec. 3. As used in this act:

15 (a) "Attorney general" means the department of the attorney
16 general.

17 (b) "Directors" means the directors or their designees of
18 the departments of natural resources, public health, agriculture,
19 AND state police. ~~and the toxic substance control~~
20 ~~commission.~~

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

23 (D) "ENFORCEMENT COSTS" MEANS COURT EXPENSES, ACTUAL ATTOR-
24 NEY FEES OF THE ATTORNEY GENERAL OR OTHER EXPENSES OF THE ATTOR-
25 NEY GENERAL OR AN EXECUTIVE DEPARTMENT THAT ARE INCURRED PURSUANT
26 TO INVESTIGATION AND ENFORCEMENT UNDER THIS ACT.

1 (E) ~~(c)~~ "Environment" means any surface water, ground
2 water, drinking water supply, land surface, subsurface strata, or
3 ambient air within the state.

4 (F) ~~(d)~~ "Environmental contamination" means the release OR
5 THREATENED RELEASE of a hazardous substance ~~, or the potential~~
6 ~~release of a discarded hazardous substance,~~ in a quantity, which
7 is or may become injurious to the ~~environment, or to the~~ public
8 health, safety, or welfare OR TO THE ENVIRONMENT OR THE NATURAL
9 RESOURCES.

10 (G) ~~(e)~~ "Evaluation" means those activities including but
11 not limited to investigation, studies, sampling, analysis,
12 ~~alternate response activity plans~~ DEVELOPMENT OF FEASIBILITY
13 STUDIES, and administrative efforts, which are needed to deter-
14 mine the nature, extent, and impact of a release AND NECESSARY
15 RESPONSE ACTIVITIES.

16 (H) "FEASIBILITY STUDY" MEANS A PROCESS FOR DEVELOPING,
17 EVALUATING, AND SELECTING APPROPRIATE RESPONSE ACTIVITIES.

18 (I) ~~(f)~~ "Fund" means the environmental response fund
19 established in section 9.

20 (J) ~~(g)~~ "Hazardous substance" means ~~a~~ 1 OR MORE OF THE
21 FOLLOWING:

22 (i) A chemical or other material which is or may become
23 injurious to the public health, safety, or welfare or to the
24 environment OR THE NATURAL RESOURCES.

25 (ii) "HAZARDOUS SUBSTANCE" AS DEFINED IN THE COMPREHENSIVE
26 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980,

1 PUBLIC LAW 96-510, 42 U.S.C. 9601 TO 9626, 9651 TO 9652, 9653 TO
2 9660, 9661 AND 9671 TO 9675.

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

6 (K) "INTERIM RESPONSE ACTIVITY" MEANS THE CLEANUP OR REMOVAL
7 OF RELEASED HAZARDOUS SUBSTANCES FROM THE ENVIRONMENT OR THE
8 TAKING OF OTHER ACTIONS, PRIOR TO THE SELECTION OF A REMEDIAL
9 ACTION, AS MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE
10 INJURY TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR TO THE ENVI-
11 RONMENT OR THE NATURAL RESOURCES, IF THAT INJURY MIGHT OTHERWISE
12 RESULT. INTERIM RESPONSE ACTIVITY ALSO MEANS THE TAKING OF OTHER
13 ACTIONS AS MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE THE
14 THREATENED RELEASE OF A HAZARDOUS SUBSTANCE, AND INCLUDES
15 ENFORCEMENT ACTIVITIES RELATED TO THOSE ACTIONS.

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

18 (M) "NATURAL RESOURCES" MEANS LAND, SURFACE WATER, GROUNDWA-
19 TER, AIR, FISH, WILDLIFE, BIOTA, AND ANY OTHER RESOURCES BELONG-
20 ING TO, MANAGED BY, HELD IN TRUST BY, OR OTHERWISE CONTROLLED BY
21 THE STATE.

22 (N) "OPERATOR" MEANS A PERSON WHO IS IN CONTROL OF OR
23 RESPONSIBLE FOR THE OPERATION OF PROPERTY ON WHICH A SITE IS
24 LOCATED. OPERATOR DOES NOT INCLUDE:

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

1 (ii) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED
2 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH BANK-
3 RUPTCY, TAX DELINQUENCY, ABANDONMENT, OR OTHER CIRCUMSTANCES IN
4 WHICH THE GOVERNMENT INVOLUNTARILY ACQUIRES TITLE OR CONTROL BY
5 VIRTUE OF ITS FUNCTION AS SOVEREIGN. IN CASE OF THIS INVOLUNTARY
6 ACQUISITION BY THE STATE OR A LOCAL UNIT OF GOVERNMENT, OPERATOR
7 MEANS A PERSON WHO WAS IN CONTROL OF OR RESPONSIBLE FOR OPERATION
8 OF THE PROPERTY IMMEDIATELY BEFORE THE STATE OR LOCAL UNIT OF
9 GOVERNMENT ACQUIRED OWNERSHIP OR CONTROL.

10 (O) "OWNER" MEANS A PERSON WHO HOLDS A LEGAL, EQUITABLE, OR
11 POSSESSORY INTEREST OF ANY KIND IN PROPERTY ON WHICH A SITE IS
12 LOCATED. OWNER DOES NOT INCLUDE EITHER OF THE FOLLOWING:

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

16 (ii) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED
17 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH BANK-
18 RUPTCY, TAX DELINQUENCY, ABANDONMENT, OR OTHER CIRCUMSTANCES IN
19 WHICH THE GOVERNMENT INVOLUNTARILY ACQUIRES TITLE OR CONTROL BY
20 VIRTUE OF ITS FUNCTION AS SOVEREIGN. IN CASE OF THIS INVOLUNTARY
21 ACQUISITION BY THE STATE OR A LOCAL UNIT OF GOVERNMENT, OWNER
22 MEANS ANY PERSON WHO OWNED OR CONTROLLED ACTIVITIES AT THE PROP-
23 ERTY IMMEDIATELY BEFORE THE STATE OR LOCAL UNIT OF GOVERNMENT
24 ACQUIRED OWNERSHIP OR CONTROL.

25 (P) ~~(h)~~ "Person" means an individual, sole proprietorship,
26 partnership, ~~association~~, JOINT VENTURE, TRUST, FIRM, JOINT
27 STOCK COMPANY, corporation, INCLUDING A GOVERNMENT CORPORATION,

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

5 (Q) ~~(i)~~ "Release" includes, but is not limited to, any
6 spilling, leaking, pumping, pouring, emitting, emptying, dis-
7 charging, injecting, escaping, leaching, dumping, or disposing of
8 a hazardous substance into the environment.

9 (R) ~~(j)~~ "Response activity" means an activity necessary to
10 protect the public health, safety, OR welfare, ~~and~~ OR the envi-
11 ronment OR THE NATURAL RESOURCES, and includes but is not limited
12 to, evaluation, REMEDIAL ACTION, INTERIM RESPONSE ACTIVITY,
13 cleanup, removal, containment, isolation, treatment, monitoring,
14 maintenance, replacement of water supplies, temporary relocation
15 of people as determined to be necessary by the ~~governor or the~~
16 ~~governor's designee~~ DEPARTMENT, ~~and~~ reimbursement for certain
17 expenses as provided for in section 11, INVESTIGATION AND
18 ENFORCEMENT BY THE ATTORNEY GENERAL OR THE DIRECTORS, AND HEALTH
19 ASSESSMENTS OR HEALTH EFFECT STUDIES CARRIED OUT UNDER THE SUPER-
20 VISION, OR WITH THE APPROVAL, OF THE DEPARTMENT OR THE DEPARTMENT
21 OF PUBLIC HEALTH.

22 (S) "REMEDIAL ACTION" INCLUDES, BUT IS NOT LIMITED TO,
23 CLEANUP, REMOVAL, CONTAINMENT, ISOLATION, TREATMENT, OR MONITOR-
24 ING OF HAZARDOUS SUBSTANCES RELEASED INTO THE ENVIRONMENT, MAIN-
25 TENANCE, OR THE TAKING OF OTHER ACTIONS AS MAY BE NECESSARY TO
26 PREVENT, MINIMIZE, OR MITIGATE INJURY TO THE PUBLIC HEALTH,
27 SAFETY, OR WELFARE, OR TO THE ENVIRONMENT OR THE NATURAL

1 RESOURCES, IF THE INJURY MAY OTHERWISE RESULT FROM THE RELEASE OR
2 THREATENED RELEASE OF A HAZARDOUS SUBSTANCE.

3 (T) "RESPONSIBLE PARTY" MEANS A PERSON WHO IS 1 OR MORE OF
4 THE FOLLOWING:

5 (i) THE OWNER OR OPERATOR OF A SITE.

6 (ii) A PERSON WHO AT THE TIME OF DISPOSAL OF A HAZARDOUS
7 SUBSTANCE OWNED OR OPERATED A SITE AT WHICH HAZARDOUS SUBSTANCES
8 WERE DISPOSED.

9 (iii) A PERSON WHO BY CONTRACT, AGREEMENT, OR OTHERWISE
10 ARRANGED FOR DISPOSAL OR TREATMENT, OR ARRANGED WITH A TRANS-
11 PORTER FOR TRANSPORT FOR DISPOSAL OR TREATMENT, OF HAZARDOUS SUB-
12 STANCES OWNED OR POSSESSED BY THE PERSON, OR BY ANY OTHER PERSON,
13 AT A SITE OWNED OR OPERATED BY ANOTHER PERSON.

14 (iv) A PERSON WHO ACCEPTED HAZARDOUS SUBSTANCES FOR TRANS-
15 PORT TO A SITE SELECTED BY THAT PERSON.

16 (v) A PERSON WHO RELEASES OR RELEASED A HAZARDOUS SUBSTANCE
17 AT A SITE.

18 (vi) A PERSON WHO CAUSES OR CAUSED ENVIRONMENTAL CONTAMINA-
19 TION AT A SITE.

20 (U) "RULE" MEANS A RULE PROMULGATED PURSUANT TO THE ADMINIS-
21 TRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF
22 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
23 LAWS.

24 (V) ~~(K)~~ "Site" means the location of an environmental
25 contamination.

1 Sec. 4. The ~~governor or the governor's designee~~
2 DEPARTMENT shall seek federal assistance for ~~evaluation and~~
3 response activities required at sites in this state.

4 Sec. 5. The ~~governor or the governor's designee~~
5 DEPARTMENT shall coordinate all activities required under this
6 act and shall promulgate rules ~~pursuant to Act No. 306 of the~~
7 ~~Public Acts of 1969, as amended, being sections 24.201 to 24.315~~
8 ~~of the Michigan Compiled Laws,~~ necessary to carry out the
9 requirements of this act.

10 Sec. 6. (1) The ~~governor or the governor's designee~~
11 DEPARTMENT pursuant to section 5 shall:

12 (a) Annually identify and evaluate the known sites in the
13 state for the purpose of assigning priority for ~~evaluation and~~
14 response ~~actions~~ ACTIVITIES.

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

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

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

4 (d) Submit to the legislature in November of each year 2
5 ~~listings. One listing shall identify in order of relative risk~~
6 ~~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~~ OR MORE LISTS
10 INCLUDING THE FOLLOWING:

11 (i) ONE LIST IDENTIFYING KNOWN SITES OF ENVIRONMENTAL CON-
12 TAMINATION THAT DOES ALL OF THE FOLLOWING:

13 (A) IDENTIFIES IN A MANNER strictly derived from the numeri-
14 cal risk assessment ~~model~~ MODELS provided for in this section
15 THE RELATIVE RISKS PRESENTED BY EACH SITE.

16 (B) CATEGORIZES SITES ACCORDING TO THE RESPONSE ACTIVITY AT
17 THE SITE AT THE TIME OF LISTING.

18 (C) INDICATES USING 3 SEPARATE DESIGNATIONS WHETHER THE
19 OWNER OF A SITE IS THE FEDERAL GOVERNMENT, THE STATE, OR A LOCAL
20 UNIT OF GOVERNMENT.

21 (ii) A LIST IDENTIFYING SITES AT WHICH REMEDIAL ACTIONS ARE
22 COMPLETE BUT WHERE LAND USE RESTRICTIONS HAVE BEEN IMPOSED ON THE
23 SITE THAT LIMIT AND SPECIFY THE FUTURE USES OF THE SITE THAT ARE
24 CONSISTENT WITH THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, OR
25 WELFARE, AND THE ENVIRONMENT.

26 (e) Submit the ~~2 listings~~ LIST provided for under
27 subdivision ~~(d)~~ (D)(i) for public hearings geographically

1 dispersed throughout the state. ~~which~~ THESE hearings shall
2 be completed at least 30 days before the governor's annual budget
3 recommendations to the legislature.

4 (F) REPORT AT LEAST ANNUALLY TO THE LEGISLATURE AND THE GOV-
5 ERNOR THOSE SITES THAT HAVE BEEN REMOVED PURSUANT TO THIS SECTION
6 AND RULES FROM A LIST DESCRIBED IN SUBDIVISION (D)(i).

7 (2) FOLLOWING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
8 ADDED THIS SUBSECTION, IF THE DEPARTMENT HAS INFORMATION IDENTI-
9 FYING THE OWNER OF PROPERTY THAT MAY BE LISTED AS A SITE, THE
10 DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE OWNER OF
11 THE PROPERTY IN WRITING PRIOR TO INCLUDING THE SITE ON THE LIST
12 DESCRIBED IN SUBSECTION (1)(D)(i).

13 (3) A SITE SHALL BE REMOVED FROM THE LIST DESCRIBED IN
14 SUBSECTION (1)(D)(i) WHEN THE DEPARTMENT'S REVIEW OF A SITE SHOWS
15 THAT THE SITE DOES NOT MEET THE CRITERIA SPECIFIED IN RULES
16 PROMULGATED UNDER THIS ACT. A SITE SHALL NOT BE REMOVED FROM
17 THIS LIST UNTIL ANY NECESSARY RESPONSE ACTIVITY THAT MEETS THE
18 STANDARDS SPECIFIED IN RULES PROMULGATED UNDER THIS ACT IS
19 COMPLETE.

20 (4) A PERSON MAY REQUEST THAT A SITE BE REMOVED FROM THE
21 LIST DESCRIBED IN SUBSECTION (1)(D)(i) BY SUBMITTING A PETITION
22 TO THE DEPARTMENT. A PETITION SHALL INCLUDE ALL OF THE FOLLOWING
23 INFORMATION:

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

25 (B) A DESCRIPTION OF THE NATURE AND EXTENT OF THE ENVIRON-
26 MENTAL CONTAMINATION THAT EXISTED AT THE SITE AT THE TIME OF ITS
27 LISTING.

1 (C) A DESCRIPTION OF THE RESPONSE ACTIVITY UNDERTAKEN TO
2 REMEDY THE CONTAMINATION, CONSISTENT WITH RULES PROMULGATED UNDER
3 THIS ACT, OR THE INVESTIGATION CONDUCTED TO DETERMINE THAT THE
4 SITE SHOULD BE REMOVED FROM THE LIST WITHOUT FURTHER RESPONSE
5 ACTIVITY.

6 (D) AN ANALYSIS OF THE EFFECTIVENESS OF THE RESPONSE ACTIV-
7 ITY UNDERTAKEN TO REMEDIATE ENVIRONMENTAL CONTAMINATION, INCLUD-
8 ING A DESCRIPTION OF ANY RESIDUAL CONTAMINATION THAT MAY EXIST AT
9 THE SITE. THE ANALYSIS SHALL INCLUDE ANALYTICAL DATA THAT DOCU-
10 MENTS THE EFFECTIVENESS OF THE RESPONSE ACTIVITY.

11 (E) OTHER SITE-SPECIFIC INFORMATION REQUIRED BY THE
12 DEPARTMENT.

13 (5) IT SHALL BE THE RESPONSIBILITY OF THE PERSON SEEKING THE
14 REMOVAL OF A SITE FROM THE SITE LIST TO PREPARE AND SUBMIT TO THE
15 DEPARTMENT THE DOCUMENTATION REQUIRED BY SUBSECTION (4).

16 (6) REMOVAL OF SITES FROM THE LIST DESCRIBED IN
17 SUBSECTION (1)(D)(i) SHALL BE ACCOMPLISHED AS PART OF THE PROCESS
18 DESCRIBED IN RULES PROMULGATED UNDER THIS ACT. HOWEVER, IF THE
19 DEPARTMENT CONCLUDES THAT THE CRITERIA SPECIFIED IN SUBSECTION
20 (3) HAVE BEEN MET AND THAT THE CIRCUMSTANCES WARRANT REMOVAL OF
21 THE SITE FROM THE SITE LIST BEFORE OR AT THE NEXT REGULARLY
22 SCHEDULED HEARING TO BE HELD IN ACCORDANCE WITH RULES PROMULGATED
23 UNDER THIS ACT, THE DEPARTMENT SHALL PREPARE A NOTICE OF INTENT
24 TO REMOVE THE SITE FROM THE SITE LIST. A NOTICE OF INTENT SHALL
25 INCLUDE INFORMATION CONSIDERED APPROPRIATE BY THE DEPARTMENT AND
26 SHALL BE PUBLISHED IN AT LEAST 1 NEWSPAPER OF GENERAL CIRCULATION
27 IN THE STATE AND IN AT LEAST 1 NEWSPAPER THAT SERVES THE AREA OF

1 THE SITE. PUBLIC COMMENT ON THE NOTICE OF INTENT TO REMOVE THE
2 SITE FROM THE SITE LIST SHALL BE ACCEPTED FOR A PERIOD OF NOT
3 LESS THAN 30 DAYS FROM THE DATE OF PUBLICATION. THE DEPARTMENT
4 MAY HOLD A PUBLIC HEARING ON THE PROPOSED ACTION.

5 (7) THE DEPARTMENT SHALL MAKE A FINAL DETERMINATION WHETHER
6 TO INCLUDE THE SITE ON THE NEXT LIST DESCRIBED IN
7 SUBSECTION (1)(D)(i). THE DEPARTMENT SHALL CONSIDER ANY COMMENTS
8 RECEIVED IN RESPONSE TO THE NOTICE DESCRIBED IN SUBSECTION (6).

9 (8) THE DEPARTMENT SHALL NOTIFY THE PERSON WHO REQUESTED
10 THAT THE SITE BE REMOVED FROM THE LIST DESCRIBED IN
11 SUBSECTION (1)(D)(i) OF THE DECISION WITHIN 45 DAYS OF THE END OF
12 THE PUBLIC COMMENT PERIOD IN THE NOTICE PUBLISHED PURSUANT TO THE
13 PROVISIONS OF SUBSECTION (6).

14 Sec. 7. (1) The governor shall include in his or her annual
15 budget recommendations to the legislature a recommended level of
16 funding to provide for ~~further evaluation of~~ RESPONSE ACTIVI-
17 TIES AT those sites identified and submitted to the legislature
18 under section 6. ~~and the implementation of any interim response~~
19 ~~activity.~~ The ~~governor~~ DEPARTMENT shall identify the order of
20 priority by which the ~~evaluation of sites and the implementation~~
21 ~~of any interim response activity~~ ACTIVITIES shall proceed.

22 (2) The governor shall include in his or her annual budget
23 recommendations to the legislature a recommended level of funding
24 to provide for response activities at those sites identified and
25 submitted to the legislature pursuant to section 6. The
26 ~~governor~~ DEPARTMENT shall identify the order in which
27 recommended response activities shall proceed.

1 (3) The governor's recommendations under this section shall
 2 be accompanied by a site specific description of the extent of
 3 known or suspected environmental contamination, the recommended
 4 ~~responses~~ RESPONSE ACTIVITIES to be undertaken, and an estimate
 5 of cost of those ~~responses~~ RESPONSE ACTIVITIES.

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

17 ~~(5) This section shall not take effect until January 1,~~
 18 ~~1983.~~

19 Sec. 8. (1) This act shall not be construed to relieve a
 20 person from any obligation for the cost of ~~evaluation or~~
 21 response activity related to a site for which the person is
 22 responsible, or to relieve a person from the obligation to pay a
 23 fine, settlement, penalty, or damages. The attorney general
 24 shall seek compensation and reimbursement from a ~~person whose~~
 25 ~~action or negligence caused a condition requiring expenditure of~~
 26 ~~money pursuant to this act~~ RESPONSIBLE PARTY.

1 (2) THIS ACT IS INTENDED TO REMEDY ANY PRESENT OR FUTURE
2 THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
3 ENVIRONMENT OR THE NATURAL RESOURCES. THIS ACT SHALL APPLY TO
4 ANY SITE AND ANY RESPONSIBLE PARTY REGARDLESS OF WHEN THE RELEASE
5 OF THE HAZARDOUS SUBSTANCE MAY HAVE OCCURRED. THE LEGISLATURE
6 EXPRESSES ITS INTENT THAT REMEDIES IN THIS ACT SHALL BE GIVEN THE
7 FULLEST RETROACTIVE APPLICATION IN ACCORD WITH ANY CONSTITUTIONAL
8 LIMITATION.

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

13 (2) The fund shall receive as revenue any money from any
14 source, as appropriated by the legislature.

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

19 (4) AN UNEXPENDED BALANCE WITHIN THE FUND AT THE CLOSE OF
20 THE FISCAL YEAR SHALL BE CARRIED FORWARD TO THE FOLLOWING FISCAL
21 YEAR.

22 Sec. 10. (1) Money required to pay for ~~evaluation and~~
23 response activities recommended under this act and to reimburse
24 state departments and agencies for expenditures for those pur-
25 poses shall be appropriated from the environmental response fund
26 and any other source the legislature considers necessary to carry
27 out the requirements of this act.

1 (2) Money from the environmental response fund shall be
 2 appropriated only for ~~evaluation and~~ response activities at
 3 sites which have been subjected to the risk assessment process
 4 described in section 6.

5 (3) The environmental response fund may be used for match,
 6 operation, and maintenance purposes as required under the compre-
 7 hensive environmental response, compensation, and liability act
 8 of 1980, PUBLIC LAW 96-510, ~~94 Stat. 2767~~ 42 U.S.C. 9601 TO
 9 9626, 9651 TO 9652, 9653 TO 9660, 9661, AND 9671 TO 9675 AND
 10 UNDER SUBTITLE I OF THE SOLID WASTE DISPOSAL ACT, TITLE II OF
 11 PUBLIC LAW 89-272, 42 U.S.C. 6991 TO 6991i.

12 (4) The governor shall recommend an annual appropriation for
 13 the fund in his or her annual budget recommendations to the
 14 legislature.

15 ~~(5) This section shall not take effect until January 1,~~
 16 ~~1983.~~

17 Sec. 11. (1) Money required to reimburse an individual who
 18 has temporarily or permanently replaced a potable water supply
 19 that was contaminated or was threatened to become contaminated by
 20 a hazardous substance may be disbursed by the ~~governor's~~
 21 ~~designee~~ DEPARTMENT if all of the following circumstances
 22 exist:

23 (a) The expenditure for the replacement of a water supply
 24 was made after October 13, 1982, the effective date of this act.

25 (b) The site of the replaced water supply is a location
 26 which is on ~~either of the 2~~ THE numerical risk assessment
 27 listings described in section ~~6~~ 6(1)(D)(i).

1 (c) The individual presents to the ~~governor's designee~~
2 DEPARTMENT documentation from the department of public health or
3 an authorized representative of a health department with respon-
4 sibility for the individual's water supply indicating that the
5 individual's water supply was unfit or was threatened to become
6 unfit for consumption or any other domestic use and that a
7 replacement of the water supply was necessary at the time that
8 expenditures were made to temporarily or permanently replace or
9 treat the water supply.

10 (d) The individual presents to the ~~governor's designee~~
11 DEPARTMENT receipts for expenses reasonably incurred in replacing
12 ~~or~~ a water supply, or in the event that the individual is
13 unable to produce the receipts after making all reasonable
14 efforts, submits a statement containing all of the following:

15 (i) The nature and cost of the water replacement that was
16 undertaken.

17 (ii) Either the name and address of any person who worked
18 for the individual to accomplish the replacement of the water
19 supply or an explanation of why this information is not
20 produced.

21 (iii) A statement from the department of public health or
22 authorized representative of the individual's local health
23 department indicating the condition of the individual's water
24 following the replacement of the water supply.

25 (e) The individual is not the person whose action or negli-
26 gence caused a condition that resulted in the contamination or

1 threat of contamination of the water supply that was temporarily
2 or permanently replaced or treated.

3 (f) The individual presents to the ~~governor's designee~~
4 DEPARTMENT documentation from the department of public health or
5 from the local health department which is responsible for the
6 individual's water supply indicating that the replacement water
7 supply is acceptable for use and was constructed in accordance
8 with applicable state and local statutes, rules, and policies.

9 (2) If an individual who seeks reimbursement pursuant to
10 this section is unable to produce receipts as required by subsec-
11 tion (1)(d), a reimbursement to that individual under this sec-
12 tion shall not exceed the cost of the least expensive comparable
13 replacement or treatment of a water supply in the individual's
14 area or, in the event there are no comparable local situations,
15 then the amount to be reimbursed shall be based on the reasonable
16 customary charge for a substantially similar replacement.

17 (3) This section shall not apply after December 31, 1989.

18 SEC. 12. (1) NOTWITHSTANDING ANY OTHER PROVISION OR RULE OF
19 LAW AND SUBJECT ONLY TO THE DEFENSES SET FORTH IN SECTION 12A, A
20 RESPONSIBLE PARTY SHALL BE LIABLE FOR ALL OF THE FOLLOWING:

21 (A) INJUNCTIVE RELIEF NECESSARY TO PROTECT THE PUBLIC
22 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT OR THE NATURAL
23 RESOURCES FROM A RELEASE OR THREATENED RELEASE.

24 (B) IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL, ALL COSTS
25 OF RESPONSE ACTIVITY INCURRED BY THE STATE RESULTING FROM THE
26 ENVIRONMENTAL CONTAMINATION.

1 (C) ALL OTHER NECESSARY COSTS OF RESPONSE ACTIVITY RESULTING
2 FROM THE ENVIRONMENTAL CONTAMINATION THAT ARE INCURRED BY A
3 PERSON CONDUCTING A RESPONSE ACTIVITY WHO IS SUPERVISED,
4 DIRECTED, OR HAS THE WRITTEN APPROVAL BY THE DEPARTMENT OR THE
5 DEPARTMENT OF PUBLIC HEALTH.

6 (D) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,
7 OR LOSS OF NATURAL RESOURCES RESULTING FROM THE ENVIRONMENTAL
8 CONTAMINATION, INCLUDING THE REASONABLE COSTS OF ASSESSING THE
9 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE ENVIRONMENTAL
10 CONTAMINATION.

11 (2) THE AMOUNTS RECOVERABLE IN AN ACTION UNDER THIS SECTION
12 SHALL INCLUDE INTEREST ON THE AMOUNTS RECOVERABLE UNDER
13 SUBSECTION (1)(B), (C), AND (D). THIS INTEREST SHALL ACCRUE FROM
14 THE DATE PAYMENT IS DEMANDED IN WRITING, OR THE DATE OF THE
15 EXPENDITURE OR DAMAGE, WHICHEVER IS LATER. THE RATE OF INTEREST
16 ON THE OUTSTANDING UNPAID BALANCE OF THE AMOUNTS RECOVERABLE
17 UNDER THIS SECTION SHALL BE THE SAME RATE AS IS SPECIFIED IN
18 SECTION 6013(5) OF THE REVISED JUDICATURE ACT OF 1961, ACT
19 NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 600.6013 OF THE
20 MICHIGAN COMPILED LAWS.

21 SEC. 12A. (1) A PERSON SHALL NOT BE LIABLE UNDER SECTION 12
22 IF THAT PERSON ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE
23 THAT THE RELEASE OR THREATENED RELEASE AND THE DAMAGES RESULTING
24 FROM THE RELEASE WERE CAUSED SOLELY BY 1 OF THE FOLLOWING:

25 (A) AN ACT OF NATURE.

26 (B) AN ACT OF WAR.

1 (C) AN ACT OR OMISSION OF A THIRD PARTY OTHER THAN AN
2 EMPLOYEE OR AGENT OF THE DEFENDANT, OR THAN ONE WHOSE ACT OR
3 OMISSION OCCURS IN CONNECTION WITH A CONTRACTUAL RELATIONSHIP,
4 EXISTING DIRECTLY OR INDIRECTLY, WITH THE DEFENDANT IF THE
5 DEFENDANT ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE BOTH OF
6 THE FOLLOWING:

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

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

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

15 (2) THE TERM CONTRACTUAL RELATIONSHIP, AS USED IN SUBSECTION
16 (1)(C), INCLUDES, BUT IS NOT LIMITED TO, LAND CONTRACTS, DEEDS,
17 OR OTHER INSTRUMENTS TRANSFERRING TITLE OR POSSESSION, UNLESS THE
18 REAL PROPERTY ON WHICH THE SITE IS LOCATED WAS ACQUIRED BY THE
19 DEFENDANT AFTER THE DISPOSAL OR PLACEMENT OF THE HAZARDOUS SUB-
20 STANCE ON, IN, OR AT THE PROPERTY, AND 1 OR MORE OF THE FOLLOWING
21 CIRCUMSTANCES IS ALSO ESTABLISHED BY THE DEFENDANT BY A PREPON-
22 DERANCE OF THE EVIDENCE:

23 (A) AT THE TIME THE DEFENDANT ACQUIRED THE PROPERTY, THE
24 DEFENDANT DID NOT KNOW AND HAD NO REASON TO KNOW THAT A HAZARDOUS
25 SUBSTANCE THAT IS THE SUBJECT OF THE RELEASE OR THREATENED
26 RELEASE WAS DISPOSED OF ON, IN, OR AT THE SITE.

1 (B) THE DEFENDANT IS A GOVERNMENT ENTITY THAT ACQUIRED THE
2 PROPERTY BY ESCHEAT, TAX DELINQUENCY, OR THROUGH ANY OTHER
3 INVOLUNTARY TRANSFER OR ACQUISITION.

4 (C) THE DEFENDANT ACQUIRED THE PROPERTY BY INHERITANCE.

5 (3) IN ADDITION TO ESTABLISHING 1 OR MORE OF THE CIRCUM-
6 STANCES DESCRIBED IN SUBSECTION (2)(A), (B), OR (C), THE
7 DEFENDANT SHALL ESTABLISH THAT HE OR SHE HAS SATISFIED THE
8 REQUIREMENTS OF SUBSECTION (1)(C)(i) AND (ii).

9 (4) TO ESTABLISH THAT THE DEFENDANT HAD NO REASON TO KNOW,
10 AS REQUIRED UNDER SUBSECTION (2)(A), THE DEFENDANT SHALL HAVE
11 UNDERTAKEN, AT THE TIME OF ACQUISITION, ALL APPROPRIATE INQUIRY
12 INTO THE PREVIOUS OWNERSHIP AND USES OF THE PROPERTY CONSISTENT
13 WITH GOOD COMMERCIAL OR CUSTOMARY PRACTICE IN AN EFFORT TO MINI-
14 MIZE LIABILITY. FOR PURPOSES OF THE PRECEDING SENTENCE, THE
15 COURT SHALL TAKE INTO ACCOUNT ANY SPECIALIZED KNOWLEDGE OR
16 EXPERIENCE ON THE PART OF THE DEFENDANT, THE RELATIONSHIP OF THE
17 PURCHASE PRICE TO THE VALUE OF THE PROPERTY IF UNCONTAMINATED BY
18 A HAZARDOUS SUBSTANCE, COMMONLY KNOWN OR REASONABLY ASCERTAINABLE
19 INFORMATION ABOUT THE PROPERTY, THE OBVIOUSNESS OF THE PRESENCE
20 OR LIKELY PRESENCE OF CONTAMINATION AT THE PROPERTY, AND THE
21 ABILITY TO DETECT ENVIRONMENTAL CONTAMINATION BY APPROPRIATE
22 INSPECTION.

23 (5) NOTHING IN THIS SUBSECTION OR IN SUBSECTION (1)(C) SHALL
24 DIMINISH THE LIABILITY OF A PREVIOUS OWNER OR OPERATOR OF A SITE
25 WHO WOULD OTHERWISE BE LIABLE UNDER THIS ACT. NOTWITHSTANDING
26 THIS SUBSECTION, IF THE DEFENDANT OBTAINED ACTUAL KNOWLEDGE OF
27 THE RELEASE OR THREATENED RELEASE AT THE SITE WHEN THE DEFENDANT

1 OWNED THE REAL PROPERTY AND THEN TRANSFERRED OWNERSHIP OF THE
2 PROPERTY TO ANOTHER PERSON WITHOUT DISCLOSING THIS KNOWLEDGE, THE
3 DEFENDANT SHALL BE TREATED AS LIABLE UNDER SECTION 12 AND NO
4 DEFENSE UNDER THIS SECTION SHALL BE AVAILABLE TO THAT DEFENDANT.
5 NOTHING IN THIS SUBSECTION SHALL AFFECT THE LIABILITY UNDER THIS
6 ACT OF A DEFENDANT WHO, BY AN ACT OR OMISSION, CAUSED OR CONTRIB-
7 UTED TO THE RELEASE OR THREATENED RELEASE THAT IS THE SUBJECT OF
8 A RESPONSE ACTIVITY AT THE SITE.

9 SEC. 12B. (1) IF 2 OR MORE RESPONSIBLE PARTIES ACTING INDE-
10 PENDENTLY CAUSE ENVIRONMENTAL CONTAMINATION THAT RESULTS IN
11 RESPONSE ACTIVITY EXPENSES, OR DAMAGES FOR INJURY TO, DESTRUCTION
12 OF, OR LOSS OF NATURAL RESOURCES, AND THERE IS A REASONABLE BASIS
13 FOR DIVISION OF HARM ACCORDING TO CONTRIBUTION OF EACH RESPONSI-
14 BLE PARTY, EACH PARTY IS SUBJECT TO LIABILITY UNDER SECTION 12
15 ONLY FOR THE PORTION OF THE TOTAL HARM THAT THE PERSON CAUSED.
16 HOWEVER, THE RESPONSIBLE PARTY OR PARTIES SEEKING TO LIMIT THEIR
17 LIABILITY ON THE GROUND THAT THE ENTIRE HARM IS CAPABLE OF DIVI-
18 SION SHALL HAVE THE BURDEN OF PROOF AS TO THE DIVISIBILITY OF THE
19 HARM AND AS TO THE APPORTIONMENT OF LIABILITY.

20 (2) IF 2 OR MORE RESPONSIBLE PARTIES CAUSE OR CONTRIBUTE TO
21 AN INDIVISIBLE HARM THAT RESULTS IN RESPONSE ACTIVITY COSTS, OR
22 DAMAGES FOR INJURY TO, DESTRUCTION OF, OR LOSS OF NATURAL
23 RESOURCES, EACH RESPONSIBLE PARTY IS SUBJECT TO LIABILITY UNDER
24 SECTION 12C FOR THE ENTIRE HARM.

25 (3) A RESPONSIBLE PARTY MAY SEEK CONTRIBUTION FROM ANY OTHER
26 RESPONSIBLE PARTY WHO IS LIABLE OR POTENTIALLY LIABLE UNDER
27 SECTION 12 DURING OR FOLLOWING A CIVIL ACTION BROUGHT UNDER THIS

1 ACT. NOTHING IN THIS SUBSECTION SHALL DIMINISH A PERSON'S RIGHT
2 TO BRING AN ACTION FOR CONTRIBUTION IN THE ABSENCE OF A CIVIL
3 ACTION BY THE STATE UNDER THIS ACT. THE COURT SHALL CONSIDER THE
4 FOLLOWING FACTORS IN ALLOCATING RESPONSE ACTIVITY COSTS AND DAM-
5 AGES AMONG LIABLE PARTIES:

6 (A) EACH RESPONSIBLE PARTY'S RELATIVE DEGREE OF RESPONSIBIL-
7 ITY IN CAUSING THE ENVIRONMENTAL CONTAMINATION.

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

9 (C) THE DEGREE OF INVOLVEMENT OF AND CARE EXERCISED BY THE
10 RESPONSIBLE PARTY IN HIS OR HER INVOLVEMENT WITH THE HAZARDOUS
11 SUBSTANCE.

12 (D) THE DEGREE OF COOPERATION BY THE RESPONSIBLE PARTY WITH
13 FEDERAL, STATE, OR LOCAL OFFICIALS TO PREVENT, MINIMIZE, RESPOND
14 TO, OR REMEDY ENVIRONMENTAL CONTAMINATION.

15 (E) WHETHER EQUITY REQUIRES THAT THE LIABILITY OF SOME OF
16 THE RESPONSIBLE PARTIES SHOULD CONSTITUTE A SINGLE SHARE.
17 IF THE COURT DETERMINES THAT ALL OR PART OF A RESPONSIBLE PARTY'S
18 SHARE OF LIABILITY IS UNCOLLECTIBLE FROM THAT PARTY, THEN THE
19 COURT SHALL REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG THE OTHER
20 RESPONSIBLE PARTIES ACCORDING TO THE FACTORS LISTED IN THIS
21 SUBSECTION. THE PARTY WHOSE LIABILITY IS REALLOCATED SHALL CON-
22 TINUE TO BE SUBJECT TO CONTRIBUTION AND TO ANY CONTINUING LIABIL-
23 ITY TO THE STATE.

24 (4) A PERSON WHO HAS RESOLVED ITS LIABILITY TO THE STATE IN
25 AN ADMINISTRATIVE OR JUDICIALLY APPROVED SETTLEMENT SHALL NOT BE
26 LIABLE FOR CLAIMS FOR CONTRIBUTION REGARDING MATTERS ADDRESSED IN
27 THE SETTLEMENT. THE SETTLEMENT DOES NOT DISCHARGE ANY OF THE

1 OTHER RESPONSIBLE PARTIES OR POTENTIALLY RESPONSIBLE PARTIES
2 UNLESS ITS TERMS PROVIDE FOR THIS, BUT THE POTENTIAL LIABILITY OF
3 THE OTHER RESPONSIBLE PARTIES IS REDUCED BY THE AMOUNT OF THE
4 SETTLEMENT.

5 (5) IF THE STATE OBTAINS LESS THAN COMPLETE RELIEF FROM A
6 PERSON WHO HAS RESOLVED ITS LIABILITY TO THE STATE IN AN ADMINIS-
7 TRATIVE OR JUDICIALLY APPROVED SETTLEMENT UNDER THIS ACT, THE
8 STATE MAY BRING AN ACTION AGAINST ANY OTHER RESPONSIBLE PARTY
9 THAT HAS NOT RESOLVED ITS LIABILITIES.

10 (6) A PERSON WHO HAS RESOLVED ITS LIABILITY TO THE STATE FOR
11 SOME OR ALL OF A RESPONSE ACTIVITY IN AN ADMINISTRATIVE OR JUDI-
12 Cially APPROVED SETTLEMENT MAY SEEK CONTRIBUTION FROM ANY PERSON
13 WHO IS NOT A PARTY TO THE SETTLEMENT DESCRIBED IN SUBSECTION (4).

14 (7) IN AN ACTION FOR CONTRIBUTION UNDER THIS SECTION, OR ANY
15 ACTION PURSUANT TO SECTION 12(1)(C) FOR RECOVERY OF RESPONSE
16 ACTIVITY COSTS BY A PERSON OTHER THAN THE STATE, THE RIGHTS OF
17 ANY PERSON OTHER THAN THE STATE, INCLUDING A PERSON WHO HAS
18 RESOLVED ITS LIABILITY TO THE STATE, SHALL BE SUBORDINATE TO THE
19 RIGHTS OF THE STATE, IF THE STATE FILES AN ACTION UNDER THIS ACT.

20 SEC. 12C. (1) AN INDEMNIFICATION, HOLD HARMLESS, OR SIMILAR
21 AGREEMENT OR CONVEYANCE SHALL NOT BE EFFECTIVE TO TRANSFER FROM A
22 PERSON WHO MAY BE LIABLE TO THE STATE FOR EVALUATION OR RESPONSE
23 ACTIVITY COSTS OR DAMAGES FOR A RELEASE OR THREATENED RELEASE
24 UNDER SECTION 12 TO ANY OTHER PERSON THE LIABILITY IMPOSED UNDER
25 THIS ACT. THIS SECTION SHALL NOT BAR AN AGREEMENT TO INSURE,
26 HOLD HARMLESS, OR INDEMNIFY A PARTY TO THE AGREEMENT FOR
27 LIABILITY UNDER THIS ACT.

1 (2) NOTHING IN THIS ACT SHALL BAR A CAUSE OF ACTION THAT A
2 PERSON SUBJECT TO LIABILITY UNDER THIS ACT, OR A GUARANTOR, HAS
3 OR WOULD HAVE, BY REASON OF SUBROGATION OR OTHERWISE AGAINST ANY
4 PERSON.

5 SEC. 12D. (1) FOR THE PURPOSES OF DETERMINING THE NEED FOR
6 RESPONSE ACTIVITY, OR SELECTING OR TAKING A RESPONSE ACTIVITY OR
7 OTHERWISE ENFORCING THE PROVISIONS OF THIS ACT, THE DEPARTMENT
8 MAY REQUIRE A PERSON WHO HAS OR MAY HAVE INFORMATION RELEVANT TO
9 ANY OF THE FOLLOWING TO FURNISH, UPON REASONABLE NOTICE, RELATED
10 INFORMATION OR DOCUMENTS, OR BOTH:

11 (A) THE IDENTIFICATION, NATURE, AND QUANTITY OF MATERIALS
12 THAT HAVE BEEN OR ARE GENERATED, TREATED, STORED, HANDLED, OR
13 DISPOSED OF AT A SITE OR TRANSPORTED TO A SITE.

14 (B) THE NATURE OR EXTENT OF A RELEASE OR THREATENED RELEASE
15 OF A HAZARDOUS SUBSTANCE AT OR FROM A SITE.

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

18 (2) UPON REASONABLE NOTICE, A PERSON DESCRIBED IN
19 SUBSECTION (1) SHALL EITHER:

20 (A) GRANT THE DEPARTMENT OR ITS AUTHORIZED REPRESENTATIVES
21 ACCESS AT ALL REASONABLE TIMES TO ANY PLACE, PROPERTY, OR LOCA-
22 TION TO INSPECT AND COPY THE RELATED INFORMATION OR DOCUMENTS, OR
23 BOTH.

24 (B) COPY AND FURNISH TO THE DEPARTMENT OR ITS AUTHORIZED
25 REPRESENTATIVE THE RELATED INFORMATION OR DOCUMENTS, OR BOTH.

1 (3) THE DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES SHALL
2 HAVE THE RIGHT TO ENTER AT ALL REASONABLE TIMES ANY PUBLIC OR
3 PRIVATE PROPERTY FOR ANY OF THE FOLLOWING PURPOSES:

4 (A) IDENTIFYING A SITE OF ENVIRONMENTAL CONTAMINATION.

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

7 (C) INSPECTING, TESTING, TAKING PHOTOGRAPHS OR VIDEOTAPES,
8 OR SAMPLING OF ANY OF THE FOLLOWING: SOILS, AIR, SURFACE WATER,
9 GROUNDWATER, SUSPECTED HAZARDOUS SUBSTANCES, OR ANY CONTAINERS OR
10 LABELS OF SUSPECTED HAZARDOUS SUBSTANCES.

11 (D) DETERMINING THE NEED FOR OR SELECTING ANY RESPONSE
12 ACTIVITY.

13 (E) TAKING OR MONITORING IMPLEMENTATION OF ANY RESPONSE
14 ACTIVITY.

15 (4) ALL INSPECTIONS AND INVESTIGATIONS UNDERTAKEN BY THE
16 DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES UNDER THIS SECTION
17 SHALL BE COMPLETED WITH REASONABLE PROMPTNESS.

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

21 (A) PETITION THE COURT OF APPROPRIATE JURISDICTION FOR A
22 WARRANT AUTHORIZING ACCESS TO PROPERTY OR DOCUMENTS PURSUANT TO
23 THIS SECTION.

24 (B) COMMENCE A CIVIL ACTION TO COMPEL COMPLIANCE WITH A
25 REQUEST FOR INFORMATION, DOCUMENTS, OR ENTRY PURSUANT TO THIS
26 SECTION, TO AUTHORIZE INFORMATION GATHERING AND ENTRY PROVIDED

1 FOR IN THIS SECTION, AND TO ENJOIN INTERFERENCE WITH THE EXERCISE
2 OF THE AUTHORITY PROVIDED IN THIS SECTION.

3 (6) IN A CIVIL ACTION BROUGHT PURSUANT TO SUBSECTION (5),
4 WHERE THERE IS A REASONABLE BASIS TO BELIEVE THERE MAY BE A
5 RELEASE OR A THREATENED RELEASE, THE COURT SHALL TAKE THE FOLLOW-
6 ING ACTIONS:

7 (A) IN THE CASE OF INTERFERENCE OR NONCOMPLIANCE WITH INFOR-
8 MATION OR DOCUMENT REQUESTS PURSUANT TO SUBSECTION (1), THE COURT
9 SHALL ENJOIN INTERFERENCE WITH AND DIRECT COMPLIANCE WITH THE
10 REQUESTS UNLESS THE DEFENDANT ESTABLISHES THAT, UNDER THE CIRCUM-
11 STANCES OF THE CASE, THE REQUEST FOR INFORMATION OR DOCUMENTS IS
12 ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION, OR OTHERWISE
13 NOT IN ACCORDANCE WITH LAW.

14 (B) IN THE CASE OF INTERFERENCE WITH ENTRY OR INSPECTION
15 REQUESTS PURSUANT TO SUBSECTION (3), THE COURT SHALL ENJOIN THE
16 INTERFERENCE AND DIRECT COMPLIANCE WITH THE REQUEST UNLESS THE
17 DEFENDANT ESTABLISHES THAT, UNDER THE CIRCUMSTANCES OF THE CASE,
18 THE REQUEST FOR ENTRY OR INSPECTION IS ARBITRARY AND CAPRICIOUS,
19 AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW.

20 (C) ASSESS A CIVIL FINE NOT TO EXCEED \$25,000.00 FOR EACH
21 DAY OF NONCOMPLIANCE AGAINST ANY PERSON WHO UNREASONABLY FAILS TO
22 COMPLY WITH THE PROVISIONS OF SUBSECTION (1), (2), OR (3).

23 (7) INFORMATION OR DOCUMENTS OBTAINED BY THE DEPARTMENT OR
24 DIRECTORS AS AUTHORIZED UNDER SUBSECTION (1) OR (2) SHALL BE
25 AVAILABLE TO THE PUBLIC TO THE EXTENT PROVIDED BY THE FREEDOM OF
26 INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING
27 SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED LAWS. A

1 PERSON WHO PROVIDES DOCUMENTS, RECORDS, OR INFORMATION PURSUANT
2 TO SUBSECTION (1) OR (2) MAY DESIGNATE THE DOCUMENTS, RECORDS, OR
3 INFORMATION THAT THE PERSON BELIEVES TO BE ENTITLED TO PROTECTION
4 AS IF THEY WERE EXEMPT FROM DISCLOSURE AS BEING EITHER TRADE
5 SECRETS OR INFORMATION OF A PERSONAL NATURE UNDER
6 SECTION 13(1)(A) OR (G) OF THE FREEDOM OF INFORMATION ACT, ACT
7 NO. 442 OF THE PUBLIC ACTS OF 1976, BEING SECTION 15.243 OF THE
8 MICHIGAN COMPILED LAWS, AND SUBMIT THOSE SPECIFICALLY DESIGNATED
9 DOCUMENTS, RECORDS, AND INFORMATION SEPARATELY FROM OTHER DOCU-
10 MENTS, RECORDS, OR INFORMATION REQUIRED TO BE PROVIDED UNDER THIS
11 SECTION.

12 (8) NOTWITHSTANDING SUBSECTION (7), THE FOLLOWING INFORMA-
13 TION OR DOCUMENTS OBTAINED BY THE DEPARTMENT OR THE DIRECTORS AS
14 REQUIRED BY THIS SECTION SHALL BE AVAILABLE TO THE PUBLIC:

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

17 (B) THE PHYSICAL PROPERTIES OF A HAZARDOUS SUBSTANCE,
18 INCLUDING ITS BOILING POINT, MELTING POINT, FLASH POINT, SPECIFIC
19 GRAVITY, VAPOR DENSITY, SOLUBILITY IN WATER, AND VAPOR PRESSURE
20 AT 20 DEGREES CELSIUS.

21 (C) THE HAZARDS TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR
22 THE ENVIRONMENT OR NATURAL RESOURCES POSED BY A HAZARDOUS SUB-
23 STANCE, INCLUDING PHYSICAL HAZARDS, SUCH AS EXPLOSION, AND POTEN-
24 TIAL ACUTE AND CHRONIC HEALTH HAZARDS.

25 (D) THE POTENTIAL ROUTES OF HUMAN EXPOSURE TO THE HAZARDOUS
26 SUBSTANCE AT THE SITE BEING INVESTIGATED, ENTERED, OR INSPECTED
27 UNDER THIS SECTION.

1 (E) THE LOCATION OF DISPOSAL OF ANY WASTE STREAM RELEASED
2 FROM THE SITE.

3 (F) MONITORING DATA OR ANALYSIS OF MONITORING DATA PERTAIN-
4 ING TO DISPOSAL ACTIVITIES RELATED TO THE SITE.

5 (G) HYDROGEOLOGIC DATA.

6 (H) GROUNDWATER MONITORING DATA.

7 SEC. 12E. (1) A RESPONSIBLE PARTY WHO OBTAINS INFORMATION
8 THAT THERE MAY BE A RELEASE OR THREATENED RELEASE INTO THE ENVI-
9 RONMENT AT A SITE FOR WHICH THAT PERSON IS RESPONSIBLE SHALL
10 IMMEDIATELY TAKE APPROPRIATE ACTION, CONSISTENT WITH APPLICABLE
11 LAWS AND RULES PROMULGATED BY THE DEPARTMENT TO DO ALL OF THE
12 FOLLOWING:

13 (A) CONFIRM THE EXISTENCE OF THE RELEASE OR THREATENED
14 RELEASE.

15 (B) DETERMINE THE NATURE AND EXTENT OF THE RELEASE OR
16 THREATENED RELEASE.

17 (C) REPORT THE RELEASE OR THREATENED RELEASE TO THE DEPART-
18 MENT WITHIN 24 HOURS AFTER DISCOVERY OF THE RELEASE OR THREATENED
19 RELEASE.

20 (2) UPON CONFIRMATION BY A RESPONSIBLE PARTY OR THE DEPART-
21 MENT OF A RELEASE OR THREATENED RELEASE, THE RESPONSIBLE PARTY
22 SHALL TAKE APPROPRIATE ACTION CONSISTENT WITH RULES PROMULGATED
23 BY THE DEPARTMENT AND APPLICABLE LAWS. THESE RESPONSE ACTIVITIES
24 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING ACTIVITIES AS
25 APPROPRIATE:

26 (A) IMMEDIATELY STOP OR PREVENT THE RELEASE AT THE SOURCE.

1 (B) IMMEDIATELY IDENTIFY AND ELIMINATE ANY EXISTING OR
2 POTENTIAL THREAT OF FIRE OR EXPLOSION OR ANY DIRECT CONTACT
3 HAZARDS.

4 (C) IDENTIFY, CHARACTERIZE, AND PROVIDE A PLAN FOR REMOVAL
5 AND TREATMENT OR DISPOSAL OF CONTAMINATED SOILS.

6 (D) COMPLETE INVESTIGATIVE ACTIVITIES AS DIRECTED BY THE
7 DEPARTMENT.

8 (E) ANY OTHER RESPONSE ACTIVITY DETERMINED BY THE DEPARTMENT
9 TO BE NECESSARY.

10 (F) SUBMIT TO THE DEPARTMENT FOR APPROVAL A REMEDIAL ACTION
11 PLAN, THAT WHEN IMPLEMENTED, WILL ACHIEVE THE CLEANUP LEVELS
12 SPECIFIED IN RULES PROMULGATED UNDER THIS ACT. THE PLAN SHALL
13 INCLUDE A SCHEDULE FOR IMPLEMENTATION OF REMEDIAL ACTIONS.

14 (G) AFTER APPROVAL OF THE PLAN DESCRIBED IN SUBDIVISION (F)
15 BY THE DEPARTMENT, IMPLEMENT THE PLAN IN ACCORDANCE WITH A SCHED-
16 ULE APPROVED BY THE DEPARTMENT.

17 SEC. 12F. (1) THE DEPARTMENT MAY REQUIRE A RESPONSIBLE
18 PARTY TO TAKE RESPONSE ACTIVITIES AS DETERMINED BY THE DEPARTMENT
19 TO BE NECESSARY AND APPROPRIATE TO PROTECT THE PUBLIC HEALTH,
20 SAFETY, OR WELFARE, OR THE ENVIRONMENT OR THE NATURAL RESOURCES.

21 (2) THE DEPARTMENT MAY ISSUE ADMINISTRATIVE ORDERS TO A
22 PERSON IDENTIFIED BY THE DEPARTMENT AS A RESPONSIBLE PARTY
23 REQUIRING THAT PERSON TO PERFORM RESPONSE ACTIVITY RELATING TO A
24 SITE FOR WHICH THAT PARTY IS RESPONSIBLE, OR TO PROVIDE RECORD
25 NOTICE AS REQUIRED UNDER SECTION 12K, OR TO TAKE ANY OTHER ACTION
26 REQUIRED BY THIS ACT. AN ORDER ISSUED UNDER THIS SECTION SHALL
27 STATE WITH REASONABLE SPECIFICITY THE BASIS FOR ISSUANCE OF THE

1 ORDER AND SPECIFY A REASONABLE TIME FOR COMPLIANCE. THE
2 ADMINISTRATIVE ORDERS MAY SEEK SUCH RELIEF AS MAY BE NECESSARY AS
3 DETERMINED BY THE DEPARTMENT.

4 (3) WITHIN 30 DAYS AFTER ISSUANCE OF AN ADMINISTRATIVE ORDER
5 UNDER SUBSECTION (1), A RESPONSIBLE PARTY SHALL INDICATE IN WRIT-
6 ING WHETHER IT INTENDS TO COMPLY WITH THE ORDER.

7 (4) A RESPONSIBLE PARTY WHO, WITHOUT SUFFICIENT CAUSE, VIO-
8 LATES OR FAILS TO PROPERLY COMPLY WITH AN ORDER ISSUED UNDER THIS
9 SECTION SHALL BE LIABLE FOR EITHER OR BOTH OF THE FOLLOWING:

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

15 (B) FOR EXEMPLARY DAMAGES IN AN AMOUNT EQUAL TO 3 TIMES THE
16 AMOUNT OF ANY STATE EXPENDITURES RESULTING FROM A VIOLATION OR A
17 FAILURE TO COMPLY WITH AN ORDER. THE EXEMPLARY DAMAGES PROVIDED
18 FOR IN THIS SUBSECTION SHALL BE IN ADDITION TO ANY OTHER COST
19 RECOVERED FROM THE PERSON AUTHORIZED BY THIS ACT.

20 (5) A PERSON TO WHOM AN ORDER WAS ISSUED AND WHO COMPLIED
21 WITH THE TERMS OF THE ORDER ISSUED UNDER THIS SECTION WHO
22 BELIEVES THAT THE ORDER WAS ARBITRARY AND CAPRICIOUS OR UNLAWFUL
23 MAY PETITION THE DEPARTMENT, WITHIN 60 DAYS AFTER COMPLETION OF
24 THE REQUIRED ACTION, FOR REIMBURSEMENT FROM THE FUND FOR THE REA-
25 SONABLE COSTS OF THE ACTION PLUS INTEREST AT THE RATE DESCRIBED
26 IN SECTION 12(2) AND OTHER NECESSARY COSTS INCURRED IN SEEKING
27 REIMBURSEMENT UNDER THIS SUBSECTION. IF THE DEPARTMENT REFUSES

1 TO GRANT ALL OR PART OF THE PETITION, THE PETITIONER MAY, WITHIN
2 30 DAYS OF RECEIPT OF THE REFUSAL, FILE AN ACTION AGAINST THE
3 DEPARTMENT IN THE COURT OF CLAIMS SEEKING THIS RELIEF. EXCEPT AS
4 PROVIDED IN THIS SUBSECTION, TO OBTAIN REIMBURSEMENT, THE PETI-
5 TIONER SHALL ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT
6 THE ACTION ORDERED WAS ARBITRARY AND CAPRICIOUS OR UNLAWFUL, AND
7 THAT COSTS FOR WHICH IT SEEKS REIMBURSEMENT ARE REASONABLE IN
8 LIGHT OF THE ACTION REQUIRED BY AND UNDERTAKEN PURSUANT TO THE
9 RELEVANT ORDER.

10 (6) A STATE COURT SHALL NOT HAVE JURISDICTION TO REVIEW AN
11 ADMINISTRATIVE ORDER ISSUED UNDER THIS SECTION IN ANY ACTION
12 EXCEPT AN ACTION THAT IS 1 OF THE FOLLOWING:

13 (A) AN ACTION TO RECOVER RESPONSE COSTS, DAMAGES, OR FOR
14 CONTRIBUTION.

15 (B) AN ACTION BY THE STATE TO ENFORCE AN ADMINISTRATIVE
16 ORDER UNDER SECTION 12H OR BY ANY OTHER PERSON UNDER SECTION
17 12J(1)(B) TO ENFORCE AN ADMINISTRATIVE ORDER OR TO RECOVER A FINE
18 FOR VIOLATION OF AN ORDER.

19 (C) AN ACTION PURSUANT TO SUBSECTION (4) FOR REVIEW OF A
20 DECISION BY THE DEPARTMENT DENYING OR LIMITING REIMBURSEMENT.

21 (D) AN ACTION PURSUANT TO SECTION 12J(1)(C) TO ENFORCE A
22 NONDISCRETIONARY REQUIREMENT OF THIS ACT.

23 SEC. 12G. (1) THE DEPARTMENT MAY TAKE RESPONSE ACTIVITY OR
24 APPROVE OF RESPONSE ACTIVITY PROPOSED BY A RESPONSIBLE PARTY AS
25 THE DEPARTMENT CONCLUDES IS NECESSARY AND APPROPRIATE TO PROTECT
26 THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT OR THE
27 NATURAL RESOURCES.

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

3 (A) ASSURE THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, OR
4 WELFARE, OR THE ENVIRONMENT OR THE NATURAL RESOURCES.

5 (B) ATTAIN A DEGREE OF CLEANUP AND CONTROL OF HAZARDOUS SUB-
6 STANCES THAT COMPLIES WITH ALL APPLICABLE OR RELEVANT AND APPRO-
7 PRIATE REQUIREMENTS, RULES, CRITERIA, LIMITATIONS, AND STANDARDS
8 OF STATE AND FEDERAL ENVIRONMENTAL LAW.

9 (C) TO THE MAXIMUM EXTENT POSSIBLE, USE REMEDIAL TECHNOLO-
10 GIES THAT PERMANENTLY ELIMINATE OR REDUCE THE VOLUME, TOXICITY,
11 AND MOBILITY OF HAZARDOUS SUBSTANCES.

12 (D) BE CONSISTENT WITH CLEANUP STANDARDS INCORPORATED IN
13 RULES PROMULGATED UNDER THIS ACT.

14 (3) THE COST-EFFECTIVENESS OF ALTERNATIVE MEANS OF COMPLYING
15 WITH THIS SECTION SHALL BE CONSIDERED BY THE DEPARTMENT ONLY IN
16 SELECTING AMONG ALTERNATIVES THAT MEET ALL OF THE CRITERIA OF
17 SUBSECTION (2).

18 (4) BEFORE APPROVAL OF A PROPOSED PLAN FOR REMEDIAL ACTION
19 AT A SITE LISTED PURSUANT TO SECTION 6(1)(D)(i) THAT IS NOT AN
20 INTERIM RESPONSE ACTIVITY, THE DEPARTMENT SHALL:

21 (A) PUBLISH A NOTICE AND BRIEF SUMMARY OF THE RECOMMENDED
22 PLAN.

23 (B) PROVIDE FOR PUBLIC REVIEW AND COMMENT PERTINENT TO DOCU-
24 MENTS RELATING TO THE REMEDIAL ACTION PLAN, INCLUDING, IF APPLI-
25 CABLE, THE FEASIBILITY STUDY THAT OUTLINES ALTERNATIVE REMEDIAL
26 ACTION MEASURES CONSIDERED.

1 (C) PROVIDE AN OPPORTUNITY FOR A PUBLIC MEETING AT OR NEAR
2 THE SITE WHEN EITHER OF THE FOLLOWING OCCURS:

3 (i) THE DEPARTMENT DETERMINES THAT THERE IS A SIGNIFICANT
4 PUBLIC CONTROVERSY OR THAT FOR ANY OTHER REASON A PUBLIC MEETING
5 IS APPROPRIATE.

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

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

12 (5) FOR PURPOSES OF THIS SECTION, PUBLICATION SHALL INCLUDE,
13 AT A MINIMUM, PUBLICATION IN A MAJOR LOCAL NEWSPAPER OF GENERAL
14 CIRCULATION. IN ADDITION, EACH ITEM DEVELOPED, RECEIVED, PUB-
15 LISHED, OR MADE AVAILABLE TO THE PUBLIC SHALL BE AVAILABLE BY THE
16 DEPARTMENT FOR PUBLIC INSPECTION AND COPYING AT OR NEAR THE
17 SITE.

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

24 (A) REMEDIAL INVESTIGATION DATA REGARDING THE SITE.

25 (B) IF APPLICABLE, A FEASIBILITY STUDY AND POTENTIAL REME-
26 DIAL 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) THE DOCUMENT THAT SUMMARIZES THE MAJOR ISSUES RAISED BY
5 THE PUBLIC AND HOW THEY ARE TO BE ADDRESSED BY THE FINAL APPROVED
6 PLAN.

7 (E) OTHER INFORMATION APPROPRIATE TO THE SITE.

8 SEC. 12H. (1) IN ADDITION TO OTHER RELIEF AUTHORIZED BY
9 LAW, THE ATTORNEY GENERAL MAY, ON BEHALF OF THE STATE, COMMENCE A
10 CIVIL ACTION SEEKING ANY OF THE FOLLOWING:

11 (A) TEMPORARY OR PERMANENT INJUNCTIVE RELIEF NECESSARY TO
12 PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT
13 OR THE NATURAL RESOURCES FROM THE RELEASE OR THREATENED RELEASE.

14 (B) ALL COSTS OF RESPONSE ACTIVITY INCURRED BY THE STATE
15 RESULTING FROM THE ENVIRONMENTAL CONTAMINATION.

16 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,
17 OR LOSS OF NATURAL RESOURCES RESULTING FROM THE ENVIRONMENTAL
18 CONTAMINATION, INCLUDING THE REASONABLE COSTS OF ASSESSING THE
19 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE ENVIRONMENTAL
20 CONTAMINATION.

21 (D) A CIVIL FINE OF NOT MORE THAN \$10,000.00 FOR EACH DAY OF
22 NONCOMPLIANCE WITH THIS ACT OR A RULE PROMULGATED UNDER THIS
23 ACT. A FINE IMPOSED UNDER THIS SUBDIVISION SHALL BE BASED UPON
24 THE SERIOUSNESS OF THE VIOLATION AND ANY GOOD FAITH EFFORTS OF
25 THE RESPONSIBLE PARTY TO COMPLY WITH THE ACT OR RULE.

1 (E) A CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY OF
2 NONCOMPLIANCE WITH AN ADMINISTRATIVE OR JUDICIAL ORDER ISSUED
3 PURSUANT TO SECTION 12E.

4 (F) ENFORCEMENT OF AN ADMINISTRATIVE ORDER ISSUED PURSUANT
5 TO SECTION 12F.

6 (G) ENFORCEMENT OF INFORMATION GATHERING AND ENTRY AUTHORITY
7 PURSUANT TO SECTION 12D(5).

8 (H) ANY OTHER RELIEF NECESSARY FOR THE ENFORCEMENT OF THIS
9 ACT.

10 (2) IF AN ACTION IS BROUGHT UNDER THIS ACT BY A PLAINTIFF
11 OTHER THAN THE ATTORNEY GENERAL, THE PLAINTIFF SHALL, AT THE TIME
12 OF FILING, PROVIDE A COPY OF THE COMPLAINT TO THE ATTORNEY
13 GENERAL.

14 (3) AN ACTION BROUGHT UNDER THIS ACT MAY BE BROUGHT IN THE
15 CIRCUIT COURT FOR THE COUNTY OF INGHAM, IN THE COUNTY IN WHICH
16 THE DEFENDANT RESIDES, HAS A PLACE OF BUSINESS, OR IN WHICH THE
17 REGISTERED OFFICE OF A DEFENDANT CORPORATION IS LOCATED, OR IN
18 THE COUNTY WHERE THE RELEASE OCCURRED.

19 (4) IN JUDICIAL ACTION UNDER THIS ACT, JUDICIAL REVIEW OF
20 ANY ISSUES CONCERNING THE SELECTION OR ADEQUACY OF A RESPONSE
21 ACTIVITY TAKEN OR ORDERED BY THE STATE SHALL BE LIMITED TO THE
22 ADMINISTRATIVE RECORD. IF THE COURT FINDS THAT THE RECORD IS
23 INCOMPLETE OR INADEQUATE, THE COURT MAY CONSIDER SUPPLEMENTAL
24 MATERIAL IN THE ACTION. IN CONSIDERING OBJECTIONS RAISED IN A
25 JUDICIAL ACTION UNDER THIS ACT, THE COURT SHALL UPHOLD THE
26 STATE'S DECISION IN SELECTING A RESPONSE ACTIVITY UNLESS THE
27 OBJECTING PARTY CAN DEMONSTRATE BASED ON THE ADMINISTRATIVE

1 RECORD THAT THE DECISION WAS ARBITRARY AND CAPRICIOUS OR
2 OTHERWISE NOT IN ACCORDANCE WITH LAW. IN REVIEWING ALLEGED PRO-
3 CEDURAL ERRORS, THE COURT MAY DISALLOW COSTS OR DAMAGES ONLY TO
4 THE EXTENT THE ERRORS WERE SO SERIOUS AND RELATED TO MATTERS OF
5 SUCH CENTRAL IMPORTANCE THAT THE ACTIVITY WOULD HAVE BEEN SIGNIF-
6 ICANTLY CHANGED HAD THE ERRORS NOT BEEN MADE.

7 SEC. 12I. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE
8 LIABILITY UNDER THIS ACT OF ANY RESPONSIBLE PARTY FOR EACH
9 RELEASE OR INCIDENT INVOLVING A RELEASE SHALL NOT EXCEED THE
10 TOTAL OF ALL THE COSTS OF RESPONSE ACTIVITIES, FINES, AND EXEM-
11 PLARY DAMAGES, PLUS \$50,000,000.00 DAMAGES FOR THE FULL VALUE OF
12 INJURY TO, DESTRUCTION OF, OR LOSS OF NATURAL RESOURCES RESULTING
13 FROM THE ENVIRONMENTAL CONTAMINATION, INCLUDING THE REASONABLE
14 COSTS OF ASSESSING THE INJURY, DESTRUCTION, OR LOSS RESULTING
15 FROM THE ENVIRONMENTAL CONTAMINATION.

16 (2) NOTWITHSTANDING THE LIMITATIONS IN SUBSECTION (1), THE
17 LIABILITY OF A RESPONSIBLE PARTY UNDER THIS ACT SHALL BE THE FULL
18 AND TOTAL COSTS AND DAMAGES LISTED IN SUBSECTION (1), IN EITHER
19 OF THE FOLLOWING CIRCUMSTANCES:

20 (A) THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUB-
21 STANCE WAS THE RESULT OF WILLFUL MISCONDUCT OR NEGLIGENCE OF THE
22 PARTY OR OCCURRED WITH THE KNOWLEDGE OF THAT PARTY.

23 (B) THE PRIMARY CAUSE OF THE RELEASE WAS A KNOWING VIOLATION
24 OF APPLICABLE SAFETY, CONSTRUCTION, OR OPERATING STANDARDS OR
25 REGULATIONS.

26 SEC. 12J. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A
27 PERSON WHOSE HEALTH OR ENJOYMENT OF THE ENVIRONMENT IS OR MAY BE

1 ADVERSELY AFFECTED BY A RELEASE OR THREATENED RELEASE, BY A
2 VIOLATION OF THIS ACT, A RULE PROMULGATED OR ORDER ISSUED UNDER
3 THIS ACT, OR BY THE FAILURE OF THE DIRECTORS OR OTHER OFFICER OF
4 THIS STATE TO PERFORM A NONDISCRETIONARY ACT OR DUTY UNDER THIS
5 ACT, MAY COMMENCE A CIVIL ACTION AGAINST ANY OF THE FOLLOWING:

6 (A) A RESPONSIBLE PARTY PURSUANT TO SECTION 12(1)(A) FOR
7 INJUNCTIVE RELIEF NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY,
8 OR WELFARE, OR THE ENVIRONMENT OR THE NATURAL RESOURCES FROM A
9 RELEASE OR THREATENED RELEASE.

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

12 (C) THE DIRECTORS OR OTHER OFFICER OF THE STATE IF IT IS
13 ALLEGED THAT THE DIRECTORS OR ANY OTHER OFFICER FAILED TO PERFORM
14 A NONDISCRETIONARY ACT OR DUTY UNDER THIS ACT.

15 (2) THE CIRCUIT COURT SHALL HAVE JURISDICTION IN ACTIONS
16 BROUGHT UNDER SUBSECTION (1)(A) TO GRANT INJUNCTIVE RELIEF NECES-
17 SARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
18 ENVIRONMENT OR THE NATURAL RESOURCES FROM A RELEASE OR THREATENED
19 RELEASE. THE CIRCUIT COURT SHALL HAVE JURISDICTION IN ACTIONS
20 BROUGHT UNDER SUBSECTION (1)(B) TO ENFORCE THIS ACT OR A RULE
21 PROMULGATED OR ORDER ISSUED UNDER THIS ACT BY ORDERING SUCH
22 ACTION AS MAY BE NECESSARY TO CORRECT THE VIOLATION, AND TO
23 IMPOSE ANY CIVIL FINE PROVIDED FOR IN THIS ACT FOR THE
24 VIOLATION. A CIVIL FINE RECOVERED UNDER THIS SECTION SHALL BE
25 DEPOSITED IN THE FUND CREATED IN SECTION 9. THE CIRCUIT COURT
26 SHALL HAVE JURISDICTION IN ACTIONS BROUGHT UNDER SUBSECTION

1 (1)(C) TO ORDER 1 OR MORE OF THE DIRECTORS OR OTHER OFFICER TO
2 PERFORM THE NONDISCRETIONARY ACT OR DUTY CONCERNED.

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

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

8 (i) THE DEPARTMENT.

9 (ii) THE ATTORNEY GENERAL.

10 (iii) THE PROPOSED DEFENDANTS.

11 (B) THE STATE HAS NOT COMMENCED AND IS NOT DILIGENTLY PROSE-
12 CUTING AN ACTION UNDER THIS ACT OR UNDER OTHER APPROPRIATE LEGAL
13 AUTHORITY TO OBTAIN INJUNCTIVE RELIEF CONCERNING THE SITE OR TO
14 REQUIRE COMPLIANCE WITH THIS ACT OR A RULE OR AN ORDER UNDER THIS
15 ACT.

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

21 (5) IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT PURSUANT
22 TO THIS SECTION, THE COURT MAY AWARD COSTS OF LITIGATION, INCLUD-
23 ING REASONABLE ATTORNEY AND EXPERT WITNESS FEES TO THE PREVAILING
24 OR SUBSTANTIALLY PREVAILING PARTY IF THE COURT DETERMINES THAT AN
25 AWARD IS APPROPRIATE.

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

1 (7) AN ACTION UNDER SUBSECTION (1)(A) OR (B) SHALL BE
2 BROUGHT IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE ALLEGED
3 RELEASE, THREATENED RELEASE, OR OTHER VIOLATION OCCURRED. AN
4 ACTION UNDER SUBSECTION (1)(C) SHALL BE BROUGHT IN THE CIRCUIT
5 COURT FOR INGHAM COUNTY.

6 SEC. 12K. A PERSON WHO HAS KNOWLEDGE OR INFORMATION OR IS
7 ON NOTICE THROUGH A RECORDED INSTRUMENT THAT A PARCEL OF HIS OR
8 HER REAL PROPERTY IS A SITE SHALL NOT TRANSFER AN INTEREST IN
9 THAT REAL PROPERTY UNLESS HE OR SHE PROVIDES WRITTEN NOTICE TO
10 THE PURCHASER OR OTHER PERSON TO WHOM THE PROPERTY IS TRANSFERRED
11 THAT THE REAL PROPERTY IS A SITE AND DISCLOSES THE GENERAL NATURE
12 AND EXTENT OF ENVIRONMENTAL CONTAMINATION. THE WRITTEN NOTICE
13 PROVIDED BY THE TRANSFEROR SHALL BE A SEPARATE INSTRUMENT AND, IF
14 THE INSTRUMENT CONVEYING THE INTEREST IN REAL PROPERTY IS
15 RECORDED, THE WRITTEN NOTICE SHALL BE RECORDED WITH THE REGISTER
16 OF DEEDS IN THE APPROPRIATE COUNTY, ALONG WITH THE INSTRUMENT
17 CONVEYING THE INTEREST IN THE REAL PROPERTY. A CONTRACT OR
18 TRANSFER ENTERED INTO IN VIOLATION OF THIS SECTION SHALL BE VOID-
19 ABLE AT THE OPTION OF THE PERSON TO WHOM THE PROPERTY IS
20 TRANSFERRED.

21 SEC. 12L. (1) THE DIRECTORS, THE DEPARTMENT, AND THE ATTOR-
22 NEY GENERAL SHALL COOPERATE IN THE INVESTIGATION AND LITIGATION
23 OF ANY ACTION BROUGHT PURSUANT TO THIS ACT.

24 (2) IN CONSULTATION WITH THE ATTORNEY GENERAL, THE DEPART-
25 MENT SHALL DEVELOP AN IMPLEMENT AND ACCOUNTING SYSTEM TO RECORD
26 ALL EXPENDITURES FOR RESPONSE ACTIVITIES.

1 SEC. 12M. (1) ALL UNPAID COSTS INCURRED BY THE STATE FOR
2 RESPONSE ACTIVITY SHALL CONSTITUTE A LIEN IN FAVOR OF THE STATE
3 UPON ANY REAL AND PERSONAL PROPERTY OWNED BY A RESPONSIBLE PARTY
4 LIABLE UNDER THIS ACT. THIS LIEN SHALL HAVE PRIORITY OVER ALL
5 OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS AND ENCUMBRANCES
6 RECORDED BEFORE THE DATE THE LIEN UNDER THIS SUBSECTION IS
7 RECORDED. THIS LIEN ARISES WHEN THE STATE FIRST INCURS COSTS FOR
8 RESPONSE ACTIVITY AT THE SITE FOR WHICH THE PARTY IS
9 RESPONSIBLE.

10 (2) IN ADDITION TO THE LIEN PROVIDED IN SUBSECTION (1),
11 WHERE THE STATE INCURS COSTS FOR RESPONSE ACTIVITY THAT INCREASES
12 THE MARKET VALUE OF REAL PROPERTY THAT IS THE LOCATION OF A
13 RELEASE OR THREATENED RELEASE, THE INCREASE IN VALUE CAUSED BY
14 THE STATE FUNDED RESPONSE ACTIVITY SHALL CONSTITUTE A LIEN IN
15 FAVOR OF THE STATE UPON THE REAL PROPERTY. THIS LIEN SHALL HAVE
16 PRIORITY OVER ALL OTHER LIENS OR ENCUMBRANCES THAT ARE OR HAVE
17 BEEN RECORDED UPON THE PROPERTY.

18 (3) A LIEN PROVIDED IN SUBSECTION (1) OR (2) IS PERFECTED
19 AGAINST REAL PROPERTY WHEN A NOTICE OF LIEN IS FILED WITH THE
20 REGISTER OF DEEDS IN THE COUNTY IN WHICH THE REAL PROPERTY IS
21 LOCATED. A LIEN UPON PERSONAL PROPERTY PROVIDED IN SUBSECTION
22 (1) IS PERFECTED WHEN A NOTICE OF LIEN IS FILED WITH THE SECRE-
23 TARY OF STATE. FILING OF THE NOTICE OF LIEN RELATES BACK TO THE
24 DATE ON WHICH THE LIEN AROSE AND PERFECTS THE LIEN AS OF THAT
25 DATE.