

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 528

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 21301a, 21304a, 21304b, 21307, 21307a, 21309a,  
21310a, 21314a, 21315, 21316, 21316a, and 21320 (MCL 324.21301a,  
324.21304a, 324.21304b, 324.21307, 324.21307a, 324.21309a,  
324.21310a, 324.21314a, 324.21315, 324.21316, 324.21316a, and  
324.21320), sections 21301a, 21304a, 21309a, 21310a, and 21315 as  
amended and section 21304b as added by 1996 PA 116 and section  
21307 as amended and sections 21307a, 21314a, and 21316a as added  
by 1995 PA 22, and by adding sections 21304c, 21304d, 21323a,  
21323b, 21323c, 21323d, 21323e, 21323f, 21323g, 21323h, 21323i,  
21323j, 21323k, 21323l, 21323m, 21325, and 21334.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 21301a. (1) This part is intended to provide remedies  
2 **USING A PROCESS AND PROCEDURES SEPARATE AND DISTINCT FROM THE**  
3 **PROCESS, PROCEDURES, AND CRITERIA ESTABLISHED UNDER PART 201** for  
4 sites posing a threat to the public health, safety, or welfare, or  
5 to the environment, **AS A RESULT OF RELEASES FROM UNDERGROUND**  
6 **STORAGE TANK SYSTEMS**, regardless of whether the release or threat  
7 of release of a regulated substance occurred before or after  
8 January 19, 1989, the effective date of the former leaking  
9 underground storage tank act, ~~Act No. 478 of the Public Acts of~~  
10 ~~1988, 1988 PA 478~~, and for this purpose, this part shall be given  
11 retroactive application. However, criminal penalties provided in  
12 ~~the amendatory act that added this section~~ **THIS PART** only apply to  
13 violations of this part that occur after April 13, 1995.

14           (2) The ~~changes in liability~~ **PROVISIONS** that are provided for  
15 ~~in the amendatory act that added this subsection~~ **THIS PART** shall be  
16 given retroactive application.

17           Sec. 21304a. (1) Corrective action activities undertaken  
18 pursuant to this part shall be conducted in accordance with the  
19 process outlined in RBCA in a manner that is protective of the  
20 public health, safety, and welfare, and the environment. **CORRECTIVE**  
21 **ACTION ACTIVITIES THAT INVOLVE A DISCHARGE INTO AIR OR GROUND WATER**  
22 **AS DEFINED IN SECTION 21302 OR SURFACE WATER AS DEFINED IN SECTION**  
23 **21303 SHALL BE CONSISTENT WITH PARTS 31 AND 55.**

24 ~~— (2) Subject to subsections (3) and (4), the department shall~~  
25 ~~establish cleanup criteria for corrective action activities~~  
26 ~~undertaken under this part using the process outlined in RBCA. The~~  
27 ~~department shall utilize only reasonable and relevant exposure~~

1 ~~assumptions and pathways in determining the cleanup criteria.~~

2       (2) **THE TIER I RISK-BASED SCREENING LEVELS FOR REGULATED**  
3 **SUBSTANCES ARE THE UNRESTRICTED RESIDENTIAL AND NONRESIDENTIAL**  
4 **GENERIC CLEANUP CRITERIA DEVELOPED BY THE DEPARTMENT PURSUANT TO**  
5 **PART 201 AND SHALL BE UTILIZED IN ACCORDANCE WITH THE PROCESS**  
6 **OUTLINED IN RBCA AS SCREENING LEVELS ONLY.**

7       (3) If a regulated substance poses a carcinogenic risk to  
8 humans, the ~~cleanup criteria~~ **TIER I RBSLS** derived for cancer risk  
9 shall be the 95% upper bound on the calculated risk of 1 additional  
10 cancer above the background cancer rate per 100,000 individuals  
11 using the exposure assumptions and pathways established by ~~the~~  
12 ~~department and the process in RBCA.~~ If a regulated substance poses  
13 a risk of both cancer and an adverse health effect other than  
14 cancer, cleanup criteria shall be derived for cancer and each  
15 adverse health effect.

16       (4) If a ~~cleanup criterion~~ **THE APPLICABLE RBSL OR SSTL** for  
17 groundwater differs from either (a) the state drinking water  
18 standard established pursuant to section 5 of the safe drinking  
19 water act, ~~Act No. 399 of the Public Acts of 1976, being section~~  
20 ~~325.1005 of the Michigan Compiled Laws, 1976 PA 399, MCL 325.1005,~~  
21 or (b) criteria for adverse aesthetic characteristics derived  
22 pursuant to R 299.5709 of the Michigan administrative code, the  
23 ~~cleanup criterion~~ **SSTL** shall be the more stringent of (a) or (b)  
24 unless a ~~consultant retained by~~ the owner or operator determines  
25 that compliance with (a) or (b) is not necessary because the use of  
26 the groundwater is reliably restricted pursuant to section 21310a.

27       (5) **CORRECTIVE ACTION AT SITES WHERE A RELEASE HAS OCCURRED OR**

1 **A THREAT OF RELEASE EXISTS FROM AN UNDERGROUND STORAGE TANK SYSTEM**  
2 **IS REGULATED EXCLUSIVELY UNDER THIS PART.** Notwithstanding any other  
3 provision of this part, if a release or threat of release at a site  
4 is not solely the result of a release or threat of release from an  
5 underground storage tank system, the owner or operator of the  
6 underground storage tank system may choose to perform response  
7 activities pursuant to part 201 in lieu of corrective actions  
8 pursuant to this part.

9 Sec. 21304b. (1) ~~An owner or operator~~ **A PERSON** shall not  
10 remove soil, or allow soil to be removed, from a site to an off-  
11 site location unless that person determines that the soil can be  
12 lawfully relocated without posing a threat to the public health,  
13 safety, or welfare, or the environment. The determination shall  
14 consider whether the soil is subject to regulation ~~pursuant to~~  
15 **UNDER** parts 111 and 115.

16 (2) For the purposes of subsection (1), soil poses a threat to  
17 the public health, safety, or welfare, or the environment if  
18 concentrations of regulated substances in the soil exceed the  
19 ~~cleanup criteria~~ **TIER I RBSLS** established pursuant to section  
20 21304a that apply to the location to which the soil will be moved  
21 or relocated, except if the soil is to be removed from the site for  
22 disposal or treatment, the soil shall satisfy the appropriate  
23 regulatory criteria for disposal or treatment. Any land use  
24 restriction that would be required for the application of a  
25 criterion pursuant to section 21304a shall be in place at the  
26 location to which the soil will be moved. Soil may be relocated  
27 only to another location that is similarly contaminated,

1 considering the general nature, concentration, and mobility of  
2 regulated substances present at the location to which the  
3 contaminated soil will be removed. Contaminated soil shall not be  
4 moved to a location that is not a site unless it is taken there for  
5 treatment or disposal in conformance with applicable laws and  
6 regulations.

7 (3) ~~An owner or operator~~ **A PERSON** shall not relocate soil, or  
8 allow soil to be relocated, within a site of environmental  
9 contamination where a corrective action plan was approved unless  
10 that person provides assurances that the same degree of control  
11 required for application of the criteria of section 21304a is  
12 provided for the contaminated soil.

13 (4) The prohibition in subsection (3) against relocation of  
14 contaminated soil within a site of environmental contamination does  
15 not apply to soils that are temporarily relocated for the purpose  
16 of implementing corrective actions or utility construction if the  
17 corrective actions or utility construction is completed in a timely  
18 fashion and the short-term hazards are appropriately controlled.

19 ~~—— (5) If soil is being moved off site from, moved to, or~~  
20 ~~relocated on site at a site where corrective actions will occur,~~  
21 ~~the soil shall not be removed without the prior approval of the~~  
22 ~~department.~~

23 (5) ~~(6)~~ If soil is being relocated in a manner not addressed  
24 by subsection ~~(5)~~ **THIS SECTION**, the ~~owner or operator of~~ **PERSON**  
25 **THAT OWNS OR OPERATES** the site from which soil is being moved shall  
26 notify the department within 14 days after the soil is moved. The  
27 notice shall include all of the following:

1 (a) The location from which soil will be removed.

2 (b) The location to which the soil will be taken.

3 (c) The volume of soil to be removed.

4 (d) A summary of information or data on which the owner or  
5 operator is basing the determination required in subsection (2)  
6 that the soil does not present a threat to the public health,  
7 safety, or welfare, or the environment.

8 (e) If land use restrictions would apply pursuant to section  
9 21310a, to the soil when it is relocated, the notice shall include  
10 documentation that those restrictions are in place.

11 (6) ~~(7)~~—The determination required by subsections (1) and (3)  
12 shall be based on knowledge of the person undertaking or approving  
13 the removal or relocation of soil, or on characterization of the  
14 soil for the purpose of compliance with this section.

15 (7) ~~(8)~~—This section does not apply to soil that is designated  
16 as an inert material pursuant to section 11507.

17 **SEC. 21304C. (1) A PERSON THAT OWNS OR OPERATES PROPERTY THAT**  
18 **THE PERSON HAS KNOWLEDGE IS OR WAS A SITE SHALL DO ALL OF THE**  
19 **FOLLOWING WITH RESPECT TO REGULATED SUBSTANCES AT THE PROPERTY:**

20 (A) UNDERTAKE MEASURES AS ARE NECESSARY TO PREVENT  
21 EXACERBATION.

22 (B) EXERCISE DUE CARE BY UNDERTAKING CORRECTIVE ACTION  
23 NECESSARY TO MITIGATE UNACCEPTABLE EXPOSURE TO REGULATED  
24 SUBSTANCES, MITIGATE FIRE AND EXPLOSION HAZARDS DUE TO REGULATED  
25 SUBSTANCES, AND ALLOW FOR THE INTENDED USE OF THE PROPERTY IN A  
26 MANNER THAT PROTECTS THE PUBLIC HEALTH AND SAFETY.

27 (C) TAKE REASONABLE PRECAUTIONS AGAINST THE REASONABLY

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1 FORESEEABLE ACTS OR OMISSIONS OF A THIRD PARTY AND THE CONSEQUENCES  
2 THAT FORESEEABLY COULD RESULT FROM THOSE ACTS OR OMISSIONS.

3 (D) PROVIDE REASONABLE COOPERATION, ASSISTANCE, AND ACCESS TO  
4 THE PERSONS THAT ARE AUTHORIZED TO CONDUCT CORRECTIVE ACTION  
5 ACTIVITIES AT THE PROPERTY, INCLUDING THE COOPERATION AND ACCESS  
6 NECESSARY FOR THE INSTALLATION, INTEGRITY, OPERATION, AND  
7 MAINTENANCE [OF] ANY COMPLETE OR PARTIAL CORRECTIVE ACTION ACTIVITY  
8 AT THE PROPERTY. NOTHING IN THIS SUBDIVISION SHALL BE INTERPRETED  
9 TO PROVIDE ANY RIGHT OF ACCESS NOT EXPRESSLY AUTHORIZED BY LAW,  
10 INCLUDING ACCESS AUTHORIZED PURSUANT TO A WARRANT OR A COURT ORDER,  
11 OR TO PRECLUDE ACCESS ALLOWED PURSUANT TO A VOLUNTARY AGREEMENT.

12 (E) COMPLY WITH ANY LAND USE OR RESOURCES USE RESTRICTIONS  
13 ESTABLISHED OR RELIED ON IN CONNECTION WITH THE CORRECTIVE ACTION  
14 ACTIVITIES AT THE PROPERTY.

15 (F) NOT IMPEDE THE EFFECTIVENESS OR INTEGRITY OF ANY LAND USE  
16 OR RESOURCE USE RESTRICTION EMPLOYED AT THE PROPERTY IN CONNECTION  
17 WITH CORRECTIVE ACTION ACTIVITIES.

18 (2) A PERSON'S OBLIGATIONS UNDER THIS SECTION SHALL BE BASED  
19 UPON THE APPLICABLE RBSL OR SSTL.

20 (3) A PERSON THAT VIOLATES SUBSECTION (1) THAT IS NOT  
21 OTHERWISE LIABLE UNDER THIS PART FOR THE RELEASE AT THE PROPERTY IS  
22 LIABLE FOR CORRECTIVE ACTION ACTIVITY COSTS AND NATURAL RESOURCE  
23 DAMAGES ATTRIBUTABLE TO ANY EXACERBATION AND ANY FINES OR PENALTIES  
24 IMPOSED UNDER THIS PART RESULTING FROM THE VIOLATION OF SUBSECTION  
25 (1) BUT IS NOT LIABLE FOR PERFORMANCE OF ADDITIONAL CORRECTIVE  
26 ACTION ACTIVITIES UNLESS THE PERSON IS OTHERWISE LIABLE UNDER THIS  
27 PART FOR PERFORMANCE OF ADDITIONAL CORRECTIVE ACTION ACTIVITIES.

1 THE BURDEN OF PROOF IN A DISPUTE AS TO WHAT CONSTITUTES  
2 EXACERBATION SHALL BE BORNE BY THE PARTY SEEKING RELIEF.

3 (4) COMPLIANCE WITH THIS SECTION DOES NOT SATISFY A PERSON'S  
4 OBLIGATION TO PERFORM CORRECTIVE ACTION ACTIVITIES AS OTHERWISE  
5 REQUIRED UNDER THIS PART.

6 (5) SUBSECTION (1) (A) TO (C) DOES NOT APPLY TO THE STATE OR TO  
7 A LOCAL UNIT OF GOVERNMENT THAT IS NOT LIABLE UNDER SECTION  
8 21323A(3) (A), (B), (C), OR (E) OR TO THE STATE OR LOCAL UNIT OF  
9 GOVERNMENT THAT ACQUIRED PROPERTY BY PURCHASE, GIFT, TRANSFER, OR  
10 CONDEMNATION OR TO A PERSON THAT IS EXEMPT FROM LIABILITY UNDER  
11 SECTION 21323A(4) (C). HOWEVER, IF THE STATE OR LOCAL UNIT OF  
12 GOVERNMENT, OTHER THAN THOSE EXEMPT FROM LIABILITY UNDER SECTION  
13 21323A(4) (B), ACTING AS THE OPERATOR OF A PARCEL OF PROPERTY THAT  
14 THE STATE OR LOCAL UNIT OF GOVERNMENT HAS KNOWLEDGE IS OR WAS A  
15 SITE, OFFERS ACCESS TO THAT PARCEL ON A REGULAR OR CONTINUOUS BASIS  
16 PURSUANT TO AN EXPRESS PUBLIC PURPOSE AND INVITES THE GENERAL  
17 PUBLIC TO USE THAT PROPERTY FOR THE EXPRESS PUBLIC PURPOSE, THE  
18 STATE OR LOCAL UNIT OF GOVERNMENT IS SUBJECT TO THIS SECTION BUT  
19 ONLY WITH RESPECT TO THAT PORTION OF THE PROPERTY THAT IS OPENED TO  
20 AND USED BY THE GENERAL PUBLIC FOR THAT EXPRESS PURPOSE, AND NOT  
21 THE ENTIRE PROPERTY. EXPRESS PUBLIC PURPOSE INCLUDES, BUT IS NOT  
22 LIMITED TO, ACTIVITIES SUCH AS A PUBLIC PARK, MUNICIPAL OFFICE  
23 BUILDING, OR MUNICIPAL PUBLIC WORKS OPERATION. EXPRESS PUBLIC  
24 PURPOSE DOES NOT INCLUDE ACTIVITIES SURROUNDING THE ACQUISITION OR  
25 COMPILATION OF PARCELS FOR THE PURPOSE OF FUTURE DEVELOPMENT.

26 (6) SUBSECTION (1) (A) TO (C) DOES NOT APPLY TO A PERSON THAT  
27 IS EXEMPT FROM LIABILITY UNDER SECTION 21323A(3) (C) OR (D) EXCEPT



1 WITH REGARD TO THAT PERSON'S ACTIVITIES AT THE PROPERTY.

2 SEC. 21304D. (1) IF THE OWNER OF A PARCEL OF REAL PROPERTY HAS  
3 KNOWLEDGE OR INFORMATION OR IS ON NOTICE THROUGH A RECORDED  
4 INSTRUMENT THAT THE REAL PROPERTY IS A SITE, THE OWNER SHALL NOT  
5 TRANSFER AN INTEREST IN THAT REAL PROPERTY UNLESS THE OWNER  
6 PROVIDES WRITTEN NOTICE TO THE TRANSFEREE THAT THE REAL PROPERTY IS  
7 A SITE AND OF THE GENERAL NATURE AND EXTENT OF THE RELEASE.

8 (2) THE OWNER OF REAL PROPERTY FOR WHICH A NOTICE REQUIRED IN  
9 SUBSECTION (1) HAS BEEN RECORDED MAY, UPON COMPLETION OF ALL  
10 CORRECTIVE ACTION ACTIVITIES FOR THE SITE AS APPROVED BY THE  
11 DEPARTMENT, RECORD WITH THE REGISTER OF DEEDS FOR THE APPROPRIATE  
12 COUNTY A CERTIFICATION THAT ALL CORRECTIVE ACTION ACTIVITY REQUIRED  
13 IN AN APPROVED FINAL ASSESSMENT REPORT HAS BEEN COMPLETED.

14 (3) A PERSON SHALL NOT TRANSFER AN INTEREST IN REAL PROPERTY  
15 UNLESS THE PERSON FULLY DISCLOSES ANY LAND OR RESOURCE USE  
16 RESTRICTIONS THAT APPLY TO THAT REAL PROPERTY AS A PART OF  
17 CORRECTIVE ACTION THAT HAS BEEN OR IS BEING IMPLEMENTED IN  
18 COMPLIANCE WITH SECTION 21304A.

19 Sec. 21307. (1) Upon confirmation of a release from an  
20 underground storage tank system, the owner or operator shall report  
21 the release ~~and whether free product has been discovered to the~~  
22 department within 24 hours after discovery. The department may  
23 investigate the release. However, an investigation by the  
24 department does not relieve the owner or operator from any  
25 responsibilities related to the release provided for in this part.

26 (2) After a release has been reported under subsection (1),  
27 the owner or operator ~~or a consultant retained by the owner or~~

1 ~~operator~~ shall immediately begin and expeditiously perform all of  
2 the following initial ~~response~~ actions:

3 (a) Identify and mitigate **IMMEDIATE** fire, explosion **HAZARDS**,  
4 and **ACUTE** vapor hazards.

5 (b) Take action to prevent further release of the regulated  
6 substance into the environment including removing the regulated  
7 substance from the underground storage tank system that is causing  
8 the release.

9 ~~—— (c) Identify and recover free product. If free product is  
10 identified, do all of the following:~~

11 ~~—— (i) Conduct free product removal in a manner that minimizes the  
12 spread of contamination into previously uncontaminated zones by  
13 using recovery and disposal techniques appropriate to the  
14 conditions at the site and in a manner that properly treats,  
15 discharges, or disposes of recovery by products as required by law.~~

16 ~~—— (ii) Use abatement of free product migration as a minimum  
17 objective for the design of the free product removal system.~~

18 ~~—— (iii) Handle any flammable products in a safe and competent  
19 manner to prevent fires or explosions.~~

20 ~~—— (iv) If a discharge is necessary in conducting free product  
21 removal, obtain all necessary permits or authorization as required  
22 by law.~~

23 (C) USING THE PROCESS OUTLINED BY RBCA REGARDING NAPL, TAKE  
24 STEPS NECESSARY AND FEASIBLE UNDER THIS PART TO ADDRESS  
25 UNACCEPTABLE IMMEDIATE RISKS.

26 (d) Excavate and contain, treat, or dispose of soils above the  
27 water table that are visibly contaminated with a regulated

1 substance if the contamination is likely to cause a fire hazard. ~~or~~  
2 ~~spread and increase the cost of corrective action.~~

3 (e) Take any other action necessary to abate an immediate  
4 threat to public health, safety, or welfare, or the environment.

5 ~~—— (f) If free product is discovered after the release was~~  
6 ~~reported under subsection (1), report the free product discovery to~~  
7 ~~the department within 24 hours of its discovery.~~

8 (3) Immediately following initiation of initial response  
9 actions under this section, the ~~consultant retained by the owner or~~  
10 operator shall do all of the following:

11 (a) Visually inspect the areas of any aboveground releases or  
12 exposed areas of belowground releases and prevent further migration  
13 of the released substance into surrounding soils, groundwater, and  
14 surface water.

15 (b) Continue to monitor and mitigate any additional **IMMEDIATE**  
16 fire and safety hazards posed by vapors or ~~free product~~ **NAPL** that  
17 have migrated from the underground storage tank system excavation  
18 zone and entered into subsurface structures.

19 ~~—— (c) If free product is discovered at any time at a location~~  
20 ~~not previously identified under subsection (2)(c), report the~~  
21 ~~discovery within 24 hours to the department and initiate free~~  
22 ~~product recovery in compliance with subsection (2)(c).~~

23 Sec. 21307a. (1) Following initiation of initial ~~response~~  
24 actions under section 21307, a ~~consultant retained by the owner or~~  
25 operator shall complete the requirements of this part and submit  
26 related reports or executive summaries detailed in this part to  
27 address the contamination at the site. At any time that sufficient

1 corrective action has been undertaken to address contamination, a  
2 ~~consultant retained by~~ the owner or operator shall complete and  
3 submit a site closure report pursuant to section 21312a and omit  
4 the remaining interim steps.

5 (2) In addition to the reporting requirements specified in  
6 this part, ~~a consultant retained by~~ the owner or operator shall  
7 provide 48-hour notification to the department prior to initiating  
8 any of the following activities:

9 (a) Soil excavation.

10 (b) Well drilling, including monitoring well installation.

11 (c) Sampling of soil or groundwater.

12 (d) Construction of treatment systems.

13 Sec. 21309a. (1) If initial ~~response~~ actions under section  
14 21307 have not resulted in completion of corrective action, a  
15 ~~consultant retained by~~ an owner or operator shall prepare a  
16 corrective action plan to address contamination at the site. ~~For~~  
17 ~~corrective~~ **CORRECTIVE** action plans submitted as part of a final  
18 assessment report ~~pursuant to section 21311a after October 1, 1995,~~  
19 ~~the corrective action plan shall use the process described in RBCA~~  
20 **AND SHALL BE BASED UPON THE SITE INFORMATION AND CHARACTERIZATION**  
21 **RESULTS OF THE INITIAL ASSESSMENT REPORT.**

22 (2) A corrective action plan shall include all of the  
23 following:

24 (a) A description of the corrective action to be implemented,  
25 including an explanation of how that action will meet the  
26 requirements of the **TIER I, II, OR III EVALUATION IN THE** RBCA  
27 process. The corrective action plan shall also include an analysis

1 of the selection of indicator parameters to be used in evaluating  
2 the implementation of the corrective action plan, if indicator  
3 parameters are to be used. The corrective action plan shall include  
4 **AN ANALYSIS OF THE RECOVERABILITY OF THE NAPL AND WHETHER THE NAPL**  
5 **IS MOBILE OR MIGRATING, AND** a description of ambient air quality  
6 monitoring activities to be undertaken during the corrective action  
7 if such activities are appropriate.

8 (b) An operation and maintenance plan if any element of the  
9 corrective action requires operation and maintenance.

10 The operation and maintenance plan shall include **INFORMATION THAT**  
11 **DESCRIBES THE PROPOSED OPERATION AND MAINTENANCE ACTIONS.** ~~all of~~  
12 ~~the following:~~

13 ~~—— (i) Name, telephone number, and address of the person who is~~  
14 ~~responsible for operation and maintenance.~~

15 ~~—— (ii) Operation and maintenance schedule.~~

16 ~~—— (iii) Written and pictorial plan of operation and maintenance.~~

17 ~~—— (iv) Design and construction plans.~~

18 ~~—— (v) Equipment diagrams, specifications, and manufacturers'~~  
19 ~~guidelines.~~

20 ~~—— (vi) Safety plan.~~

21 ~~—— (vii) Emergency plan, including emergency contact telephone~~  
22 ~~numbers.~~

23 ~~—— (viii) A list of spare parts available for emergency repairs.~~

24 ~~—— (ix) Other information required by the department to determine~~  
25 ~~the adequacy of the operation and maintenance plan. Department~~  
26 ~~requests for information pursuant to this subparagraph shall be~~  
27 ~~limited to factors not adequately addressed by information required~~

1 ~~by subparagraphs (i) through (viii) and shall be accompanied by an~~  
2 ~~explanation of the need for the additional information.~~

3 (c) A monitoring plan if monitoring of environmental media or  
4 site activities or both is required to confirm the effectiveness  
5 and integrity of the remedy. The monitoring plan shall include all  
6 of the following:

7 (i) Location of monitoring points.

8 (ii) Environmental media to be monitored, including, but not  
9 limited to, soil, air, water, or biota.

10 (iii) Monitoring schedule.

11 (iv) Monitoring methodology, including sample collection  
12 procedures **SUCH AS GRAB SAMPLING PROCEDURES FOR MONITORING**  
13 **GROUNDWATER, AMONG OTHER PROCEDURES.**

14 (v) Substances to be monitored, including an explanation of  
15 the selection of any indicator parameters to be used.

16 (vi) Laboratory methodology, including the name of the  
17 laboratory responsible for analysis of monitoring samples, method  
18 detection limits, and practical quantitation levels. Raw data used  
19 to determine method detection limits shall be made available to the  
20 department on request.

21 (vii) Quality control/quality assurance plan.

22 (viii) Data presentation and evaluation plan.

23 ~~(ix) Contingency plan to address ineffective monitoring.~~

24 ~~(x) Operation and maintenance plan for monitoring.~~

25 (ix) ~~(xi)~~ How the monitoring data will be used to demonstrate  
26 effectiveness of corrective action activities.

27 (x) ~~(xii)~~ Other elements required by the department to determine

1 the adequacy of the monitoring plan. Department requests for  
2 information pursuant to this subparagraph shall be limited to  
3 factors not adequately addressed by information required under  
4 subparagraphs (i) through ~~(vi)~~—(ix) and shall be accompanied by an  
5 explanation of the need for the additional information.

6 (d) An explanation of any land use or resource use  
7 restrictions, if the restrictions are required pursuant to section  
8 21310a, **INCLUDING HOW THOSE RESTRICTIONS WILL BE EFFECTIVE IN**  
9 **PREVENTING OR CONTROLLING UNACCEPTABLE EXPOSURES.**

10 (e) A schedule for implementation of the corrective action.

11 ~~——(f) A financial assurance mechanism, as provided for in R~~  
12 ~~29.2161 to R 29.2169 of the Michigan administrative code, in an~~  
13 ~~amount approved by the department, to pay for monitoring, operation~~  
14 ~~and maintenance, oversight, and other costs if required by the~~  
15 ~~department as necessary to assure the effectiveness and integrity~~  
16 ~~of the corrective action.~~

17 **(F) IF THE CORRECTIVE ACTION PLAN INCLUDES THE OPERATION OF A**  
18 **MECHANICAL SOIL OR GROUNDWATER REMEDIATION SYSTEM, OR BOTH, A**  
19 **FINANCIAL ASSURANCE MECHANISM TO PAY FOR MONITORING, OPERATION, AND**  
20 **MAINTENANCE NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF**  
21 **THE CORRECTIVE ACTION REMEDIATION SYSTEM.**

22 (g) If provisions for operation and maintenance, monitoring,  
23 or financial assurance are included in the corrective action plan,  
24 and those provisions are not complied with, the corrective action  
25 plan is void from the time of lapse or violation ~~unless~~—**UNTIL** the  
26 lapse or violation is corrected. ~~to the satisfaction of the~~  
27 ~~department.~~

1           (3) If a corrective action plan prepared under this section  
2 does not result in an unrestricted use of the property, ~~for any~~  
3 ~~purpose,~~ the owner or operator ~~or a consultant retained by the~~  
4 ~~owner or operator~~ shall provide notice to the public by means  
5 designed to reach those members of the public directly impacted by  
6 the release **ABOVE A RESIDENTIAL RBSL** and the proposed corrective  
7 action. The notice shall include the name, address, and telephone  
8 number of a contact person. A copy of the notice and proof of  
9 providing the notice shall be submitted to the department. The  
10 department shall ensure that site release information and  
11 corrective action plans that do not result in an unrestricted use  
12 of property are made available to the public for inspection upon  
13 request.

14           Sec. 21310a. (1) If the corrective action activities at a site  
15 result in a final remedy that relies on ~~tier I commercial or~~  
16 ~~industrial criteria~~ **A NONRESIDENTIAL RBSL OR AN SSTL**, institutional  
17 controls shall be implemented as provided in this subsection. A  
18 notice of corrective action shall be recorded with the register of  
19 deeds for the county in which the site is located prior to  
20 submittal of a closure report under section 21312a. A notice shall  
21 be filed under this subsection only by the property owner or with  
22 the express written permission of the property owner. ~~The form and~~  
23 ~~content of the notice shall be subject to approval by the~~  
24 ~~department.~~ A notice of corrective action recorded under this  
25 subsection shall state the land use that was the basis of the  
26 corrective action. ~~selected by a consultant retained by the owner~~  
27 ~~or operator.~~ The notice shall state that if there is a proposed



1 change in the land use at any time in the future, that change may  
2 necessitate further evaluation of potential risks to the public  
3 health, safety, and welfare and to the environment and that the  
4 department shall be contacted regarding any proposed change in the  
5 land use. Additional requirements for ~~financial assurance,~~  
6 monitoring ~~,~~ or operation and maintenance shall not apply if  
7 contamination levels do not exceed the levels established in the  
8 tier I evaluation.

9 (2) If corrective action activities at a site rely on  
10 institutional controls other than as provided in subsection (1),  
11 the institutional controls shall be implemented as provided in this  
12 subsection. The restrictive covenant shall be recorded with the  
13 register of deeds for the county in which the property is located  
14 within 30 days from submittal of the final assessment report  
15 pursuant to section 21311a, unless otherwise agreed to by the  
16 department. The restrictive covenant shall be filed only by the  
17 property owner or with the express written permission of the  
18 property owner. The restrictions shall run with the land and be  
19 binding on the owner's successors, assigns, and lessees. The  
20 restrictions shall apply until ~~the department determines that~~  
21 regulated substances no longer present an unacceptable risk to the  
22 public health, safety, or welfare or to the environment. The  
23 restrictive covenant shall include a survey and property  
24 description which define the areas addressed by the corrective  
25 action plan and the scope of any land use or resource use  
26 limitations. The form and content of the restrictive covenant ~~are~~  
27 ~~subject to approval by the department and shall include provisions~~

1 to accomplish all of the following:

2 (a) Restrict activities at the site that may interfere with  
3 corrective action, operation and maintenance, monitoring, or other  
4 measures necessary to assure the effectiveness and integrity of the  
5 corrective action.

6 (b) Restrict activities that may result in exposure to  
7 regulated substances above levels established in the corrective  
8 action plan.

9 (c) Prevent a conveyance of title, an easement, or other  
10 interest in the property from being consummated by the property  
11 owner without adequate and complete provision for compliance with  
12 the corrective action plan and prevention of exposure to regulated  
13 substances described in subdivision (b).

14 (d) Grant to the department and its designated representatives  
15 the right to enter the property at reasonable times for the purpose  
16 of determining and monitoring compliance with the corrective action  
17 plan, including but not limited to the right to take samples,  
18 inspect the operation of the corrective action measures, and  
19 inspect records.

20 (e) Allow the state to enforce restrictions set forth in the  
21 covenant by legal action in a court of appropriate jurisdiction.

22 (f) Describe generally the uses of the property that are  
23 consistent with the corrective action plan.

24 (3) If ~~a consultant retained by~~ the owner or operator  
25 determines that exposure to regulated substances may be reliably  
26 restricted by a means other than a restrictive covenant and that  
27 imposition of land use or resource use restrictions through

1 restrictive covenants is impractical, the ~~consultant~~ **OWNER OR**  
2 **OPERATOR** may select a corrective action plan that relies on  
3 alternative mechanisms. Mechanisms that may be considered under  
4 this subsection include, but are not limited to, an ordinance that  
5 prohibits the use of groundwater in a manner and to a degree that  
6 protects against unacceptable exposure to a regulated substance as  
7 defined by the ~~cleanup criteria~~ **RBSLS OR SSTLS** identified in the  
8 corrective action plan. An ordinance that serves as an exposure  
9 control under this subsection shall include both of the following:

10 (a) A requirement that the local unit of government notify the  
11 department 30 days before adopting a modification to the ordinance  
12 or the lapsing or revocation of the ordinance.

13 (b) A requirement that the ordinance be filed with the  
14 register of deeds as an ordinance affecting multiple properties.

15 (4) Notwithstanding subsections (1), (2), and (3), if a  
16 mechanism other than a notice of corrective action, an ordinance,  
17 or a restrictive covenant is requested by a ~~consultant retained by~~  
18 an owner or operator and the department determines that the  
19 alternative mechanism is appropriate, the department may approve of  
20 the alternate mechanism.

21 ~~—— (5) A person who implements corrective action activities shall~~  
22 ~~provide notice of the land use restrictions that are part of the~~  
23 ~~corrective action plan to the local unit of government in which the~~  
24 ~~site is located within 30 days of submittal of the corrective~~  
25 ~~action plan, unless otherwise approved by the department.~~

26 **(5) A PERSON THAT IMPLEMENTS CORRECTIVE ACTION ACTIVITIES THAT**  
27 **RELIES ON LAND USE RESTRICTIONS SHALL PROVIDE NOTICE OF THE LAND**

1 USE RESTRICTIONS THAT ARE PART OF THE CORRECTIVE ACTION PLAN TO THE  
2 LOCAL UNIT OF GOVERNMENT IN WHICH THE SITE IS LOCATED WITHIN 30  
3 DAYS OF FILING OF THE LAND USE RESTRICTIONS WITH THE COUNTY  
4 REGISTER OF DEEDS.

5 Sec. 21314a. ~~The department shall establish and implement a~~  
6 ~~classification system for sites considering impacts on public~~  
7 ~~health, safety, and welfare, and the environment. Notwithstanding~~  
8 ~~any other provision in this part, at sites posing an imminent risk~~  
9 ~~to the public health, safety, or welfare, or the environment,~~  
10 ~~corrective action shall be implemented immediately. SITES SHALL BE~~  
11 ~~CLASSIFIED CONSISTENT WITH THE PROCESS OUTLINED IN RBCA.~~ If the  
12 department determines that no imminent risk to the public health,  
13 safety, or welfare, or the environment exists at a site, the  
14 department may allow corrective action at these sites to be  
15 conducted on a schedule approved by the department. ~~This provision~~  
16 ~~shall not be used by the department to limit the ability of a~~  
17 ~~owner, operator or a consultant to submit a claim to the Michigan~~  
18 ~~underground storage tank financial assurance fund, or delay payment~~  
19 ~~on a valid claim to an owner, operator or consultant.~~

20 Sec. 21315. (1) The department shall design and implement a  
21 program to selectively audit ~~or oversee all aspects of corrective~~  
22 ~~actions undertaken~~ **FINAL ASSESSMENT REPORTS AND CLOSURE REPORTS**  
23 **SUBMITTED** under this part. ~~to assure compliance with this part. The~~  
24 ~~department may audit a site at any time prior to receipt of a~~  
25 ~~closure report pursuant to section 21312a and within 6 months after~~  
26 ~~receipt of the closure report.~~

27 ~~—— (2) If the department conducts an audit under this section and~~

1 ~~the audit confirms that the cleanup criteria have been met, the~~  
2 ~~department shall provide the owner or operator with a letter that~~  
3 ~~describes the audit and its results.~~ UPON RECEIPT OF A FINAL  
4 ASSESSMENT REPORT OR CLOSURE REPORT, THE DEPARTMENT SHALL HAVE 90  
5 DAYS TO DETERMINE WHETHER IT WILL AUDIT THE REPORT AND INFORM THE  
6 OWNER OR OPERATOR OF ITS INTENTION TO AUDIT THE SUBMITTED REPORT  
7 WITHIN 7 DAYS OF THE DETERMINATION. IF THE DEPARTMENT DOES NOT  
8 INFORM THE OWNER OR OPERATOR OF ITS INTENTION TO AUDIT THE REPORT  
9 WITHIN THE REQUIRED TIME LIMITS, THE DEPARTMENT SHALL NOT AUDIT THE  
10 REPORT. IF THE DEPARTMENT DETERMINES THAT IT WILL CONDUCT AN AUDIT,  
11 THE AUDIT SHALL BE COMPLETED WITHIN 180 DAYS OF THE SUBMISSION. THE  
12 DEPARTMENT SHALL INFORM THE OWNER OR OPERATOR IN WRITING OF THE  
13 RESULTS OF THE AUDIT WITHIN 14 DAYS OF THE COMPLETION OF THE AUDIT.  
14 ALL AUDITS SHALL BE CONDUCTED BASED ON THE STANDARDS, CRITERIA, AND  
15 PROCEDURES IN EFFECT AT THE TIME THE FINAL ASSESSMENT REPORT OR  
16 CLOSURE REPORT WAS SUBMITTED.

17 (2) THE DEPARTMENT SHALL HAVE 270 DAYS FROM THE EFFECTIVE DATE  
18 OF THE 2012 AMENDATORY ACT THAT AMENDED THIS SECTION TO SELECTIVELY  
19 AUDIT FINAL ASSESSMENT REPORTS OR CLOSURE REPORTS THAT WERE  
20 SUBMITTED WITHIN THE TIME PERIOD BEGINNING 6 MONTHS PRIOR TO AND  
21 ENDING 60 DAYS AFTER THE EFFECTIVE DATE OF THE 2012 AMENDATORY ACT  
22 THAT AMENDED THIS SECTION.

23 (3) IF THE DEPARTMENT CONDUCTS AN AUDIT, THE RESULTS OF THE  
24 AUDIT SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY THE FINAL  
25 ASSESSMENT REPORT OR CLOSURE REPORT OR SHALL NOTIFY THE OWNER OR  
26 OPERATOR THAT THE REPORT DOES NOT CONTAIN SUFFICIENT INFORMATION  
27 FOR THE DEPARTMENT TO MAKE A DECISION. IF THE DEPARTMENT'S RESPONSE

1 IS THAT THE REPORT DOES NOT INCLUDE SUFFICIENT INFORMATION, THE  
2 DEPARTMENT SHALL IDENTIFY THE INFORMATION THAT IS REQUIRED FOR THE  
3 DEPARTMENT TO MAKE A DECISION. IF A REPORT IS APPROVED WITH  
4 CONDITIONS, THE DEPARTMENT'S APPROVAL SHALL STATE WITH SPECIFICITY  
5 THE CONDITIONS OF THE APPROVAL.

6 (4) IF THE DEPARTMENT DOES NOT PERFORM AN AUDIT AND PROVIDE A  
7 WRITTEN RESPONSE IN ACCORDANCE WITH SUBSECTION (1) TO A FINAL  
8 ASSESSMENT REPORT OR CLOSURE REPORT SUBMITTED AFTER JUNE 15, 2012,  
9 THE REPORT IS CONSIDERED APPROVED. AN OWNER OR OPERATOR MAY REQUEST  
10 WRITTEN CONFIRMATION FROM THE DEPARTMENT THAT THE REPORT IS  
11 CONSIDERED APPROVED UNDER THIS SECTION, AND THE DEPARTMENT SHALL  
12 PROVIDE WRITTEN CONFIRMATION WITHIN 14 DAYS OF THE REQUEST.

13 (5) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY  
14 MUTUAL AGREEMENT OF THE DEPARTMENT AND AN OWNER OR OPERATOR  
15 SUBMITTING A FINAL ASSESSMENT OR CLOSURE REPORT. AN AGREEMENT  
16 EXTENDING A TIME FRAME SHALL BE IN WRITING.

17 (6) IF AN AUDIT CONDUCTED UNDER THIS SECTION DOES NOT CONFIRM  
18 THAT CORRECTIVE ACTION HAS BEEN CONDUCTED IN COMPLIANCE WITH THIS  
19 PART OR DOES NOT CONFIRM THAT APPLICABLE RBSLS OR SSTLS HAVE BEEN  
20 MET, THE DEPARTMENT SHALL INCLUDE BOTH OF THE FOLLOWING IN THE  
21 WRITTEN RESPONSE AS REQUIRED IN SUBSECTION (1):

22 (A) THE SPECIFIC DEFICIENCIES AND THE SECTION OR SECTIONS OF  
23 THIS PART OR RULES APPLICABLE TO THIS PART OR APPLICABLE RBCA  
24 STANDARD THAT SUPPORT THE DEPARTMENT'S CONCLUSION OF NONCOMPLIANCE  
25 OR THAT APPLICABLE RBSLS OR SSTLS HAVE NOT BEEN MET.

26 (B) RECOMMENDATIONS ABOUT CORRECTIVE ACTIONS OR DOCUMENTATION  
27 THAT MAY ADDRESS THE DEFICIENCIES IDENTIFIED UNDER SUBSECTION

1 (6) (A) .

2 (7) IF THE DEPARTMENT DENIES A FINAL ASSESSMENT REPORT OR  
3 CLOSURE REPORT UNDER THIS SECTION, AN OWNER OR OPERATOR SHALL  
4 EITHER REVISE AND RESUBMIT THE REPORT FOR APPROVAL, SUBMIT A  
5 PETITION FOR REVIEW OF SCIENTIFIC OR TECHNICAL DISPUTES TO THE  
6 RESPONSE ACTIVITY REVIEW PANEL PURSUANT TO SECTION 20114E AND PAY A  
7 FEE IN THE AMOUNT OF \$300.00 IN LIEU OF THE \$3,500.00 FEE SET FORTH  
8 IN SECTION 20114E(7), OR SUBMIT A PETITION TO THE DEPARTMENT'S  
9 OFFICE OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING  
10 PURSUANT TO SECTION 21332.

11 (8) Notwithstanding section 21312a, after conducting an audit  
12 under this section, the department may issue a closure letter for  
13 any site that meets the ~~cleanup criteria~~ **APPLICABLE RBSL OR SSTL**  
14 pursuant to section 21304a.

15 ~~—— (3) If an audit conducted under this section does not confirm~~  
16 ~~that corrective action has been conducted in compliance with this~~  
17 ~~part or that cleanup criteria have been met, the department may~~  
18 ~~require an owner or operator to do either or both of the following:~~

19 ~~—— (a) Provide additional information related to any requirement~~  
20 ~~of this part.~~

21 ~~—— (b) Retain a consultant to take additional corrective actions~~  
22 ~~necessary to comply with this part or to protect public health,~~  
23 ~~safety, or welfare, or the environment.~~

24 (9) THE DEPARTMENT SHALL ONLY AUDIT A REPORT REQUIRED UNDER  
25 THIS PART 1 TIME. IF THE DEPARTMENT'S AUDIT IDENTIFIES DEFICIENCIES  
26 AS DESCRIBED IN SUBSECTION (6), THE DEPARTMENT MAY AUDIT A REVISED  
27 REPORT TO EVALUATE WHETHER THE IDENTIFIED DEFICIENCIES HAVE BEEN

1 CORRECTED, WHICH SHALL BE COMPLETED WITHIN 90 DAYS OF THE REVISED  
2 REPORT'S SUBMISSION TO THE DEPARTMENT.

3 Sec. 21316. The department may create and require the use of  
4 forms **CONTAINING INFORMATION SPECIFICALLY REQUIRED UNDER THIS PART**  
5 to assist in the reporting requirements provided in this part.

6 Sec. 21316a. (1) A person shall not knowingly deliver a  
7 regulated substance to an underground storage tank system ~~at any~~  
8 ~~facility that is not in compliance with this part and rules~~  
9 ~~promulgated under this part, and part 211 and rules promulgated~~  
10 ~~under part 211.~~ **THAT HAS HAD A PLACARD AFFIXED TO IT UNDER**  
11 **SUBSECTION (2)**. A person ~~who~~ **THAT** knowingly delivers a regulated  
12 substance to an underground storage tank system **THAT HAS HAD A**  
13 **PLACARD AFFIXED TO IT UNDER SUBSECTION (2)** is guilty of a  
14 misdemeanor punishable by imprisonment for not more than 90 days or  
15 a fine of not more than \$500.00, or both. **A PERSON IS CONSIDERED TO**  
16 **HAVE KNOWLEDGE IF PLACARDS HAVE BEEN AFFIXED TO THE UNDERGROUND**  
17 **STORAGE TANK SYSTEM AT THE PROPERTY AND ARE VISIBLE AT THE TIME OF**  
18 **THE DELIVERY.**

19 (2) The department, upon discovery of a ~~THE OPERATION OF AN~~  
20 **UNDERGROUND STORAGE TANK SYSTEM IN** violation of this part, rules  
21 promulgated under this part, part 211, or rules promulgated under  
22 part 211, ~~at a facility having an underground storage tank system,~~  
23 shall provide notification prohibiting delivery of regulated  
24 substances to ~~such a facility~~ **THE UNDERGROUND STORAGE TANK SYSTEM**  
25 by affixing a placard providing notice of the violation in plain  
26 view to the underground storage tank system. **THE DEPARTMENT SHALL**  
27 **PROVIDE A MINIMUM OF 15 DAYS' NOTICE TO THE LIABLE OWNER OR**



1 OPERATOR PRIOR TO AFFIXING A PLACARD FOR VIOLATIONS OF THIS PART OR  
2 RULES PROMULGATED UNDER THIS PART, UNLESS THE VIOLATION CAUSES AN  
3 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY,  
4 OR WELFARE OR THE ENVIRONMENT.

5 (3) A person shall not remove, deface, alter, or otherwise  
6 tamper with a placard affixed to an underground storage tank system  
7 pursuant to subsection (2). A person ~~who~~**THAT** knowingly removes,  
8 defaces, alters, or otherwise tampers with a placard affixed to an  
9 underground storage tank system pursuant to subsection (2) such  
10 that the notification is not discernible is guilty of a misdemeanor  
11 punishable by imprisonment for not more than 90 days or a fine of  
12 not more than \$500.00, or both.

13 (4) The attorney general or, upon request by the department,  
14 county prosecuting attorney may commence criminal actions for  
15 violation of subsections (1) and (3) in the circuit court of the  
16 county where the violation occurred.

17 Sec. 21320. If the department learns of a suspected or  
18 confirmed release from an underground storage tank system, the  
19 department may undertake corrective actions necessary to protect  
20 the public health, safety, or welfare ~~—~~or the environment **AT SITES**  
21 **WHERE PERSONS THAT ARE LIABLE ARE NOT FINANCIALLY VIABLE OR NOT**  
22 **READILY IDENTIFIABLE, AT SITES WHERE PERSONS THAT ARE LIABLE HAVE**  
23 **NOT IMPLEMENTED CORRECTIVE ACTION NECESSARY TO ABATE AN IMMINENT**  
24 **AND SUBSTANTIAL ENDANGERMENT, OR TO FACILITATE BROWNFIELD**  
25 **REDEVELOPMENT.**

26 **SEC. 21323A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS**  
27 **ACT, AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND SECTION**

1 21323C, THE FOLLOWING PERSONS ARE LIABLE UNDER THIS PART:

2 (A) THE OWNER OR OPERATOR IF THE OWNER OR OPERATOR IS  
3 RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE OR THREAT OF RELEASE.

4 (B) AN OWNER OR OPERATOR WHO BECAME AN OWNER OR OPERATOR ON OR  
5 AFTER MARCH 6, 1996, UNLESS THE OWNER OR OPERATOR COMPLIES WITH  
6 BOTH OF THE FOLLOWING:

7 (i) A BASELINE ENVIRONMENTAL ASSESSMENT IS CONDUCTED PRIOR TO  
8 OR WITHIN 45 DAYS AFTER THE EARLIER OF THE DATE OF PURCHASE,  
9 OCCUPANCY, OR FORECLOSURE. FOR PURPOSES OF THIS SECTION, ASSESSING  
10 PROPERTY TO CONDUCT A BASELINE ENVIRONMENTAL ASSESSMENT DOES NOT  
11 CONSTITUTE OCCUPANCY.

12 (ii) THE OWNER OR OPERATOR PROVIDES A BASELINE ENVIRONMENTAL  
13 ASSESSMENT TO THE DEPARTMENT AND SUBSEQUENT PURCHASER OR TRANSFEREE  
14 WITHIN 6 MONTHS AFTER THE EARLIER OF THE DATE OF PURCHASE,  
15 OCCUPANCY, OR FORECLOSURE.

16 (C) THE ESTATE OR TRUST OF A PERSON DESCRIBED IN SUBDIVISIONS  
17 (A) AND (B).

18 (2) SUBJECT TO SECTION 21304C, AN OWNER OR OPERATOR WHO  
19 COMPLIES WITH SUBSECTION (1) (B) IS NOT LIABLE FOR CONTAMINATION  
20 EXISTING AT THE PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK  
21 SYSTEM IS LOCATED AT THE EARLIER OF THE DATE OF PURCHASE,  
22 OCCUPANCY, OR FORECLOSURE, UNLESS THE PERSON IS RESPONSIBLE FOR AN  
23 ACTIVITY CAUSING THE CONTAMINATION. SUBSECTION (1) (B) DOES NOT  
24 ALTER A PERSON'S LIABILITY WITH REGARD TO A SUBSEQUENT RELEASE OR  
25 THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM IF THE  
26 PERSON IS RESPONSIBLE FOR AN ACTIVITY CAUSING THE SUBSEQUENT  
27 RELEASE OR THREAT OF RELEASE.

1           (3) NOTWITHSTANDING SUBSECTION (1), THE FOLLOWING PERSONS ARE  
2 NOT LIABLE UNDER THIS PART WITH RESPECT TO CONTAMINATION AT  
3 PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK SYSTEM IS LOCATED  
4 RESULTING FROM A RELEASE OR THREAT OF RELEASE UNLESS THE PERSON IS  
5 RESPONSIBLE FOR AN ACTIVITY CAUSING THAT RELEASE OR THREAT OF  
6 RELEASE:

7           (A) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED  
8 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH  
9 BANKRUPTCY, TAX DELINQUENCY, ABANDONMENT, A TRANSFER FROM A LENDER  
10 OR OTHER CIRCUMSTANCES IN WHICH THE GOVERNMENT INVOLUNTARILY  
11 ACQUIRES TITLE OR CONTROL BY VIRTUE OF ITS GOVERNMENTAL FUNCTION OR  
12 AS PROVIDED IN THIS PART, A LOCAL UNIT OF GOVERNMENT TO WHICH  
13 OWNERSHIP OR CONTROL OF PROPERTY IS TRANSFERRED BY THE STATE OR BY  
14 ANOTHER LOCAL UNIT OF GOVERNMENT THAT IS NOT LIABLE UNDER  
15 SUBSECTION (1), OR THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT  
16 ACQUIRED OWNERSHIP OR CONTROL OF PROPERTY BY SEIZURE, RECEIVERSHIP,  
17 OR FORFEITURE PURSUANT TO THE OPERATION OF LAW OR BY COURT ORDER.

18           (B) A STATE OR LOCAL UNIT OF GOVERNMENT THAT HOLDS OR ACQUIRES  
19 AN EASEMENT INTEREST IN PROPERTY, HOLDS OR ACQUIRES AN INTEREST IN  
20 PROPERTY BY DEDICATION IN A PLAT, OR BY DEDICATION PURSUANT TO THE  
21 PUBLIC HIGHWAYS AND PRIVATE ROADS ACT, 1909 PA 283, MCL 220.1 TO  
22 239.6, OR OTHERWISE HOLDS OR ACQUIRES AN INTEREST IN PROPERTY FOR A  
23 TRANSPORTATION OR UTILITY CORRIDOR, INCLUDING SEWERS, PIPES, AND  
24 PIPELINES, OR PUBLIC RIGHT-OF-WAY.

25           (C) A PERSON THAT HOLDS AN EASEMENT INTEREST IN PROPERTY OR  
26 HOLDS A UTILITY FRANCHISE TO PROVIDE SERVICE, FOR THE PURPOSE OF  
27 CONVEYING OR PROVIDING GOODS OR SERVICES, INCLUDING, BUT NOT

1 LIMITED TO, UTILITIES, SEWERS, ROADS, RAILWAYS, AND PIPELINES; OR A  
2 PERSON THAT ACQUIRES ACCESS THROUGH AN EASEMENT.

3 (D) A PERSON THAT OWNS SEVERED SUBSURFACE MINERAL RIGHTS OR  
4 SEVERED SUBSURFACE FORMATIONS OR WHO LEASES SUBSURFACE MINERAL  
5 RIGHTS OR FORMATIONS.

6 (E) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT LEASES  
7 PROPERTY TO A PERSON IF THE STATE OR THE LOCAL UNIT OF GOVERNMENT  
8 IS NOT LIABLE UNDER THIS PART FOR ENVIRONMENTAL CONTAMINATION AT  
9 THE PROPERTY.

10 (F) A PERSON THAT ACQUIRES PROPERTY AS A RESULT OF THE DEATH  
11 OF THE PRIOR OWNER OR OPERATOR OF THE PROPERTY, WHETHER BY  
12 INHERITANCE, DEVISE, OR TRANSFER FROM AN INTER VIVOS OR  
13 TESTAMENTARY TRUST.

14 (G) A PERSON THAT DID NOT KNOW AND HAD NO REASON TO KNOW THAT  
15 THE PROPERTY WAS CONTAMINATED. TO ESTABLISH THAT THE PERSON DID NOT  
16 KNOW AND DID NOT HAVE A REASON TO KNOW THAT THE PROPERTY WAS  
17 CONTAMINATED, THE PERSON SHALL HAVE UNDERTAKEN AT THE TIME OF  
18 ACQUISITION ALL APPROPRIATE INQUIRY INTO THE PREVIOUS OWNERSHIP AND  
19 USES OF THE PROPERTY CONSISTENT WITH GOOD COMMERCIAL OR CUSTOMARY  
20 PRACTICE. A DETERMINATION OF LIABILITY UNDER THIS SECTION SHALL  
21 TAKE INTO ACCOUNT ANY SPECIALIZED KNOWLEDGE OR EXPERIENCE ON THE  
22 PART OF THE PERSON, THE RELATIONSHIP OF THE PURCHASE PRICE TO THE  
23 VALUE OF THE PROPERTY IF UNCONTAMINATED BY A REGULATED SUBSTANCE,  
24 COMMONLY KNOWN OR REASONABLE ASCERTAINABLE INFORMATION ABOUT THE  
25 PROPERTY, THE OBVIOUSNESS OF THE PRESENCE OR LIKELY PRESENCE OF A  
26 RELEASE OR THREAT OF RELEASE AT THE PROPERTY, AND THE ABILITY TO  
27 DETECT A RELEASE OR THREAT OF RELEASE BY APPROPRIATE INSPECTION.

1 (H) A UTILITY PERFORMING NORMAL CONSTRUCTION, MAINTENANCE, AND  
2 REPAIR ACTIVITIES IN THE NORMAL COURSE OF ITS UTILITY SERVICE  
3 BUSINESS. THIS SUBDIVISION DOES NOT APPLY TO PROPERTY OWNED BY THE  
4 UTILITY.

5 (I) A LESSEE WHO USES THE LEASED PROPERTY FOR A RETAIL,  
6 OFFICE, OR COMMERCIAL PURPOSE REGARDLESS OF THE LEVEL OF THE  
7 LESSEE'S REGULATED SUBSTANCE USE UNLESS THE LESSEE IS OTHERWISE  
8 LIABLE UNDER THIS SECTION.

9 (4) NOTWITHSTANDING SUBSECTION (1), THE FOLLOWING PERSONS ARE  
10 NOT LIABLE UNDER THIS PART:

11 (A) A LENDER THAT ENGAGES IN OR CONDUCTS A LAWFUL MARSHALING  
12 OR LIQUIDATION OF PERSONAL PROPERTY IF THE LENDER DOES NOT CAUSE OR  
13 CONTRIBUTE TO THE ENVIRONMENTAL CONTAMINATION. THIS INCLUDES  
14 HOLDING A SALE OF PERSONAL PROPERTY ON A PORTION OF THE PROPERTY.

15 (B) THE OWNER OR OPERATOR OF PROPERTY ONTO WHICH CONTAMINATION  
16 HAS MIGRATED UNLESS THAT PERSON IS RESPONSIBLE FOR AN ACTIVITY  
17 CAUSING THE RELEASE THAT IS THE SOURCE OF THE CONTAMINATION.

18 (C) A PERSON THAT OWNS OR OPERATES PROPERTY ON WHICH THE  
19 RELEASE OR THREAT OF RELEASE WAS CAUSED SOLELY BY 1 OR MORE OF THE  
20 FOLLOWING:

21 (i) AN ACT OF GOD.

22 (ii) AN ACT OF WAR.

23 (iii) AN ACT OR OMISSION OF A THIRD PARTY OTHER THAN AN EMPLOYEE  
24 OR AGENT OF THE PERSON OR A PERSON IN A CONTRACTUAL RELATIONSHIP  
25 EXISTING EITHER DIRECTLY OR INDIRECTLY WITH A PERSON THAT IS LIABLE  
26 UNDER THIS SECTION.

27 (D) ANY PERSON FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN A

1 CLOSURE REPORT THAT IS APPROVED BY THE DEPARTMENT OR IS CONSIDERED  
2 APPROVED UNDER SECTION 21312A. NOTWITHSTANDING THIS SUBDIVISION, A  
3 PERSON MAY BE LIABLE UNDER THIS PART FOR THE FOLLOWING:

4 (i) A SUBSEQUENT RELEASE NOT ADDRESSED IN THE CLOSURE REPORT IF  
5 THE PERSON IS OTHERWISE LIABLE UNDER THIS PART FOR THAT RELEASE.

6 (ii) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE  
7 CLOSURE REPORT AND FOR WHICH THE PERSON IS OTHERWISE LIABLE UNDER  
8 THIS PART.

9 (iii) IF THE CLOSURE REPORT RELIES ON LAND USE OR RESOURCE USE  
10 RESTRICTIONS, AN OWNER OR OPERATOR WHO DESIRES TO CHANGE THOSE  
11 RESTRICTIONS IS RESPONSIBLE FOR ANY CORRECTIVE ACTION NECESSARY TO  
12 COMPLY WITH THIS PART FOR ANY LAND USE OR RESOURCE USE OTHER THAN  
13 THE LAND USE OR RESOURCE USE THAT WAS THE BASIS FOR THE CLOSURE  
14 REPORT.

15 (iv) IF THE CLOSURE REPORT RELIES ON MONITORING NECESSARY TO  
16 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE CORRECTIVE ACTION, AN  
17 OWNER OR OPERATOR WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL  
18 CONTAMINATION ADDRESSED IN A CLOSURE REPORT IS LIABLE UNDER THIS  
19 PART FOR ADDITIONAL CORRECTIVE ACTION ACTIVITIES NECESSARY TO  
20 ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL CONTAMINATION  
21 DEMONSTRATED BY THE MONITORING IN EXCESS OF THE LEVELS RELIED ON IN  
22 THE CLOSURE REPORT.

23 (v) IF THE CORRECTIVE ACTIONS THAT WERE THE BASIS FOR THE  
24 CLOSURE REPORT FAIL TO MEET PERFORMANCE OBJECTIVES THAT ARE  
25 IDENTIFIED IN THE CLOSURE REPORT OR SECTION 21304A, AN OWNER OR  
26 OPERATOR WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL CONTAMINATION  
27 ADDRESSED IN THE CLOSURE REPORT IS LIABLE UNDER THIS PART FOR

1 CORRECTIVE ACTION NECESSARY TO SATISFY THE PERFORMANCE OBJECTIVES  
2 OR OTHERWISE COMPLY WITH THIS PART.

3 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE  
4 STATE OR A LOCAL UNIT OF GOVERNMENT OR A LENDER WHO HAS NOT  
5 PARTICIPATED IN THE MANAGEMENT OF THE PROPERTY IS NOT LIABLE UNDER  
6 THIS PART FOR COSTS OR DAMAGES AS A RESULT OF CORRECTIVE ACTION  
7 TAKEN IN RESPONSE TO A RELEASE OR THREAT OF RELEASE. FOR A LENDER,  
8 THIS SUBSECTION APPLIES ONLY TO CORRECTIVE ACTION UNDERTAKEN PRIOR  
9 TO FORECLOSURE. THIS SUBSECTION DOES NOT PRECLUDE LIABILITY FOR  
10 COSTS OR DAMAGES AS A RESULT OF GROSS NEGLIGENCE, INCLUDING  
11 RECKLESS, WILLFUL, OR WANTON MISCONDUCT, OR INTENTIONAL MISCONDUCT  
12 BY THE STATE OR LOCAL UNIT OF GOVERNMENT.

13 (6) IN ESTABLISHING LIABILITY UNDER THIS SECTION, THE  
14 DEPARTMENT BEARS THE BURDEN OF PROOF.

15 (7) AN OWNER OR OPERATOR WHO WAS IN COMPLIANCE WITH SUBSECTION  
16 (1) (B) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
17 THIS SUBSECTION IS CONSIDERED TO BE IN COMPLIANCE WITH SUBSECTION  
18 (1) (B).

19 SEC. 21323B. (1) EXCEPT AS PROVIDED IN SECTION 21323A(2), A  
20 PERSON THAT IS LIABLE UNDER SECTION 21323A IS JOINTLY AND SEVERALLY  
21 LIABLE FOR ALL OF THE FOLLOWING:

22 (A) ALL COSTS OF CORRECTIVE ACTION LAWFULLY INCURRED BY THE  
23 STATE RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE  
24 ACTION UNDER THIS PART.

25 (B) ALL COSTS OF CORRECTIVE ACTION REASONABLY INCURRED UNDER  
26 THE CIRCUMSTANCES BY ANY OTHER PERSON.

27 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,

1 OR LOSS OF NATURAL RESOURCES, INCLUDING THE REASONABLE COSTS OF  
2 ASSESSING THE INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE  
3 RELEASE.

4 (2) THE COSTS OF CORRECTIVE ACTION RECOVERABLE UNDER  
5 SUBSECTION (1) SHALL ALSO INCLUDE ALL COSTS OF CORRECTIVE ACTION  
6 REASONABLY INCURRED BY THE STATE PRIOR TO THE PROMULGATION OF RULES  
7 RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE ACTION  
8 UNDER THIS PART. A PERSON CHALLENGING THE RECOVERY OF COSTS UNDER  
9 THIS SUBSECTION HAS THE BURDEN OF ESTABLISHING THAT THE COSTS WERE  
10 NOT REASONABLY INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE  
11 TIME THE COSTS WERE INCURRED.

12 (3) THE AMOUNTS RECOVERABLE IN AN ACTION UNDER THIS SECTION  
13 MAY INCLUDE INTEREST, ATTORNEY FEES, WITNESS FEES, AND THE COSTS OF  
14 LITIGATION TO THE PREVAILING OR SUBSTANTIALLY PREVAILING PARTY. THE  
15 INTEREST SHALL ACCRUE FROM THE DATE PAYMENT IS DEMANDED IN WRITING,  
16 OR THE DATE OF THE EXPENDITURE OR DAMAGE, WHICHEVER IS LATER. THE  
17 RATE OF INTEREST ON THE OUTSTANDING UNPAID BALANCE OF THE AMOUNTS  
18 RECOVERABLE UNDER THIS SECTION SHALL BE THE SAME RATE AS IS  
19 SPECIFIED IN SECTION 6013(8) OF THE REVISED JUDICATURE ACT OF 1961,  
20 1961 PA 236, MCL 600.6013.

21 (4) IN THE CASE OF INJURY TO, DESTRUCTION OF, OR LOSS OF  
22 NATURAL RESOURCES UNDER SUBSECTION (1)(C), LIABILITY SHALL BE TO  
23 THE STATE FOR NATURAL RESOURCES BELONGING TO, MANAGED BY,  
24 CONTROLLED BY, APPERTAINING TO, OR HELD IN TRUST BY THE STATE OR A  
25 LOCAL UNIT OF GOVERNMENT. SUMS RECOVERED BY THE STATE UNDER THIS  
26 PART FOR NATURAL RESOURCE DAMAGES SHALL BE RETAINED BY THE  
27 DEPARTMENT FOR USE ONLY TO RESTORE, REPAIR, REPLACE, OR ACQUIRE THE



1 EQUIVALENT OF THE NATURAL RESOURCES INJURED OR ACQUIRE SUBSTITUTE  
2 OR ALTERNATIVE RESOURCES. THERE SHALL BE NO DOUBLE RECOVERY UNDER  
3 THIS PART FOR NATURAL RESOURCE DAMAGES, INCLUDING THE COSTS OF  
4 DAMAGE ASSESSMENT OR RESTORATION, REHABILITATION, REPLACEMENT, OR  
5 ACQUISITION, FOR THE SAME RELEASE AND NATURAL RESOURCE.

6 (5) A PERSON SHALL NOT BE REQUIRED UNDER THIS PART TO  
7 UNDERTAKE CORRECTIVE ACTION FOR A PERMITTED RELEASE. RECOVERY BY  
8 ANY PERSON FOR CORRECTIVE ACTION COSTS OR DAMAGES RESULTING FROM A  
9 PERMITTED RELEASE SHALL BE PURSUANT TO OTHER APPLICABLE LAW, IN  
10 LIEU OF THIS PART. WITH RESPECT TO A PERMITTED RELEASE, THIS  
11 SUBSECTION DOES NOT AFFECT OR MODIFY THE OBLIGATIONS OR LIABILITY  
12 OF ANY PERSON UNDER ANY OTHER STATE LAW, INCLUDING COMMON LAW, FOR  
13 DAMAGES, INJURY, OR LOSS RESULTING FROM A RELEASE OF A REGULATED  
14 SUBSTANCE OR FOR CORRECTIVE ACTION OR THE COSTS OF CORRECTIVE  
15 ACTION.

16 (6) IF THE DEPARTMENT DETERMINES THAT THERE MAY BE AN IMMINENT  
17 AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR  
18 WELFARE OR TO THE ENVIRONMENT BECAUSE OF AN ACTUAL OR THREATENED  
19 RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM, THE ATTORNEY  
20 GENERAL MAY BRING AN ACTION AGAINST ANY PERSON THAT IS LIABLE UNDER  
21 SECTION 21323A OR ANY OTHER APPROPRIATE PERSON TO SECURE THE RELIEF  
22 THAT MAY BE NECESSARY TO ABATE THE DANGER OR THREAT. THE COURT HAS  
23 JURISDICTION TO GRANT SUCH RELIEF AS THE PUBLIC INTEREST AND THE  
24 EQUITIES OF THE CASE MAY REQUIRE.

25 (7) THE COSTS RECOVERABLE UNDER THIS SECTION MAY BE RECOVERED  
26 IN AN ACTION BROUGHT BY THE STATE OR ANY OTHER PERSON.

27 SEC. 21323C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,

1 A PERSON THAT IS A CORRECTIVE ACTION CONTRACTOR FOR ANY RELEASE OR  
2 THREATENED RELEASE IS NOT LIABLE TO ANY PERSON FOR INJURIES, COSTS,  
3 DAMAGES, EXPENSES, OR OTHER LIABILITY, INCLUDING, BUT NOT LIMITED  
4 TO, CLAIMS FOR INDEMNIFICATION OR CONTRIBUTION AND CLAIMS BY THIRD  
5 PARTIES FOR DEATH, PERSONAL INJURIES, ILLNESS, OR LOSS OF OR  
6 DAMAGES TO PROPERTY OR ECONOMIC LOSS THAT RESULT FROM THE RELEASE  
7 OR THREATENED RELEASE. THIS SUBSECTION DOES NOT APPLY IF A RELEASE  
8 OR THREATENED RELEASE IS CAUSED BY CONDUCT OF THE CORRECTIVE ACTION  
9 CONTRACTOR THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT  
10 CONSTITUTES INTENTIONAL MISCONDUCT.

11 (2) SUBSECTION (1) DOES NOT AFFECT THE LIABILITY OF A PERSON  
12 UNDER ANY WARRANTY UNDER FEDERAL, STATE, OR COMMON LAW. THIS  
13 SUBSECTION DOES NOT AFFECT THE LIABILITY OF AN EMPLOYER WHO IS A  
14 CORRECTIVE ACTION CONTRACTOR TO ANY EMPLOYEE OF THE EMPLOYER UNDER  
15 LAW, INCLUDING ANY LAW RELATING TO WORKER'S COMPENSATION.

16 (3) AN EMPLOYEE OF THIS STATE OR A LOCAL UNIT OF GOVERNMENT  
17 WHO PROVIDES SERVICES RELATING TO A CORRECTIVE ACTION WHILE ACTING  
18 WITHIN THE SCOPE OF HIS OR HER AUTHORITY AS A GOVERNMENTAL EMPLOYEE  
19 HAS THE SAME EXEMPTION FROM LIABILITY AS IS PROVIDED TO THE  
20 CORRECTIVE ACTION CONTRACTOR UNDER SUBSECTION (1).

21 (4) EXCEPT AS PROVIDED IN THIS SECTION, THIS SECTION DOES NOT  
22 AFFECT THE LIABILITY UNDER THIS PART OR UNDER ANY OTHER FEDERAL OR  
23 STATE LAW OF ANY PERSON.

24 (5) AS USED IN SUBSECTIONS (1) TO (4):

25 (A) "CORRECTIVE ACTION CONTRACT" MEANS A CONTRACT OR AGREEMENT  
26 ENTERED INTO BY A CORRECTIVE ACTION CONTRACTOR WITH 1 OR MORE OF  
27 THE FOLLOWING:

1 (i) THE DEPARTMENT.

2 (ii) THE DEPARTMENT OF COMMUNITY HEALTH.

3 (iii) A PERSON THAT IS ARRANGING FOR CORRECTIVE ACTION UNDER  
4 THIS PART.

5 (B) "CORRECTIVE ACTION CONTRACTOR" MEANS ALL OF THE FOLLOWING:

6 (i) A PERSON THAT ENTERS INTO A CORRECTIVE ACTION CONTRACT WITH  
7 RESPECT TO A RELEASE OR THREATENED RELEASE AND IS CARRYING OUT THE  
8 TERMS OF A CONTRACT.

9 (ii) A PERSON THAT IS RETAINED OR HIRED BY A PERSON DESCRIBED  
10 IN SUBPARAGRAPH (i) TO PROVIDE ANY SERVICE RELATING TO A CORRECTIVE  
11 ACTION.

12 (iii) A QUALIFIED UNDERGROUND STORAGE TANK CONSULTANT.

13 (6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON IS  
14 NOT LIABLE FOR CORRECTIVE ACTION COSTS OR DAMAGES THAT RESULT FROM  
15 AN ACT OR A FAILURE TO ACT IN THE COURSE OF RENDERING CARE,  
16 ASSISTANCE, OR ADVICE WITH RESPECT TO A RELEASE OF PETROLEUM INTO  
17 OR ON THE SURFACE WATERS OF THE STATE OR ON THE ADJOINING  
18 SHORELINES TO THE SURFACE WATERS OF THE STATE IF THE ACT OR FAILURE  
19 TO ACT WAS CONSISTENT WITH THE NATIONAL CONTINGENCY PLAN OR AS  
20 OTHERWISE DIRECTED BY THE FEDERAL ON-SCENE COORDINATOR OR THE  
21 DIRECTOR. THIS SUBSECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

22 (A) A PERSON THAT IS LIABLE UNDER SECTION 21323A THAT IS A  
23 RESPONSIBLE PARTY.

24 (B) AN ACTION WITH RESPECT TO PERSONAL INJURY OR WRONGFUL  
25 DEATH.

26 (C) A PERSON THAT IS GROSSLY NEGLIGENT OR ENGAGES IN WILLFUL  
27 MISCONDUCT.

1 (7) A PERSON THAT IS LIABLE UNDER SECTION 21323A AND THAT IS A  
2 RESPONSIBLE PARTY IS LIABLE FOR ANY CORRECTIVE ACTION COSTS AND  
3 DAMAGES THAT ANOTHER PERSON IS RELIEVED OF UNDER SUBSECTION (6).

4 (8) AS USED IN THIS SUBSECTION AND SUBSECTIONS (6) AND (7):

5 (A) "DAMAGES" MEANS DAMAGES OF ANY KIND FOR WHICH LIABILITY  
6 MAY EXIST UNDER THE LAWS OF THIS STATE RESULTING FROM, ARISING OUT  
7 OF, OR RELATED TO THE RELEASE OR THREATENED RELEASE OF PETROLEUM.

8 (B) "FEDERAL ON-SCENE COORDINATOR" MEANS THE FEDERAL OFFICIAL  
9 PREDESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
10 OR THE UNITED STATES COAST GUARD TO COORDINATE AND DIRECT FEDERAL  
11 RESPONSES UNDER THE NATIONAL CONTINGENCY PLAN OR THE OFFICIAL  
12 DESIGNATED BY THE LEAD AGENCY TO COORDINATE AND DIRECT CORRECTIVE  
13 ACTION UNDER THE NATIONAL CONTINGENCY PLAN.

14 (C) "NATIONAL CONTINGENCY PLAN" MEANS THE NATIONAL CONTINGENCY  
15 PLAN PREPARED AND PUBLISHED UNDER SECTION 311 OF TITLE III OF THE  
16 FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1321.

17 (9) THIS SECTION DOES NOT AFFECT A PLAINTIFF'S BURDEN OF  
18 ESTABLISHING LIABILITY UNDER THIS PART.

19 SEC. 21323D. (1) IF 2 OR MORE PERSONS ACTING INDEPENDENTLY ARE  
20 LIABLE UNDER SECTION 21323A AND THERE IS A REASONABLE BASIS FOR  
21 DIVISION OF HARM ACCORDING TO THE CONTRIBUTION OF EACH PERSON, EACH  
22 PERSON IS SUBJECT TO LIABILITY UNDER THIS PART ONLY FOR THE PORTION  
23 OF THE TOTAL HARM ATTRIBUTABLE TO THAT PERSON. HOWEVER, A PERSON  
24 SEEKING TO LIMIT THAT PERSON'S LIABILITY ON THE GROUNDS THAT THE  
25 ENTIRE HARM IS CAPABLE OF DIVISION HAS THE BURDEN OF PROOF AS TO  
26 THE DIVISIBILITY OF THE HARM AND AS TO THE APPORTIONMENT OF  
27 LIABILITY.

1           (2) IF 2 OR MORE PERSONS ARE LIABLE UNDER SECTION 21323A FOR  
2 AN INDIVISIBLE HARM, EACH PERSON IS SUBJECT TO LIABILITY FOR THE  
3 ENTIRE HARM.

4           (3) A PERSON MAY SEEK CONTRIBUTION FROM ANY OTHER PERSON THAT  
5 IS LIABLE UNDER SECTION 21323A DURING OR FOLLOWING A CIVIL ACTION  
6 BROUGHT UNDER THIS PART. THIS SUBSECTION DOES NOT DIMINISH THE  
7 RIGHT OF A PERSON TO BRING AN ACTION FOR CONTRIBUTION IN THE  
8 ABSENCE OF A CIVIL ACTION BY THE STATE UNDER THIS PART. IN A  
9 CONTRIBUTION ACTION BROUGHT UNDER THIS PART, THE COURT SHALL  
10 CONSIDER ALL OF THE FOLLOWING FACTORS IN ALLOCATING CORRECTIVE  
11 ACTION COSTS AND DAMAGES AMONG LIABLE PERSONS:

12           (A) EACH PERSON'S RELATIVE DEGREE OF RESPONSIBILITY IN CAUSING  
13 THE RELEASE OR THREAT OF RELEASE.

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

15           (C) THE DEGREE OF INVOLVEMENT OF AND CARE EXERCISED BY THE  
16 PERSON WITH REGARD TO THE REGULATED SUBSTANCE.

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

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

22           (4) IF, IN AN ACTION FOR CONTRIBUTION UNDER SUBSECTION (3),  
23 THE COURT DETERMINES THAT ALL OR PART OF A PERSON'S SHARE OF  
24 LIABILITY IS UNCOLLECTIBLE FROM THAT PERSON, THEN THE COURT MAY  
25 REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG THE OTHER LIABLE PERSONS  
26 ACCORDING TO THE FACTORS LISTED IN SUBSECTION (3). A PERSON WHOSE  
27 SHARE IS DETERMINED TO BE UNCOLLECTIBLE CONTINUES TO BE SUBJECT TO

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1 CONTRIBUTION AND TO ANY CONTINUING LIABILITY TO THE STATE.

2 (5) A PERSON THAT HAS RESOLVED THAT PERSON'S LIABILITY TO THE  
3 STATE IN AN ADMINISTRATIVE OR JUDICIALLY APPROVED CONSENT ORDER IS  
4 NOT LIABLE FOR CLAIMS FOR CONTRIBUTION REGARDING MATTERS ADDRESSED  
5 IN THE CONSENT ORDER. THE CONSENT ORDER DOES NOT DISCHARGE ANY OF  
6 THE OTHER PERSONS LIABLE UNDER SECTION 21323A UNLESS THE TERMS OF  
7 THE CONSENT ORDER PROVIDE FOR THIS DISCHARGE, BUT THE POTENTIAL  
8 LIABILITY OF THE OTHER PERSONS IS REDUCED BY THE AMOUNT OF THE  
9 CONSENT ORDER.

10 (6) A PERSON THAT IS NOT LIABLE UNDER THIS PART, INCLUDING A  
11 PERSON THAT WAS ISSUED A WRITTEN DETERMINATION UNDER FORMER SECTION  
12 20129A AFFIRMING THAT THE PERSON MEETS THE CRITERIA FOR AN  
13 EXEMPTION FROM LIABILITY, AND THAT IS OTHERWISE IN COMPLIANCE WITH  
14 SECTION [21304C], SHALL BE CONSIDERED TO HAVE RESOLVED THAT PERSON'S  
15 LIABILITY TO THE STATE IN AN ADMINISTRATIVELY APPROVED SETTLEMENT  
16 UNDER THE APPLICABLE FEDERAL LAW AND SHALL BY OPERATION OF LAW BE  
17 GRANTED CONTRIBUTION PROTECTION UNDER FEDERAL LAW AND UNDER THIS  
18 PART IN THE SAME MANNER THAT CONTRIBUTION PROTECTION IS PROVIDED  
19 PURSUANT TO SUBSECTION (5).

20 (7) IF THE STATE OBTAINS LESS THAN COMPLETE RELIEF FROM A  
21 PERSON THAT HAS RESOLVED THAT PERSON'S LIABILITY TO THE STATE IN AN  
22 ADMINISTRATIVE OR JUDICIALLY APPROVED CONSENT ORDER UNDER THIS  
23 PART, THE STATE MAY BRING AN ACTION AGAINST ANY OTHER PERSON LIABLE  
24 UNDER SECTION 21323A THAT HAS NOT RESOLVED THAT PERSON'S LIABILITY.

25 (8) A PERSON THAT HAS RESOLVED THAT PERSON'S LIABILITY TO THE  
26 STATE FOR SOME OR ALL OF A CORRECTIVE ACTION IN AN ADMINISTRATIVE  
27 OR JUDICIALLY APPROVED CONSENT ORDER MAY SEEK CONTRIBUTION FROM ANY

1 PERSON THAT IS NOT A PARTY TO THE CONSENT ORDER DESCRIBED IN  
2 SUBSECTION (5).

3 (9) IN AN ACTION FOR CONTRIBUTION UNDER THIS SECTION, THE  
4 RIGHTS OF ANY PERSON THAT HAS RESOLVED THAT PERSON'S LIABILITY TO  
5 THE STATE IS SUBORDINATE TO THE RIGHTS OF THE STATE, IF THE STATE  
6 FILES AN ACTION UNDER THIS PART.

7 SEC. 21323E. (1) AN INDEMNIFICATION, HOLD HARMLESS, OR SIMILAR  
8 AGREEMENT OR CONVEYANCE IS NOT EFFECTIVE TO TRANSFER FROM A PERSON  
9 THAT IS LIABLE UNDER SECTION 21323A TO THE STATE FOR EVALUATION OR  
10 CORRECTIVE ACTION COSTS OR DAMAGES FOR A RELEASE OR THREAT OF  
11 RELEASE TO ANY OTHER PERSON THE LIABILITY IMPOSED UNDER THIS PART.  
12 THIS SECTION DOES NOT BAR AN AGREEMENT TO INSURE, HOLD HARMLESS, OR  
13 INDEMNIFY A PARTY TO THE AGREEMENT FOR LIABILITY UNDER THIS PART.

14 (2) THIS PART DOES NOT BAR A CAUSE OF ACTION THAT A PERSON  
15 SUBJECT TO LIABILITY UNDER THIS PART, OR A GUARANTOR, HAS OR WOULD  
16 HAVE BY REASON OF SUBROGATION OR OTHERWISE AGAINST ANY PERSON.

17 SEC. 21323F. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE  
18 LIABILITY UNDER THIS PART FOR EACH RELEASE OR THREAT OF RELEASE  
19 SHALL NOT EXCEED THE TOTAL OF ALL THE COSTS OF CORRECTIVE ACTION  
20 AND FINES, PLUS \$50,000,000.00 DAMAGES FOR INJURY TO, DESTRUCTION  
21 OF, OR LOSS OF NATURAL RESOURCES RESULTING FROM THE RELEASE OR  
22 THREAT OF RELEASE, INCLUDING THE REASONABLE COSTS OF ASSESSING THE  
23 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE RELEASE OR THREAT  
24 OF RELEASE.

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

1 FOLLOWING CIRCUMSTANCES:

2 (A) THE RELEASE OR THREATENED RELEASE OF A REGULATED SUBSTANCE  
3 WAS THE RESULT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE  
4 PARTY.

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

8 SEC. 21323G. (1) THE STATE MAY PROVIDE A PERSON WITH A  
9 COVENANT NOT TO SUE CONCERNING ANY LIABILITY TO THE STATE UNDER  
10 THIS PART, INCLUDING FUTURE LIABILITY, RESULTING FROM A RELEASE OR  
11 THREATENED RELEASE ADDRESSED BY CORRECTIVE ACTION, WHETHER THAT  
12 ACTION IS ON OR OFF THE PROPERTY ON WHICH AN UNDERGROUND STORAGE  
13 TANK SYSTEM IS LOCATED, IF EACH OF THE FOLLOWING IS MET:

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

15 (B) THE COVENANT NOT TO SUE WOULD EXPEDITE CORRECTIVE ACTION  
16 CONSISTENT WITH RULES PROMULGATED UNDER THIS PART.

17 (C) THERE IS FULL COMPLIANCE WITH A CONSENT ORDER UNDER THIS  
18 PART FOR RESPONSE TO THE RELEASE OR THREATENED RELEASE CONCERNED.

19 (D) THE CORRECTIVE ACTION HAS BEEN APPROVED BY THE DEPARTMENT.

20 (2) A COVENANT NOT TO SUE CONCERNING FUTURE LIABILITY TO THE  
21 STATE SHALL NOT TAKE EFFECT UNTIL THE DEPARTMENT CERTIFIES THAT  
22 CORRECTIVE ACTION HAS BEEN COMPLETED IN ACCORDANCE WITH THE  
23 REQUIREMENTS OF THIS PART AT THE PROPERTY THAT IS THE SUBJECT OF  
24 THE COVENANT.

25 (3) IN ASSESSING THE APPROPRIATENESS OF A COVENANT NOT TO SUE  
26 AND ANY CONDITION TO BE INCLUDED IN A COVENANT NOT TO SUE, THE  
27 STATE SHALL CONSIDER WHETHER THE COVENANT OR CONDITION IS IN THE



1 PUBLIC INTEREST ON THE BASIS OF FACTORS SUCH AS THE FOLLOWING:

2 (A) THE EFFECTIVENESS AND RELIABILITY OF THE CORRECTIVE  
3 ACTION, IN LIGHT OF THE OTHER ALTERNATIVE CORRECTIVE ACTIONS  
4 CONSIDERED FOR THE PROPERTY CONCERNED.

5 (B) THE NATURE OF THE RISKS REMAINING AT THE PROPERTY.

6 (C) THE EXTENT TO WHICH PERFORMANCE STANDARDS ARE INCLUDED IN  
7 THE CONSENT ORDER.

8 (D) THE EXTENT TO WHICH THE CORRECTIVE ACTION PROVIDES A  
9 COMPLETE REMEDY FOR THE PROPERTY, INCLUDING A REDUCTION IN THE  
10 HAZARDOUS NATURE OF THE SUBSTANCES AT THE PROPERTY.

11 (E) THE EXTENT TO WHICH THE TECHNOLOGY USED IN THE CORRECTIVE  
12 ACTION IS DEMONSTRATED TO BE EFFECTIVE.

13 (F) WHETHER CORRECTIVE ACTION WILL BE CARRIED OUT, IN WHOLE OR  
14 IN SIGNIFICANT PART, BY PERSONS THAT ARE LIABLE UNDER SECTION  
15 21323A.

16 (4) A COVENANT NOT TO SUE UNDER THIS SECTION IS SUBJECT TO THE  
17 SATISFACTORY PERFORMANCE BY A PERSON OF THAT PERSON'S OBLIGATIONS  
18 UNDER THE AGREEMENT CONCERNED.

19 (5) A COVENANT NOT TO SUE A PERSON CONCERNING FUTURE LIABILITY  
20 TO THE STATE SHALL INCLUDE AN EXCEPTION TO THE COVENANT THAT ALLOWS  
21 THE STATE TO SUE THAT PERSON CONCERNING FUTURE LIABILITY RESULTING  
22 FROM THE RELEASE OR THREATENED RELEASE THAT IS THE SUBJECT OF THE  
23 COVENANT IF THE LIABILITY ARISES OUT OF CONDITIONS THAT ARE UNKNOWN  
24 AT THE TIME THE DEPARTMENT CERTIFIES UNDER SUBSECTION (2) THAT  
25 CORRECTIVE ACTION HAS BEEN COMPLETED AT THE PROPERTY CONCERNED.

26 (6) IN EXTRAORDINARY CIRCUMSTANCES, THE STATE MAY DETERMINE,  
27 AFTER ASSESSMENT OF RELEVANT FACTORS SUCH AS THOSE REFERRED TO IN

1 SUBSECTION (3) AND VOLUME, TOXICITY, MOBILITY, STRENGTH OF  
2 EVIDENCE, ABILITY TO PAY, LITIGATIVE RISKS, PUBLIC INTEREST  
3 CONSIDERATIONS, PRECEDENTIAL VALUE, AND INEQUITIES AND AGGRAVATING  
4 FACTORS, NOT TO INCLUDE THE EXCEPTION IN SUBSECTION (5) IF OTHER  
5 TERMS, CONDITIONS, OR REQUIREMENTS OF THE AGREEMENT CONTAINING THE  
6 COVENANT NOT TO SUE ARE SUFFICIENT TO PROVIDE ALL REASONABLE  
7 ASSURANCES THAT THE PUBLIC HEALTH AND THE ENVIRONMENT WILL BE  
8 PROTECTED FROM ANY FUTURE RELEASES AT OR FROM THE PROPERTY.

9 (7) THE STATE MAY INCLUDE ANY PROVISIONS PROVIDING FOR FUTURE  
10 ENFORCEMENT ACTION THAT IN THE DISCRETION OF THE DEPARTMENT ARE  
11 NECESSARY AND APPROPRIATE TO ASSURE PROTECTION OF THE PUBLIC  
12 HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT.

13 SEC. 21323H. (1) THE STATE MAY PROVIDE A PERSON THAT PROPOSES  
14 TO REDEVELOP OR REUSE PROPERTY CONTAMINATED BY A RELEASE FROM AN  
15 UNDERGROUND STORAGE TANK SYSTEM, INCLUDING A VACANT MANUFACTURING  
16 OR ABANDONED INDUSTRIAL SITE, WITH A COVENANT NOT TO SUE CONCERNING  
17 LIABILITY UNDER SECTION 21323A, IF ALL OF THE FOLLOWING CONDITIONS  
18 ARE MET:

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

20 (B) THE COVENANT NOT TO SUE WILL YIELD NEW RESOURCES TO  
21 FACILITATE IMPLEMENTATION OF CORRECTIVE ACTION.

22 (C) THE COVENANT NOT TO SUE WOULD, WHEN APPROPRIATE, EXPEDITE  
23 CORRECTIVE ACTION CONSISTENT WITH THE RULES PROMULGATED UNDER THIS  
24 PART.

25 (D) BASED UPON AVAILABLE INFORMATION, THE DEPARTMENT  
26 DETERMINES THAT THE REDEVELOPMENT OR REUSE OF THE PROPERTY IS NOT  
27 LIKELY TO DO ANY OF THE FOLLOWING:

1           (i) EXACERBATE OR CONTRIBUTE TO THE EXISTING RELEASE OR THREAT  
2 OF RELEASE.

3           (ii) INTERFERE WITH THE IMPLEMENTATION OF CORRECTIVE ACTION.

4           (iii) POSE HEALTH RISKS RELATED TO THE RELEASE OR THREAT OF  
5 RELEASE TO PERSONS WHO MAY BE PRESENT AT OR IN THE VICINITY OF THE  
6 PROPERTY.

7           (E) THE PROPOSAL TO REDEVELOP OR REUSE THE PROPERTY HAS  
8 ECONOMIC DEVELOPMENT POTENTIAL.

9           (2) A PERSON THAT REQUESTS A COVENANT NOT TO SUE UNDER  
10 SUBSECTION (1) SHALL DEMONSTRATE TO THE SATISFACTION OF THE STATE  
11 ALL OF THE FOLLOWING:

12           (A) THAT THE PERSON IS FINANCIALLY CAPABLE OF REDEVELOPING AND  
13 REUSING THE PROPERTY IN ACCORDANCE WITH THE COVENANT NOT TO SUE.

14           (B) THAT THE PERSON IS NOT AFFILIATED IN ANY WAY WITH ANY  
15 PERSON THAT IS LIABLE UNDER SECTION 21323A FOR A RELEASE OR THREAT  
16 OF RELEASE AT THE PROPERTY.

17           (C) COMPLIANCE WITH SECTION 21304C.

18           (3) A COVENANT NOT TO SUE ISSUED UNDER THIS SECTION SHALL  
19 ADDRESS ONLY PAST RELEASES OR THREATS OF RELEASE AT A PROPERTY AND  
20 SHALL EXPRESSLY RESERVE THE RIGHT OF THE STATE TO ASSERT ALL OTHER  
21 CLAIMS AGAINST THE PERSON THAT PROPOSES TO REDEVELOP OR REUSE THE  
22 PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE CLAIMS ARISING FROM  
23 ANY OF THE FOLLOWING:

24           (A) THE RELEASE OR THREAT OF RELEASE OF ANY REGULATED  
25 SUBSTANCE RESULTING FROM THE REDEVELOPMENT OR REUSE OF THE PROPERTY  
26 TO THE EXTENT SUCH CLAIMS OTHERWISE ARISE UNDER THIS PART.

27           (B) INTERFERENCE WITH OR FAILURE TO COOPERATE WITH THE

1 DEPARTMENT, ITS CONTRACTORS, OR OTHER PERSONS CONDUCTING CORRECTIVE  
2 ACTION.

3 (4) A COVENANT NOT TO SUE ISSUED UNDER THIS SECTION SHALL  
4 PROVIDE FOR AN IRREVOCABLE RIGHT OF ENTRY TO THE DEPARTMENT, ITS  
5 CONTRACTORS, OR OTHER PERSONS PERFORMING CORRECTIVE ACTION RELATED  
6 TO THE RELEASE OR THREAT OF RELEASE ADDRESSED BY THE COVENANT NOT  
7 TO SUE AND FOR MONITORING COMPLIANCE WITH THE COVENANT NOT TO SUE.

8 SEC. 21323I. (1) THE DEPARTMENT AND THE ATTORNEY GENERAL MAY  
9 ENTER INTO A CONSENT ORDER WITH A PERSON THAT IS LIABLE UNDER  
10 SECTION 21323A OR ANY GROUP OF PERSONS THAT ARE LIABLE UNDER  
11 SECTION 21323A TO PERFORM CORRECTIVE ACTION IF THE DEPARTMENT AND  
12 THE ATTORNEY GENERAL DETERMINE THAT THE PERSONS THAT ARE LIABLE  
13 UNDER SECTION 21323A WILL PROPERLY IMPLEMENT THE CORRECTIVE ACTION  
14 AND THAT THE CONSENT ORDER IS IN THE PUBLIC INTEREST, WILL EXPEDITE  
15 EFFECTIVE CORRECTIVE ACTION, AND WILL MINIMIZE LITIGATION. THE  
16 CONSENT ORDER MAY, AS DETERMINED APPROPRIATE BY THE DEPARTMENT AND  
17 THE ATTORNEY GENERAL, PROVIDE FOR IMPLEMENTATION BY A PERSON OR ANY  
18 GROUP OF PERSONS THAT ARE LIABLE UNDER SECTION 21323A OF ANY  
19 PORTION OF CORRECTIVE ACTION AT THE PROPERTY. A DECISION OF THE  
20 ATTORNEY GENERAL NOT TO ENTER INTO A CONSENT ORDER UNDER THIS PART  
21 IS NOT SUBJECT TO JUDICIAL REVIEW.

22 (2) WHENEVER PRACTICAL AND IN THE PUBLIC INTEREST, AS  
23 DETERMINED BY THE DEPARTMENT, THE DEPARTMENT AND THE ATTORNEY  
24 GENERAL SHALL AS PROMPTLY AS POSSIBLE REACH A FINAL SETTLEMENT WITH  
25 A PERSON IN AN ADMINISTRATIVE OR CIVIL ACTION UNDER THIS PART IF  
26 THIS SETTLEMENT INVOLVES ONLY A MINOR PORTION OF THE RESPONSE COSTS  
27 AT THE PROPERTY CONCERNED AND, IN THE JUDGMENT OF THE DEPARTMENT

1 AND THE ATTORNEY GENERAL, THE CONDITIONS IN EITHER OF THE FOLLOWING  
2 ARE MET:

3 (A) BOTH OF THE FOLLOWING ARE MINIMAL IN COMPARISON TO OTHER  
4 REGULATED SUBSTANCES AT THE PROPERTY:

5 (i) THE AMOUNT OF THE REGULATED SUBSTANCES CONTRIBUTED BY THAT  
6 PERSON TO THE PROPERTY.

7 (ii) THE TOXIC OR OTHER REGULATED EFFECTS OF THE SUBSTANCES  
8 CONTRIBUTED BY THAT PERSON TO THE PROPERTY.

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

11 (i) THE PERSON IS THE OWNER OF THE PROPERTY ON OR IN WHICH THE  
12 UNDERGROUND STORAGE TANK SYSTEM IS OR WAS LOCATED.

13 (ii) THE PERSON DID NOT CONDUCT OR PERMIT THE GENERATION,  
14 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY REGULATED  
15 SUBSTANCE AT THE PROPERTY.

16 (iii) THE PERSON DID NOT CONTRIBUTE TO THE RELEASE OR THREAT OF  
17 RELEASE OF A REGULATED SUBSTANCE AT THE PROPERTY THROUGH ANY ACTION  
18 OR OMISSION.

19 (3) A SETTLEMENT SHALL NOT BE MADE UNDER SUBSECTION (2) (B) IF  
20 THE PERSON PURCHASED THE PROPERTY WITH ACTUAL OR CONSTRUCTIVE  
21 KNOWLEDGE THAT THE PROPERTY WAS USED FOR THE GENERATION,  
22 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF A REGULATED  
23 SUBSTANCE.

24 (4) A SETTLEMENT UNDER SUBSECTION (2) MAY BE SET ASIDE IF  
25 INFORMATION OBTAINED AFTER THE SETTLEMENT INDICATES THAT THE PERSON  
26 SETTLING DOES NOT MEET THE CONDITIONS SET FORTH IN SUBSECTION  
27 (2) (A) OR (B).

1           SEC. 21323J. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, A  
2 PERSON, INCLUDING A LOCAL UNIT OF GOVERNMENT ON BEHALF OF ITS  
3 CITIZENS, WHOSE HEALTH OR ENJOYMENT OF THE ENVIRONMENT IS OR MAY BE  
4 ADVERSELY AFFECTED BY A RELEASE FROM AN UNDERGROUND STORAGE TANK  
5 SYSTEM OR THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK  
6 SYSTEM, BY A VIOLATION OF THIS PART OR A RULE PROMULGATED OR ORDER  
7 ISSUED UNDER THIS PART, OR BY THE FAILURE OF THE DIRECTORS TO  
8 PERFORM A NONDISCRETIONARY ACT OR DUTY UNDER THIS PART, MAY  
9 COMMENCE A CIVIL ACTION AGAINST ANY OF THE FOLLOWING:

10           (A) AN OWNER OR OPERATOR WHO IS LIABLE UNDER SECTION 21323A  
11 FOR INJUNCTIVE RELIEF NECESSARY TO PREVENT IRREPARABLE HARM TO THE  
12 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT FROM A RELEASE  
13 OR THREATENED RELEASE IN RELATION TO THAT UNDERGROUND STORAGE TANK  
14 SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND STORAGE TANK SYSTEM  
15 IS LOCATED.

16           (B) A PERSON THAT IS LIABLE UNDER SECTION 21323A FOR A  
17 VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART OR AN  
18 ORDER ISSUED UNDER THIS PART IN RELATION TO THAT UNDERGROUND  
19 STORAGE TANK SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND  
20 STORAGE TANK SYSTEM IS LOCATED.

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

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

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

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

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

15 (i) THE DEPARTMENT.

16 (ii) THE ATTORNEY GENERAL.

17 (iii) THE PROPOSED DEFENDANTS.

18 (B) THE STATE HAS NOT COMMENCED AND IS NOT DILIGENTLY  
19 PROSECUTING AN ACTION UNDER THIS PART OR UNDER OTHER APPROPRIATE  
20 LEGAL AUTHORITY TO OBTAIN INJUNCTIVE RELIEF CONCERNING THE  
21 UNDERGROUND STORAGE TANK SYSTEM OR THE PROPERTY ON WHICH THE  
22 UNDERGROUND STORAGE TANK SYSTEM IS LOCATED OR TO REQUIRE COMPLIANCE  
23 WITH THIS PART OR A RULE OR AN ORDER UNDER THIS PART.

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

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

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

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

12           (8) ALL UNPAID COSTS AND DAMAGES FOR WHICH A PERSON IS LIABLE  
13 UNDER THIS SECTION CONSTITUTE A LIEN IN FAVOR OF THE STATE UPON A  
14 PROPERTY THAT HAS BEEN THE SUBJECT OF CORRECTIVE ACTION BY THE  
15 STATE AND IS OWNED BY THAT PERSON. A LIEN UNDER THIS SUBSECTION HAS  
16 PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS AND  
17 ENCUMBRANCES RECORDED BEFORE THE DATE THE LIEN UNDER THIS  
18 SUBSECTION IS RECORDED. A LIEN UNDER THIS SUBSECTION ARISES WHEN  
19 THE STATE FIRST INCURS COSTS FOR CORRECTIVE ACTION AT THE PROPERTY  
20 FOR WHICH THE PERSON IS RESPONSIBLE.

21           (9) IF THE ATTORNEY GENERAL DETERMINES THAT THE LIEN PROVIDED  
22 IN SUBSECTION (8) IS INSUFFICIENT TO PROTECT THE INTEREST OF THE  
23 STATE IN RECOVERING CORRECTIVE ACTION COSTS AT A PROPERTY, THE  
24 ATTORNEY GENERAL MAY FILE A PETITION IN THE CIRCUIT COURT OF THE  
25 COUNTY IN WHICH THE FACILITY IS LOCATED SEEKING EITHER OR BOTH OF  
26 THE FOLLOWING:

27           (A) A LIEN UPON THE PROPERTY OWNED BY THE PERSON DESCRIBED IN



1 SUBSECTION (8), SUBJECT TO CORRECTIVE ACTION THAT TAKES PRIORITY  
2 OVER ALL OTHER LIENS AND ENCUMBRANCES THAT ARE OR HAVE BEEN  
3 RECORDED ON THE PROPERTY.

4 (B) A LIEN UPON REAL OR PERSONAL PROPERTY OR RIGHTS TO REAL OR  
5 PERSONAL PROPERTY, OTHER THAN THE PROPERTY WHICH WAS THE SUBJECT OF  
6 CORRECTIVE ACTION, OWNED BY THE PERSON DESCRIBED IN SUBSECTION (8),  
7 HAVING PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS  
8 AND ENCUMBRANCES RECORDED PRIOR TO THE DATE THE LIEN UNDER THIS  
9 SUBSECTION IS RECORDED. HOWEVER, THE FOLLOWING ARE NOT SUBJECT TO  
10 THE LIEN PROVIDED FOR IN THIS SUBSECTION:

11 (i) ASSETS OF A QUALIFIED PENSION PLAN OR INDIVIDUAL RETIREMENT  
12 ACCOUNT UNDER THE INTERNAL REVENUE CODE.

13 (ii) ASSETS HELD EXPRESSLY FOR THE PURPOSE OF FINANCING A  
14 DEPENDENT'S COLLEGE EDUCATION.

15 (iii) UP TO \$500,000.00 IN NONBUSINESS REAL OR PERSONAL PROPERTY  
16 OR RIGHTS TO NONBUSINESS REAL OR PERSONAL PROPERTY, EXCEPT THAT NOT  
17 MORE THAN \$25,000.00 OF THIS AMOUNT MAY BE CASH OR SECURITIES.

18 (10) A PETITION SUBMITTED PURSUANT TO SUBSECTION (9) SHALL SET  
19 FORTH WITH AS MUCH SPECIFICITY AS POSSIBLE THE TYPE OF LIEN SOUGHT,  
20 THE PROPERTY THAT WOULD BE AFFECTED, AND THE REASONS THE ATTORNEY  
21 GENERAL BELIEVES THE LIEN IS NECESSARY. UPON RECEIPT OF A PETITION  
22 UNDER SUBSECTION (3), THE COURT SHALL PROMPTLY SCHEDULE A HEARING  
23 TO DETERMINE WHETHER THE PETITION SHOULD BE GRANTED. NOTICE OF THE  
24 HEARING SHALL BE PROVIDED TO THE ATTORNEY GENERAL, THE PROPERTY  
25 OWNER, AND ANY PERSONS HOLDING LIENS OR PERFECTED SECURITY INTEREST  
26 IN THE REAL PROPERTY SUBJECT TO CORRECTIVE ACTION. A LIEN SHALL NOT  
27 BE GRANTED UNDER SUBSECTION (3) AGAINST THE OWNER OF THE PROPERTY

1 IF THE OWNER IS NOT LIABLE UNDER SECTION 21323A.

2 (11) IN ADDITION TO THE LIEN PROVIDED IN SUBSECTIONS (8) AND  
3 (9), IF THE STATE INCURS COSTS FOR CORRECTIVE ACTION THAT INCREASES  
4 THE MARKET VALUE OF REAL PROPERTY THAT IS THE LOCATION OF A RELEASE  
5 OR THREATENED RELEASE, THE INCREASE IN THE VALUE CAUSED BY THE  
6 STATE-FUNDED CORRECTIVE ACTION, TO THE EXTENT THE STATE INCURRED  
7 UNPAID COSTS AND DAMAGES, CONSTITUTES A LIEN IN FAVOR OF THE STATE  
8 UPON THE REAL PROPERTY. THIS LIEN HAS PRIORITY OVER ALL OTHER LIENS  
9 OR ENCUMBRANCES THAT ARE OR HAVE BEEN RECORDED UPON THE PROPERTY.

10 (12) A LIEN PROVIDED IN SUBSECTION (8), (9), OR (11) IS  
11 PERFECTED AGAINST REAL PROPERTY WHEN A NOTICE OF LIEN IS FILED BY  
12 THE DEPARTMENT WITH THE REGISTER OF DEEDS IN THE COUNTY IN WHICH  
13 THE REAL PROPERTY IS LOCATED. A LIEN UPON PERSONAL PROPERTY  
14 PROVIDED IN SUBSECTION (9) IS PERFECTED WHEN A NOTICE OF LIEN IS  
15 FILED BY THE DEPARTMENT IN ACCORDANCE WITH APPLICABLE LAW AND  
16 REGULATION FOR THE PERFECTION OF A LIEN ON THAT TYPE OF PERSONAL  
17 PROPERTY. IN ADDITION, THE DEPARTMENT SHALL, AT THE TIME OF THE  
18 FILING OF THE NOTICE OF LIEN, PROVIDE A COPY OF THE NOTICE OF LIEN  
19 TO THE OWNER OF THAT PROPERTY BY CERTIFIED MAIL.

20 (13) A LIEN UNDER THIS SECTION CONTINUES UNTIL THE LIABILITY  
21 FOR THE COSTS AND DAMAGES IS SATISFIED OR RESOLVED OR BECOMES  
22 UNENFORCEABLE THROUGH THE OPERATION OF THE STATUTE OF LIMITATIONS  
23 PROVIDED IN THIS PART.

24 (14) UPON SATISFACTION OF THE LIABILITY SECURED BY THE LIEN,  
25 THE DEPARTMENT SHALL FILE A NOTICE OF RELEASE OF LIEN IN THE SAME  
26 MANNER AS PROVIDED IN SUBSECTION (12).

27 (15) IF THE DEPARTMENT, AT THE TIME OR PRIOR TO THE TIME OF

1 FILING THE NOTICE OF RELEASE OF LIEN PURSUANT TO SUBSECTION (14),  
2 HAS MADE A DETERMINATION THAT THE PERSON LIABLE UNDER SECTION  
3 21323A HAS COMPLETED ALL OF THE CORRECTIVE ACTION, THE DEPARTMENT  
4 SHALL EXECUTE AND FILE WITH THE NOTICE OF RELEASE OF LIEN A  
5 DOCUMENT STATING THAT ALL CORRECTIVE ACTION HAS BEEN COMPLETED.

6 SEC. 21323K. (1) A PERSON THAT IS LIABLE UNDER SECTION 21323A  
7 OR A LENDER THAT HAS A SECURITY INTEREST IN ALL OR A PORTION OF A  
8 PROPERTY ON WHICH CONTAMINATION FROM A RELEASE OF REGULATED  
9 SUBSTANCES FROM AN UNDERGROUND STORAGE TANK SYSTEM MAY FILE A  
10 PETITION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PROPERTY  
11 IS LOCATED SEEKING ACCESS TO THE PROPERTY IN ORDER TO CONDUCT  
12 CORRECTIVE ACTION. IF THE COURT GRANTS ACCESS TO PROPERTY UNDER  
13 THIS SECTION, THE COURT MAY DO ANY OF THE FOLLOWING:

14 (A) PROVIDE COMPENSATION TO THE PERSON THAT OWNS OR OPERATES  
15 THE PROPERTY FOR DAMAGES RELATED TO THE GRANTING OF ACCESS TO THE  
16 PROPERTY, INCLUDING COMPENSATION FOR LOSS OF USE OF THE PROPERTY.

17 (B) ENJOIN INTERFERENCE WITH THE CORRECTIVE ACTION.

18 (C) GRANT ANY OTHER APPROPRIATE RELIEF AS DETERMINED BY THE  
19 COURT.

20 (2) IF A COURT GRANTS ACCESS TO PROPERTY UNDER THIS SECTION,  
21 THE PERSON THAT OWNS OR OPERATES THE PROPERTY TO WHICH ACCESS IS  
22 GRANTED IS NOT LIABLE FOR EITHER OF THE FOLLOWING:

23 (A) A RELEASE CAUSED BY THE CORRECTIVE ACTION FOR WHICH ACCESS  
24 IS GRANTED UNLESS THE PERSON IS OTHERWISE LIABLE UNDER SECTION  
25 21323A.

26 (B) FOR CONDITIONS ASSOCIATED WITH THE CORRECTIVE ACTION THAT  
27 MAY PRESENT A THREAT TO PUBLIC HEALTH OR SAFETY.

Senate Bill No. 528 (H-2) as amended April 17, 2012

1 SEC. 21323/. THE LIMITATION PERIOD FOR FILING ACTIONS UNDER  
2 THIS PART IS AS FOLLOWS:

3 (A) FOR THE RECOVERY OF CORRECTIVE ACTION COSTS AND NATURAL  
4 RESOURCES DAMAGES PURSUANT TO SECTION 21323B(1) (A), (B), OR (C),  
5 WITHIN 6 YEARS OF INITIATION OF PHYSICAL ON-SITE CONSTRUCTION  
6 ACTIVITIES FOR THE CORRECTIVE ACTION AT THE PROPERTY BY THE PERSON  
7 SEEKING RECOVERY, EXCEPT AS PROVIDED IN SUBDIVISION (B).

8 (B) FOR 1 OR MORE SUBSEQUENT ACTIONS FOR RECOVERY OF  
9 CORRECTIVE ACTION COSTS PURSUANT TO SECTION [21323B], AT ANY TIME  
10 DURING THE CORRECTIVE ACTION, IF COMMENCED NOT LATER THAN 3 YEARS  
11 AFTER THE DATE OF COMPLETION OF ALL CORRECTIVE ACTION AT THE  
12 PROPERTY.

13 (C) FOR CIVIL FINES UNDER THIS PART, WITHIN 3 YEARS AFTER  
14 DISCOVERY OF THE VIOLATION FOR WHICH THE CIVIL FINES ARE ASSESSED.

15 SEC. 21323M. (1) EXCEPT AS PROVIDED IN SECTION 21323B(5), A  
16 PERSON THAT HAS COMPLIED WITH THE REQUIREMENTS OF THIS PART OR IS  
17 EXEMPT FROM LIABILITY UNDER THIS PART IS NOT SUBJECT TO A CLAIM IN  
18 LAW OR EQUITY FOR PERFORMANCE OF CORRECTIVE ACTION UNDER PART 17,  
19 PART 31, OR COMMON LAW.

20 (2) THIS SECTION DOES NOT BAR ANY OF THE FOLLOWING:

21 (A) TORT CLAIMS UNRELATED TO PERFORMANCE OF CORRECTIVE ACTION.

22 (B) TORT CLAIMS FOR DAMAGES WHICH RESULT FROM CORRECTIVE  
23 ACTION.

24 (C) TORT CLAIMS RELATED TO THE EXERCISE OR FAILURE TO EXERCISE  
25 RESPONSIBILITIES UNDER SECTION 21304C.

26 SEC. 21325. A PERSON SHALL BE CONSIDERED A QUALIFIED  
27 UNDERGROUND STORAGE TANK CONSULTANT IF THE PERSON MEETS ALL OF THE

1 FOLLOWING REQUIREMENTS:

2 (A) EXPERIENCE IN ALL PHASES OF UNDERGROUND STORAGE TANK WORK,  
3 INCLUDING TANK REMOVAL OVERSIGHT, SITE ASSESSMENT, SOIL REMOVAL,  
4 FEASIBILITY, DESIGN, REMEDIAL SYSTEM INSTALLATION, REMEDIATION  
5 MANAGEMENT ACTIVITIES, AND SITE CLOSURE AND POSSESSES OR EMPLOYS AT  
6 LEAST 1 OF THE FOLLOWING:

7 (i) A PROFESSIONAL ENGINEER LICENSE WITH 3 OR MORE YEARS OF  
8 RELEVANT CORRECTIVE ACTION EXPERIENCE, PREFERABLY INVOLVING  
9 UNDERGROUND STORAGE TANKS.

10 (ii) A PROFESSIONAL GEOLOGIST CERTIFICATION OR A SIMILAR  
11 APPROVED DESIGNATION SUCH AS A PROFESSIONAL HYDROLOGIST OR A  
12 CERTIFIED GROUNDWATER PROFESSIONAL, WITH 3 OR MORE YEARS OF  
13 RELEVANT CORRECTIVE ACTION EXPERIENCE, PREFERABLY INVOLVING  
14 UNDERGROUND STORAGE TANKS.

15 (iii) A PERSON WITH A MASTER'S DEGREE FROM AN ACCREDITED  
16 INSTITUTION OF HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR  
17 SCIENCE AND 8 YEARS OF FULL-TIME RELEVANT EXPERIENCE OR A PERSON  
18 WITH A BACCALAUREATE DEGREE FROM AN ACCREDITED INSTITUTION OF  
19 HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND 10  
20 YEARS OF FULL-TIME RELEVANT EXPERIENCE. THIS EXPERIENCE SHALL BE  
21 DOCUMENTED WITH PROFESSIONAL AND PERSONAL REFERENCES, PAST  
22 EMPLOYMENT REFERENCES AND HISTORIES, AND DOCUMENTATION THAT ALL  
23 REQUIREMENTS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970,  
24 PUBLIC LAW 91-596, 84 STAT. 1590, AND REGULATIONS PROMULGATED UNDER  
25 THAT ACT, AND THE MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT, 1974  
26 PA 154, MCL 408.1001 TO 408.1094, AND RULES PROMULGATED UNDER THAT  
27 ACT HAVE BEEN MET.

1           (iv) A PERSON THAT WAS CERTIFIED BY THE DEPARTMENT AS AN  
2 UNDERGROUND STORAGE TANK PROFESSIONAL PURSUANT TO SECTION 21543 AT  
3 THE TIME OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
4 THIS SUBPARAGRAPH.

5           (B) THE PERSON HAS ALL OF THE FOLLOWING INSURANCE POLICIES  
6 WRITTEN BY CARRIERS AUTHORIZED TO WRITE SUCH BUSINESS, OR APPROVED  
7 AS AN ELIGIBLE SURPLUS LINES INSURER, BY THE STATE AND WHICH ARE  
8 PLACED WITH AN INSURER LISTED IN A.M. BEST'S WITH A RATING OF NO  
9 LESS THAN B+ VII:

10           (i) WORKER'S COMPENSATION INSURANCE.

11           (ii) PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE.  
12 THIS POLICY MAY NOT EXCLUDE BODILY INJURY, PROPERTY DAMAGE, OR  
13 CLAIMS ARISING OUT OF POLLUTION FOR ENVIRONMENTAL WORK AND SHALL BE  
14 ISSUED WITH A LIMIT OF NOT LESS THAN \$1,000,000.00 PER OCCURRENCE.

15           (iii) CONTRACTOR POLLUTION LIABILITY INSURANCE WITH LIMITS OF  
16 NOT LESS THAN \$1,000,000.00 PER OCCURRENCE, IF NOT INCLUDED UNDER  
17 THE PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE REQUIRED  
18 UNDER SUBPARAGRAPH (ii). THE INSURANCE REQUIREMENT UNDER THIS  
19 SUBPARAGRAPH IS NOT REQUIRED FOR CONSULTANTS WHO DO NOT PERFORM  
20 CONTRACTING FUNCTIONS.

21           (iv) COMMERCIAL GENERAL LIABILITY INSURANCE WITH LIMITS OF NOT  
22 LESS THAN \$1,000,000.00 PER OCCURRENCE AND \$2,000,000.00 AGGREGATE.

23           (v) AUTOMOBILE LIABILITY INSURANCE WITH LIMITS OF NOT LESS  
24 THAN \$1,000,000.00 PER OCCURRENCE.

25           (C) HAS DEMONSTRATED COMPLIANCE WITH THE OCCUPATIONAL SAFETY  
26 AND HEALTH ACT OF 1970, PUBLIC LAW 91-596, 84 STAT. 1590, AND THE  
27 REGULATIONS PROMULGATED UNDER THAT ACT, AND THE MICHIGAN

1 OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO  
2 408.1094, AND THE RULES PROMULGATED UNDER THAT ACT, AND IS ABLE TO  
3 DEMONSTRATE THAT ALL SUCH RULES AND REGULATIONS HAVE BEEN COMPLIED  
4 WITH DURING THE PERSON'S PREVIOUS CORRECTIVE ACTION ACTIVITY.

5 SEC. 21334. NOT LATER THAN NOVEMBER 1, 2013 AND NOT LATER THAN  
6 NOVEMBER 1 OF EACH SUBSEQUENT YEAR, THE DEPARTMENT SHALL SUBMIT A  
7 REPORT TO THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF  
8 REPRESENTATIVES WITH JURISDICTION PRIMARILY PERTAINING TO NATURAL  
9 RESOURCES AND THE ENVIRONMENT THAT CONTAINS ALL OF THE FOLLOWING:

10 (A) THE NUMBER OF CLOSURE REPORTS SUBMITTED AND APPROVED BY  
11 THE DEPARTMENT AND THE NUMBER OF CLOSURE REPORTS THAT WERE APPROVED  
12 BY OPERATION OF LAW UNDER THIS PART.

13 (B) THE NUMBER OF CLOSURE REPORTS THAT WERE SUBMITTED TO THE  
14 DEPARTMENT AND NOT APPROVED UNDER THIS PART.

15 (C) THE NUMBER OF CONTESTED CASE HEARINGS HELD PURSUANT TO  
16 SECTION 21332.

17 (D) THE NUMBER OF ISSUES RESOLVED BY THE RESPONSE ACTIVITY  
18 REVIEW PANEL UNDER SECTION 20114E.

19 Enacting section 1. This amendatory act does not take effect  
20 unless all of the following bills of the 96th Legislature are  
21 enacted into law:

22 (a) Senate Bill No. 529.

23 (b) Senate Bill No. 530.

24 (c) Senate Bill No. 531.

25 (d) Senate Bill No. 532.

26 (e) Senate Bill No. 533.