

**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, 21309a, 21310a, 21314a, 21315, 21316, 21316a, and 21320 (MCL 324.21301a, 324.21304a, 324.21304b, 324.21307, 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 21314a and 21316a as added by 1995 PA 22, and by adding sections 21304c, 21323a, 21323b, 21323c, 21323d, 21323e, 21323f, 21323g, 21323h, 21323i, 21323j, 21323k, 21323l, 21323m, and 21325.

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.

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

26 **(2) THE TIER I RISK-BASED SCREENING LEVELS FOR REGULATED**
27 **SUBSTANCES ARE THE UNRESTRICTED RESIDENTIAL AND NONRESIDENTIAL**

1 **GENERIC CLEANUP CRITERIA DEVELOPED BY THE DEPARTMENT PURSUANT TO**
2 **PART 201 AND SHALL BE UTILIZED IN ACCORDANCE WITH THE PROCESS**
3 **OUTLINED IN RBCA AS SCREENING LEVELS ONLY.**

4 (3) If a regulated substance poses a carcinogenic risk to
5 humans, the cleanup criteria derived for cancer risk shall be the
6 95% upper bound on the calculated risk of 1 additional cancer above
7 the background cancer rate per 100,000 individuals using the
8 exposure assumptions and pathways established by ~~the department and~~
9 the process in RBCA. If a regulated substance poses a risk of both
10 cancer and an adverse health effect other than cancer, cleanup
11 criteria shall be derived for cancer and each adverse health
12 effect.

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

24 (5) Notwithstanding any other provision of this part, if a
25 release or threat of release at a site is not solely the result of
26 a release or threat of release from an underground storage tank
27 system, the owner or operator of the underground storage tank

1 system may choose to perform response activities pursuant to part
2 201 in lieu of corrective actions pursuant to this part.

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

10 (2) For the purposes of subsection (1), soil poses a threat to
11 the public health, safety, or welfare, or the environment if
12 concentrations of regulated substances in the soil exceed the
13 cleanup criteria established pursuant to section 21304a that apply
14 to the location to which the soil will be moved or relocated,
15 except if the soil is to be removed from the site for disposal or
16 treatment, the soil shall satisfy the appropriate regulatory
17 criteria for disposal or treatment. Any land use restriction that
18 would be required for the application of a criterion pursuant to
19 section 21304a shall be in place at the location to which the soil
20 will be moved. Soil may be relocated only to another location that
21 is similarly contaminated, considering the general nature,
22 concentration, and mobility of regulated substances present at the
23 location to which the contaminated soil will be removed.
24 Contaminated soil shall not be moved to a location that is not a
25 site unless it is taken there for treatment or disposal in
26 conformance with applicable laws and regulations.

27 (3) An owner or operator shall not relocate soil, or allow

1 soil to be relocated, within a site of environmental contamination
2 where a corrective action plan was approved unless that person
3 provides assurances that the same degree of control required for
4 application of the criteria of section 21304a is provided for the
5 contaminated soil.

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

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

16 (5) ~~(6)~~ If soil is being relocated in a manner not addressed
17 by ~~subsection (5)~~ **THIS SECTION**, the owner or operator of the site
18 from which soil is being moved shall notify the department within
19 14 days after the soil is moved. The notice shall include all of
20 the following:

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

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

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

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

1 (e) If land use restrictions would apply pursuant to section
2 21310a, to the soil when it is relocated, the notice shall include
3 documentation that those restrictions are in place.

4 (6) ~~(7)~~—The determination required by subsections (1) and (3)
5 shall be based on knowledge of the person undertaking or approving
6 the removal or relocation of soil, or on characterization of the
7 soil for the purpose of compliance with this section.

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

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

13 (A) UNDERTAKE MEASURES AS ARE NECESSARY TO PREVENT
14 EXACERBATION.

15 (B) EXERCISE DUE CARE BY UNDERTAKING CORRECTIVE ACTION
16 NECESSARY TO MITIGATE UNACCEPTABLE EXPOSURE TO REGULATED
17 SUBSTANCES, MITIGATE FIRE AND EXPLOSION HAZARDS DUE TO REGULATED
18 SUBSTANCES, AND ALLOW FOR THE INTENDED USE OF THE PROPERTY IN A
19 MANNER THAT PROTECTS THE PUBLIC HEALTH AND SAFETY.

20 (C) TAKE REASONABLE PRECAUTIONS AGAINST THE REASONABLY
21 FORESEEABLE ACTS OR OMISSIONS OF A THIRD PARTY AND THE CONSEQUENCES
22 THAT FORESEEABLY COULD RESULT FROM THOSE ACTS OR OMISSIONS.

23 (D) PROVIDE REASONABLE COOPERATION, ASSISTANCE, AND ACCESS TO
24 THE PERSONS THAT ARE AUTHORIZED TO CONDUCT CORRECTIVE ACTION
25 ACTIVITIES AT THE PROPERTY, INCLUDING THE COOPERATION AND ACCESS
26 NECESSARY FOR THE INSTALLATION, INTEGRITY, OPERATION, AND
27 MAINTENANCE OR ANY COMPLETE OR PARTIAL CORRECTIVE ACTION ACTIVITY

1 AT THE PROPERTY. NOTHING IN THIS SUBDIVISION SHALL BE INTERPRETED
2 TO PROVIDE ANY RIGHT OF ACCESS NOT EXPRESSLY AUTHORIZED BY LAW,
3 INCLUDING ACCESS AUTHORIZED PURSUANT TO A WARRANT OR A COURT ORDER,
4 OR TO PRECLUDE ACCESS ALLOWED PURSUANT TO A VOLUNTARY AGREEMENT.

5 (E) COMPLY WITH ANY LAND USE OR RESOURCES USE RESTRICTIONS
6 ESTABLISHED OR RELIED ON IN CONNECTION WITH THE CORRECTIVE ACTION
7 ACTIVITIES AT THE PROPERTY.

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

11 (2) THE OWNER'S OR OPERATOR'S OBLIGATIONS UNDER THIS SECTION
12 SHALL BE BASED UPON THE APPLICABLE RBSL OR SSTL.

13 (3) A PERSON THAT VIOLATES SUBSECTION (1) THAT IS NOT
14 OTHERWISE LIABLE UNDER THIS PART FOR THE RELEASE AT THE PROPERTY IS
15 LIABLE FOR CORRECTIVE ACTION ACTIVITY COSTS AND NATURAL RESOURCE
16 DAMAGES ATTRIBUTABLE TO ANY EXACERBATION AND ANY FINES OR PENALTIES
17 IMPOSED UNDER THIS PART RESULTING FROM THE VIOLATION OF SUBSECTION
18 (1) BUT IS NOT LIABLE FOR PERFORMANCE OF ADDITIONAL CORRECTIVE
19 ACTION ACTIVITIES UNLESS THE PERSON IS OTHERWISE LIABLE UNDER THIS
20 PART FOR PERFORMANCE OF ADDITIONAL CORRECTIVE ACTION ACTIVITIES.
21 THE BURDEN OF PROOF IN A DISPUTE AS TO WHAT CONSTITUTES
22 EXACERBATION SHALL BE BORNE BY THE PARTY SEEKING RELIEF.

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

26 (5) SUBSECTION (1) (A) TO (C) DOES NOT APPLY TO THE STATE OR TO
27 A LOCAL UNIT OF GOVERNMENT THAT IS NOT LIABLE UNDER SECTION

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

19 (6) SUBSECTION (1) (A) TO (C) DOES NOT APPLY TO A PERSON THAT
20 IS EXEMPT FROM LIABILITY UNDER SECTION 21323A(3) (C) OR (D) EXCEPT
21 WITH REGARD TO THAT PERSON'S ACTIVITIES AT THE PROPERTY.

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

1 responsibilities related to the release provided for in this part.

2 (2) After a release has been reported under subsection (1),
3 the owner or operator ~~or a consultant retained by the owner or~~
4 ~~operator~~ shall immediately begin and expeditiously perform all of
5 the following initial ~~response~~ actions:

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

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

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

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

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

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

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

26 (C) USING THE PROCESS OUTLINED BY RBCA REGARDING NAPL, TAKE
27 STEPS NECESSARY AND FEASIBLE UNDER THIS PART TO ADDRESS

1 **UNACCEPTABLE IMMEDIATE RISKS.**

2 (d) Excavate and contain, treat, or dispose of soils above the
3 water table that are visibly contaminated with a regulated
4 substance if the contamination is likely to cause a fire hazard. ~~or~~
5 ~~spread and increase the cost of corrective action.~~

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

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

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

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

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

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

26 Sec. 21309a. (1) If initial response actions under section
27 21307 have not resulted in completion of corrective action, a

1 ~~consultant retained by an owner or operator shall prepare a~~
2 ~~corrective action plan to address contamination at the site. For~~
3 ~~corrective~~ **CORRECTIVE** action plans submitted as part of a final
4 assessment report ~~pursuant to section 21311a after October 1, 1995,~~
5 ~~the corrective action plan shall use the process described in RBCA~~
6 **AND SHALL BE BASED UPON THE SITE INFORMATION AND CHARACTERIZATION**
7 **RESULTS OF THE INITIAL ASSESSMENT REPORT.**

8 (2) A corrective action plan shall include all of the
9 following:

10 (a) A description of the corrective action to be implemented,
11 including an explanation of how that action will meet the
12 requirements of the **TIER I, II, OR III EVALUATION IN THE RBCA**
13 process. The corrective action plan shall also include an analysis
14 of the selection of indicator parameters to be used in evaluating
15 the implementation of the corrective action plan, if indicator
16 parameters are to be used. The corrective action plan shall include
17 **AN ANALYSIS OF THE RECOVERABILITY OF THE NAPL AND WHETHER THE NAPL**
18 **IS MOBILE OR MIGRATING, AND** a description of ambient air quality
19 monitoring activities to be undertaken during the corrective action
20 if such activities are appropriate.

21 (b) An operation and maintenance plan if any element of the
22 corrective action requires operation and maintenance.
23 The operation and maintenance plan shall include **INFORMATION THAT**
24 **DESCRIBES THE PROPOSED OPERATION AND MAINTENANCE ACTIONS.** ~~all of~~
25 ~~the following:~~

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

- 1 ~~—— (ii) Operation and maintenance schedule.~~
2 ~~—— (iii) Written and pictorial plan of operation and maintenance.~~
3 ~~—— (iv) Design and construction plans.~~
4 ~~—— (v) Equipment diagrams, specifications, and manufacturers'~~
5 ~~guidelines.~~
6 ~~—— (vi) Safety plan.~~
7 ~~—— (vii) Emergency plan, including emergency contact telephone~~
8 ~~numbers.~~
9 ~~—— (viii) A list of spare parts available for emergency repairs.~~
10 ~~—— (ix) Other information required by the department to determine~~
11 ~~the adequacy of the operation and maintenance plan. Department~~
12 ~~requests for information pursuant to this subparagraph shall be~~
13 ~~limited to factors not adequately addressed by information required~~
14 ~~by subparagraphs (i) through (viii) and shall be accompanied by an~~
15 ~~explanation of the need for the additional information.~~

16 (c) A monitoring plan if monitoring of environmental media or
17 site activities or both is required to confirm the effectiveness
18 and integrity of the remedy. The monitoring plan shall include all
19 of the following:

- 20 (i) Location of monitoring points.
21 (ii) Environmental media to be monitored, including, but not
22 limited to, soil, air, water, or biota.
23 (iii) Monitoring schedule.
24 (iv) Monitoring methodology, including sample collection
25 procedures **SUCH AS GRAB SAMPLING PROCEDURES FOR MONITORING**
26 **GROUNDWATER, AMONG OTHER PROCEDURES.**
27 (v) Substances to be monitored, including an explanation of

1 the selection of any indicator parameters to be used.

2 (vi) Laboratory methodology, including the name of the
3 laboratory responsible for analysis of monitoring samples, method
4 detection limits, and practical quantitation levels. Raw data used
5 to determine method detection limits shall be made available to the
6 department on request.

7 (vii) Quality control/quality assurance plan.

8 (viii) Data presentation and evaluation plan.

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

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

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

13 (x) ~~(xii)~~ Other elements required by the department to determine
14 the adequacy of the monitoring plan. Department requests for
15 information pursuant to this subparagraph shall be limited to
16 factors not adequately addressed by information required under
17 subparagraphs (i) through ~~(xi)~~ (ix) and shall be accompanied by an
18 explanation of the need for the additional information.

19 (d) An explanation of any land use or resource use
20 restrictions, if the restrictions are required pursuant to section
21 21310a, **INCLUDING HOW THOSE RESTRICTIONS WILL BE EFFECTIVE IN**
22 **PREVENTING OR CONTROLLING UNACCEPTABLE EXPOSURES.**

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

24 ~~(f) A financial assurance mechanism, as provided for in R~~
25 ~~29.2161 to R 29.2169 of the Michigan administrative code, in an~~
26 ~~amount approved by the department, to pay for monitoring, operation~~
27 ~~and maintenance, oversight, and other costs if required by the~~

1 ~~department as necessary to assure the effectiveness and integrity~~
2 ~~of the corrective action.~~

3 (F) IF THE CORRECTIVE ACTION PLAN INCLUDES THE OPERATION OF A
4 MECHANICAL SOIL OR GROUNDWATER REMEDIATION SYSTEM, OR BOTH, A
5 FINANCIAL ASSURANCE MECHANISM TO PAY FOR MONITORING, OPERATION, AND
6 MAINTENANCE NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF
7 THE CORRECTIVE ACTION REMEDIATION SYSTEM.

8 (g) If provisions for operation and maintenance, monitoring,
9 or financial assurance are included in the corrective action plan,
10 and those provisions are not complied with, the corrective action
11 plan is void from the time of lapse or violation ~~unless~~ UNTIL the
12 lapse or violation is corrected. ~~to the satisfaction of the~~
13 ~~department.~~

14 (3) If a corrective action plan prepared under this section
15 does not result in an unrestricted use of the property, ~~for any~~
16 ~~purpose,~~ the owner or operator ~~or a consultant retained by the~~
17 ~~owner or operator~~ shall provide notice to the public by means
18 designed to reach those members of the public directly impacted by
19 the release ABOVE THE APPLICABLE RBSL OR APPLICABLE SSTL and the
20 proposed corrective action. The notice shall include the name,
21 address, and telephone number of a contact person. A copy of the
22 notice and proof of providing the notice shall be submitted to the
23 department. The department shall ensure that site release
24 information and corrective action plans that do not result in an
25 unrestricted use of property are made available to the public for
26 inspection upon request.

27 Sec. 21310a. (1) If the corrective action activities at a site

1 result in a final remedy that relies on ~~tier I commercial or~~
2 ~~industrial criteria~~ **AN SSTL**, institutional controls shall be
3 implemented as provided in this subsection. A notice of corrective
4 action shall be recorded with the register of deeds for the county
5 in which the site is located prior to submittal of a closure report
6 under section 21312a. A notice shall be filed under this subsection
7 only by the property owner or with the express written permission
8 of the property owner. ~~The form and content of the notice shall be~~
9 ~~subject to approval by the department.~~ A notice of corrective
10 action recorded under this subsection shall state the land use that
11 was the basis of the corrective action. ~~selected by a consultant~~
12 ~~retained by the owner or operator.~~ The notice shall state that if
13 there is a proposed change in the land use at any time in the
14 future, that change may necessitate further evaluation of potential
15 risks to the public health, safety, and welfare and to the
16 environment and that the department shall be contacted regarding
17 any proposed change in the land use. Additional requirements for
18 ~~financial assurance, monitoring, or operation and maintenance~~
19 shall not apply if contamination levels do not exceed the levels
20 established in the tier I evaluation.

21 (2) If corrective action activities at a site rely on
22 institutional controls other than as provided in subsection (1),
23 the institutional controls shall be implemented as provided in this
24 subsection. The restrictive covenant shall be recorded with the
25 register of deeds for the county in which the property is located
26 within 30 days from submittal of the final assessment report
27 pursuant to section 21311a, unless otherwise agreed to by the

1 department. The restrictive covenant shall be filed only by the
2 property owner or with the express written permission of the
3 property owner. The restrictions shall run with the land and be
4 binding on the owner's successors, assigns, and lessees. The
5 restrictions shall apply until ~~the department determines that~~
6 regulated substances no longer present an unacceptable risk to the
7 public health, safety, or welfare or to the environment. The
8 restrictive covenant shall include a survey and property
9 description which define the areas addressed by the corrective
10 action plan and the scope of any land use or resource use
11 limitations. The form and content of the restrictive covenant ~~are~~
12 ~~subject to approval by the department and~~ shall include provisions
13 to accomplish all of the following:

14 (a) Restrict activities at the site that may interfere with
15 corrective action, operation and maintenance, monitoring, or other
16 measures necessary to assure the effectiveness and integrity of the
17 corrective action.

18 (b) Restrict activities that may result in exposure to
19 regulated substances above levels established in the corrective
20 action plan.

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

26 (d) Grant to the department and its designated representatives
27 the right to enter the property at reasonable times for the purpose

1 of determining and monitoring compliance with the corrective action
2 plan, including but not limited to the right to take samples,
3 inspect the operation of the corrective action measures, and
4 inspect records.

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

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

9 (3) If ~~a consultant retained by~~ the owner or operator
10 determines that exposure to regulated substances may be reliably
11 restricted by a means other than a restrictive covenant and that
12 imposition of land use or resource use restrictions through
13 restrictive covenants is impractical, the ~~consultant~~ **OWNER OR**
14 **OPERATOR** may select a corrective action plan that relies on
15 alternative mechanisms. Mechanisms that may be considered under
16 this subsection include, but are not limited to, an ordinance that
17 prohibits the use of groundwater in a manner and to a degree that
18 protects against unacceptable exposure to a regulated substance as
19 defined by the cleanup criteria identified in the corrective action
20 plan. An ordinance that serves as an exposure control under this
21 subsection shall include both of the following:

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

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

27 (4) Notwithstanding subsections (1), (2), and (3), if a

1 mechanism other than a notice of corrective action, an ordinance,
 2 or a restrictive covenant is requested by a ~~consultant retained by~~
 3 an owner or operator and the department determines that the
 4 alternative mechanism is appropriate, the department may approve of
 5 the alternate mechanism.

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

11 **(5) A PERSON THAT IMPLEMENTS CORRECTIVE ACTION ACTIVITIES THAT**
 12 **RELIES ON LAND USE RESTRICTIONS SHALL PROVIDE NOTICE OF THE LAND**
 13 **USE RESTRICTIONS THAT ARE PART OF THE CORRECTIVE ACTION PLAN TO THE**
 14 **LOCAL UNIT OF GOVERNMENT IN WHICH THE SITE IS LOCATED WITHIN 30**
 15 **DAYS OF FILING OF THE LAND USE RESTRICTIONS WITH THE COUNTY**
 16 **REGISTER OF DEEDS.**

17 Sec. 21314a. ~~The department shall establish and implement a~~
 18 ~~classification system for sites considering impacts on public~~
 19 ~~health, safety, and welfare, and the environment. Notwithstanding~~
 20 ~~any other provision in this part, at sites posing an imminent risk~~
 21 ~~to the public health, safety, or welfare, or the environment,~~
 22 ~~corrective action shall be implemented immediately. **SITES SHALL BE**~~
 23 **CLASSIFIED CONSISTENT WITH THE PROCESS OUTLINED IN RBCA.** If the
 24 department determines that no imminent risk to the public health,
 25 safety, or welfare, or the environment exists at a site, the
 26 department may allow corrective action at these sites to be
 27 conducted on a schedule approved by the department. ~~This provision~~

1 ~~shall not be used by the department to limit the ability of a~~
2 ~~owner, operator or a consultant to submit a claim to the Michigan~~
3 ~~underground storage tank financial assurance fund, or delay payment~~
4 ~~on a valid claim to an owner, operator or consultant.~~

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

12 ~~—— (2) If the department conducts an audit under this section and~~
13 ~~the audit confirms that the cleanup criteria have been met, the~~
14 ~~department shall provide the owner or operator with a letter that~~
15 ~~describes the audit and its results.~~ **UPON RECEIPT OF A FINAL**
16 **ASSESSMENT REPORT OR CLOSURE REPORT, THE DEPARTMENT SHALL HAVE 90**
17 **DAYS TO DETERMINE WHETHER IT WILL AUDIT THE REPORT AND INFORM THE**
18 **OWNER OR OPERATOR OF ITS INTENTION TO AUDIT THE SUBMITTED REPORT**
19 **WITHIN 7 DAYS OF THE DETERMINATION. IF THE DEPARTMENT DOES NOT**
20 **INFORM THE OWNER OR OPERATOR OF ITS INTENTION TO AUDIT THE REPORT**
21 **WITHIN THE REQUIRED TIME LIMITS, THE DEPARTMENT SHALL NOT AUDIT THE**
22 **REPORT. IF THE DEPARTMENT DETERMINES THAT IT WILL CONDUCT AN AUDIT,**
23 **THE AUDIT SHALL BE COMPLETED WITHIN 180 DAYS OF THE SUBMISSION. THE**
24 **DEPARTMENT SHALL INFORM THE OWNER OR OPERATOR IN WRITING OF THE**
25 **RESULTS OF THE AUDIT WITHIN 14 DAYS OF THE COMPLETION OF THE AUDIT.**
26 **ALL AUDITS SHALL BE CONDUCTED BASED ON THE STANDARDS, CRITERIA, AND**
27 **PROCEDURES IN EFFECT AT THE TIME THE FINAL ASSESSMENT REPORT OR**

1 CLOSURE REPORT WAS SUBMITTED.

2 (2) THE DEPARTMENT SHALL HAVE 270 DAYS FROM THE EFFECTIVE DATE
3 OF THE 2012 AMENDATORY ACT THAT AMENDED THIS SECTION TO SELECTIVELY
4 AUDIT FINAL ASSESSMENT REPORTS OR CLOSURE REPORTS THAT WERE
5 SUBMITTED WITHIN 6 MONTHS PRIOR TO THE EFFECTIVE DATE OF THE 2012
6 AMENDATORY ACT THAT AMENDED THIS SECTION.

7 (3) IF THE DEPARTMENT CONDUCTS AN AUDIT, THE RESULTS OF THE
8 AUDIT SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY THE FINAL
9 ASSESSMENT REPORT OR CLOSURE REPORT OR SHALL NOTIFY THE OWNER OR
10 OPERATOR THAT THE REPORT DOES NOT CONTAIN SUFFICIENT INFORMATION
11 FOR THE DEPARTMENT TO MAKE A DECISION. IF THE DEPARTMENT'S RESPONSE
12 IS THAT THE REPORT DOES NOT INCLUDE SUFFICIENT INFORMATION, THE
13 DEPARTMENT SHALL IDENTIFY THE INFORMATION THAT IS REQUIRED FOR THE
14 DEPARTMENT TO MAKE A DECISION. IF A REPORT IS APPROVED WITH
15 CONDITIONS, THE DEPARTMENT'S APPROVAL SHALL STATE WITH SPECIFICITY
16 THE CONDITIONS OF THE APPROVAL.

17 (4) IF THE DEPARTMENT DOES NOT PERFORM AN AUDIT AND PROVIDE A
18 WRITTEN RESPONSE IN ACCORDANCE WITH SUBSECTION (1) TO A FINAL
19 ASSESSMENT REPORT OR CLOSURE REPORT SUBMITTED AFTER THE EFFECTIVE
20 DATE OF THE 2012 AMENDATORY ACT THAT AMENDED THIS SECTION, THE
21 REPORT IS CONSIDERED APPROVED. AN OWNER OR OPERATOR MAY REQUEST
22 WRITTEN CONFIRMATION FROM THE DEPARTMENT THAT THE REPORT IS
23 CONSIDERED APPROVED UNDER THIS SECTION, AND THE DEPARTMENT SHALL
24 PROVIDE WRITTEN CONFIRMATION WITHIN 14 DAYS OF THE REQUEST.

25 (5) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY
26 MUTUAL AGREEMENT OF THE DEPARTMENT AND AN OWNER OR OPERATOR
27 SUBMITTING A FINAL ASSESSMENT OR CLOSURE REPORT. AN AGREEMENT

1 EXTENDING A TIME FRAME SHALL BE IN WRITING.

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

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

11 (B) RECOMMENDATIONS ABOUT CORRECTIVE ACTIONS OR DOCUMENTATION
12 THAT MAY ADDRESS THE DEFICIENCIES IDENTIFIED UNDER SUBSECTION
13 (6) (A).

14 (7) IF THE DEPARTMENT DENIES A FINAL ASSESSMENT REPORT OR
15 CLOSURE REPORT UNDER THIS SECTION, AN OWNER OR OPERATOR SHALL
16 EITHER REVISE AND RESUBMIT THE REPORT FOR APPROVAL, SUBMIT A
17 PETITION FOR REVIEW OF SCIENTIFIC OR TECHNICAL DISPUTES TO THE
18 RESPONSE ACTIVITY REVIEW PANEL PURSUANT TO SECTION 20114E AND PAY A
19 FEE IN THE AMOUNT OF \$300.00 IN LIEU OF THE \$3,500.00 FEE SET FORTH
20 IN SECTION 20114E(7), OR SUBMIT A PETITION TO THE DEPARTMENT'S
21 OFFICE OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING
22 PURSUANT TO SECTION 21332.

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

27 ~~(3) If an audit conducted under this section does not confirm~~

1 ~~that corrective action has been conducted in compliance with this~~
2 ~~part or that cleanup criteria have been met, the department may~~
3 ~~require an owner or operator to do either or both of the following:~~

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

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

9 **(9) THE DEPARTMENT SHALL ONLY AUDIT A REPORT REQUIRED UNDER**
10 **THIS PART 1 TIME. IF THE DEPARTMENT'S AUDIT IDENTIFIES DEFICIENCIES**
11 **AS DESCRIBED IN SUBSECTION (6), THE DEPARTMENT MAY AUDIT A REVISED**
12 **REPORT TO EVALUATE WHETHER THE IDENTIFIED DEFICIENCIES HAVE BEEN**
13 **CORRECTED, WHICH SHALL BE COMPLETED WITHIN 90 DAYS OF THE REVISED**
14 **REPORT'S SUBMISSION TO THE DEPARTMENT.**

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

18 Sec. 21316a. (1) A person shall not knowingly deliver a
19 regulated substance to an underground storage tank system ~~at any~~
20 ~~facility that is not in compliance with this part and rules~~
21 ~~promulgated under this part, and part 211 and rules promulgated~~
22 ~~under part 211.~~ **THAT HAS HAD A PLACARD AFFIXED TO IT UNDER**
23 **SUBSECTION (2).** A person who knowingly delivers a regulated
24 substance to an underground storage tank system **THAT HAS HAD A**
25 **PLACARD AFFIXED TO IT UNDER SUBSECTION (2)** is guilty of a
26 misdemeanor punishable by imprisonment for not more than 90 days or
27 a fine of not more than \$500.00, or both. **A PERSON IS CONSIDERED TO**

1 HAVE KNOWLEDGE IF PLACARDS HAVE BEEN AFFIXED TO THE UNDERGROUND
2 STORAGE TANK SYSTEM AT THE PROPERTY AND ARE VISIBLE AT THE TIME OF
3 THE DELIVERY.

4 (2) The department, upon discovery of a ~~THE OPERATION OF AN~~
5 ~~UNDERGROUND STORAGE TANK SYSTEM IN~~ violation of this part, rules
6 promulgated under this part, part 211, or rules promulgated under
7 part 211, ~~at a facility having an underground storage tank system,~~
8 shall provide notification prohibiting delivery of regulated
9 substances to ~~such a facility~~ **THE UNDERGROUND STORAGE TANK SYSTEM**
10 by affixing a placard providing notice of the violation in plain
11 view to the underground storage tank system. **THE DEPARTMENT SHALL**
12 **PROVIDE A MINIMUM OF 15 DAYS' NOTICE TO THE LIABLE OWNER OR**
13 **OPERATOR PRIOR TO AFFIXING A PLACARD FOR VIOLATIONS OF THIS PART OR**
14 **RULES PROMULGATED UNDER THIS PART, UNLESS THE VIOLATION CAUSES AN**
15 **IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY,**
16 **OR WELFARE OR THE ENVIRONMENT.**

17 (3) A person shall not remove, deface, alter, or otherwise
18 tamper with a placard affixed to an underground storage tank system
19 pursuant to subsection (2). A person who knowingly removes,
20 defaces, alters, or otherwise tampers with a placard affixed to an
21 underground storage tank system pursuant to subsection (2) such
22 that the notification is not discernible is guilty of a misdemeanor
23 punishable by imprisonment for not more than 90 days or a fine of
24 not more than \$500.00, or both.

25 (4) The attorney general or, upon request by the department,
26 county prosecuting attorney may commence criminal actions for
27 violation of subsections (1) and (3) in the circuit court of the

1 county where the violation occurred.

2 Sec. 21320. If the department learns of a suspected or
3 confirmed release from an underground storage tank system AND
4 CORRECTIVE ACTION NECESSARY TO ABATE AN IMMINENT AND SUBSTANTIAL
5 ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
6 ENVIRONMENT HAVE NOT BEEN IMPLEMENTED, the department may undertake
7 corrective actions necessary to protect the public health, safety,
8 or welfare —or the environment.

9 SEC. 21323A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
10 ACT, AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND SECTION
11 21323, THE FOLLOWING PERSONS ARE LIABLE UNDER THIS PART:

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

14 (B) AN OWNER OR OPERATOR WHO BECOMES AN OWNER OR OPERATOR ON
15 OR AFTER MARCH 6, 1996, UNLESS THE OWNER OR OPERATOR COMPLIES WITH
16 BOTH OF THE FOLLOWING:

17 (i) A BASELINE ENVIRONMENTAL ASSESSMENT IS CONDUCTED PRIOR TO
18 OR WITHIN 45 DAYS AFTER THE EARLIER OF THE DATE OF PURCHASE,
19 OCCUPANCY, OR FORECLOSURE. FOR PURPOSES OF THIS SECTION, ASSESSING
20 PROPERTY TO CONDUCT A BASELINE ENVIRONMENTAL ASSESSMENT DOES NOT
21 CONSTITUTE OCCUPANCY.

22 (ii) THE OWNER OR OPERATOR PROVIDES A BASELINE ENVIRONMENTAL
23 ASSESSMENT TO THE DEPARTMENT AND SUBSEQUENT PURCHASER OR TRANSFEREE
24 WITHIN 6 MONTHS AFTER THE EARLIER OF THE DATE OF PURCHASE,
25 OCCUPANCY, OR FORECLOSURE.

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

1 (2) SUBJECT TO SECTION 21304C, AN OWNER OR OPERATOR WHO
2 COMPLIES WITH SUBSECTION (1) (B) IS NOT LIABLE FOR CONTAMINATION
3 EXISTING AT THE PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK
4 SYSTEM IS LOCATED AT THE EARLIER OF THE DATE OF PURCHASE,
5 OCCUPANCY, OR FORECLOSURE, UNLESS THE PERSON IS RESPONSIBLE FOR AN
6 ACTIVITY CAUSING THE CONTAMINATION. SUBSECTION (1) (B) DOES NOT
7 ALTER A PERSON'S LIABILITY WITH REGARD TO A SUBSEQUENT RELEASE OR
8 THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM IF THE
9 PERSON IS RESPONSIBLE FOR AN ACTIVITY CAUSING THE SUBSEQUENT
10 RELEASE OR THREAT OF RELEASE.

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

17 (A) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED
18 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH
19 BANKRUPTCY, TAX DELINQUENCY, ABANDONMENT, A TRANSFER FROM A LENDER
20 OR OTHER CIRCUMSTANCES IN WHICH THE GOVERNMENT INVOLUNTARILY
21 ACQUIRES TITLE OR CONTROL BY VIRTUE OF ITS GOVERNMENTAL FUNCTION OR
22 AS PROVIDED IN THIS PART, A LOCAL UNIT OF GOVERNMENT TO WHICH
23 OWNERSHIP OR CONTROL OF PROPERTY IS TRANSFERRED BY THE STATE OR BY
24 ANOTHER LOCAL UNIT OF GOVERNMENT THAT IS NOT LIABLE UNDER
25 SUBSECTION (1), OR THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT
26 ACQUIRED OWNERSHIP OR CONTROL OF PROPERTY BY SEIZURE, RECEIVERSHIP,
27 OR FORFEITURE PURSUANT TO THE OPERATION OF LAW OR BY COURT ORDER.

1 (B) A STATE OR LOCAL UNIT OF GOVERNMENT THAT HOLDS OR ACQUIRES
2 AN EASEMENT INTEREST IN PROPERTY, HOLDS OR ACQUIRES AN INTEREST IN
3 PROPERTY BY DEDICATION IN A PLAT, OR BY DEDICATION PURSUANT TO THE
4 PUBLIC HIGHWAYS AND PRIVATE ROADS ACT, 1909 PA 283, MCL 220.1 TO
5 239.6, OR OTHERWISE HOLDS OR ACQUIRES AN INTEREST IN PROPERTY FOR A
6 TRANSPORTATION OR UTILITY CORRIDOR, INCLUDING SEWERS, PIPES, AND
7 PIPELINES, OR PUBLIC RIGHT-OF-WAY.

8 (C) A PERSON WHO HOLDS AN EASEMENT INTEREST IN PROPERTY OR
9 HOLDS A UTILITY FRANCHISE TO PROVIDE SERVICE, FOR THE PURPOSE OF
10 CONVEYING OR PROVIDING GOODS OR SERVICES, INCLUDING, BUT NOT
11 LIMITED TO, UTILITIES, SEWERS, ROADS, RAILWAYS, AND PIPELINES; OR A
12 PERSON THAT ACQUIRES ACCESS THROUGH AN EASEMENT.

13 (D) A PERSON WHO OWNS SEVERED SUBSURFACE MINERAL RIGHTS OR
14 SEVERED SUBSURFACE FORMATIONS OR WHO LEASES SUBSURFACE MINERAL
15 RIGHTS OR FORMATIONS.

16 (E) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT LEASES
17 PROPERTY TO A PERSON IF THE STATE OR THE LOCAL UNIT OF GOVERNMENT
18 IS NOT LIABLE UNDER THIS PART FOR ENVIRONMENTAL CONTAMINATION AT
19 THE PROPERTY.

20 (F) A PERSON WHO ACQUIRES PROPERTY AS A RESULT OF THE DEATH OF
21 THE PRIOR OWNER OR OPERATOR OF THE PROPERTY, WHETHER BY
22 INHERITANCE, DEVISE, OR TRANSFER FROM AN INTER VIVOS OR
23 TESTAMENTARY TRUST.

24 (G) A PERSON WHO DID NOT KNOW AND HAD NO REASON TO KNOW THAT
25 THE PROPERTY WAS CONTAMINATED. TO ESTABLISH THAT THE PERSON DID NOT
26 KNOW AND DID NOT HAVE A REASON TO KNOW THAT THE PROPERTY WAS
27 CONTAMINATED, THE PERSON SHALL HAVE UNDERTAKEN AT THE TIME OF

1 ACQUISITION ALL APPROPRIATE INQUIRY INTO THE PREVIOUS OWNERSHIP AND
2 USES OF THE PROPERTY CONSISTENT WITH GOOD COMMERCIAL OR CUSTOMARY
3 PRACTICE. A DETERMINATION OF LIABILITY UNDER THIS SECTION SHALL
4 TAKE INTO ACCOUNT ANY SPECIALIZED KNOWLEDGE OR EXPERIENCE ON THE
5 PART OF THE PERSON, THE RELATIONSHIP OF THE PURCHASE PRICE TO THE
6 VALUE OF THE PROPERTY IF UNCONTAMINATED BY A REGULATED SUBSTANCE,
7 COMMONLY KNOWN OR REASONABLE ASCERTAINABLE INFORMATION ABOUT THE
8 PROPERTY, THE OBVIOUSNESS OF THE PRESENCE OR LIKELY PRESENCE OF A
9 RELEASE OR THREAT OF RELEASE AT THE PROPERTY, AND THE ABILITY TO
10 DETECT A RELEASE OR THREAT OF RELEASE BY APPROPRIATE INSPECTION.

11 (H) A UTILITY PERFORMING NORMAL CONSTRUCTION, MAINTENANCE, AND
12 REPAIR ACTIVITIES IN THE NORMAL COURSE OF ITS UTILITY SERVICE
13 BUSINESS. THIS SUBDIVISION DOES NOT APPLY TO PROPERTY OWNED BY THE
14 UTILITY.

15 (I) A LESSEE WHO USES THE LEASED PROPERTY FOR A RETAIL,
16 OFFICE, OR COMMERCIAL PURPOSE REGARDLESS OF THE LEVEL OF THE
17 LESSEE'S REGULATED SUBSTANCE USE UNLESS THE LESSEE IS OTHERWISE
18 LIABLE UNDER SECTION 21323A.

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

21 (A) A LENDER THAT ENGAGES IN OR CONDUCTS A LAWFUL MARSHALING
22 OR LIQUIDATION OF PERSONAL PROPERTY IF THE LENDER DOES NOT CAUSE OR
23 CONTRIBUTE TO THE ENVIRONMENTAL CONTAMINATION. THIS INCLUDES
24 HOLDING A SALE OF PERSONAL PROPERTY ON A PORTION OF THE PROPERTY.

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

1 (C) A PERSON WHO OWNS OR OPERATES PROPERTY ON WHICH THE
2 RELEASE OR THREAT OF RELEASE WAS CAUSED SOLELY BY 1 OR MORE OF THE
3 FOLLOWING:

4 (i) AN ACT OF GOD.

5 (ii) AN ACT OF WAR.

6 (iii) AN ACT OR OMISSION OF A THIRD PARTY OTHER THAN AN EMPLOYEE
7 OR AGENT OF THE PERSON OR A PERSON IN A CONTRACTUAL RELATIONSHIP
8 EXISTING EITHER DIRECTLY OR INDIRECTLY WITH A PERSON WHO IS LIABLE
9 UNDER THIS SECTION.

10 (D) ANY PERSON FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN A
11 CLOSURE REPORT THAT IS APPROVED BY THE DEPARTMENT OR IS CONSIDERED
12 APPROVED UNDER SECTION 21312A. NOTWITHSTANDING THIS SUBDIVISION, A
13 PERSON MAY BE LIABLE UNDER THIS PART FOR THE FOLLOWING:

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

16 (ii) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE
17 CLOSURE REPORT AND FOR WHICH THE PERSON IS OTHERWISE LIABLE UNDER
18 THIS PART.

19 (iii) IF THE CLOSURE REPORT RELIES ON LAND USE OR RESOURCE USE
20 RESTRICTIONS, AN OWNER OR OPERATOR WHO DESIRES TO CHANGE THOSE
21 RESTRICTIONS IS RESPONSIBLE FOR ANY CORRECTIVE ACTION NECESSARY TO
22 COMPLY WITH THIS PART FOR ANY LAND USE OR RESOURCE USE OTHER THAN
23 THE LAND USE OR RESOURCE USE THAT WAS THE BASIS FOR THE CLOSURE
24 REPORT.

25 (iv) IF THE CLOSURE REPORT RELIES ON MONITORING NECESSARY TO
26 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE CORRECTIVE ACTION, AN
27 OWNER OR OPERATOR WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL

1 CONTAMINATION ADDRESSED IN A CLOSURE REPORT IS LIABLE UNDER THIS
2 PART FOR ADDITIONAL CORRECTIVE ACTION ACTIVITIES NECESSARY TO
3 ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL CONTAMINATION
4 DEMONSTRATED BY THE MONITORING IN EXCESS OF THE LEVELS RELIED ON IN
5 THE CLOSURE REPORT.

6 (v) IF THE CORRECTIVE ACTIONS THAT WERE THE BASIS FOR THE
7 CLOSURE REPORT FAIL TO MEET PERFORMANCE OBJECTIVES THAT ARE
8 IDENTIFIED IN THE CLOSURE REPORT, AN OWNER OR OPERATOR WHO IS
9 OTHERWISE LIABLE FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN THE
10 CLOSURE REPORT IS LIABLE UNDER THIS PART FOR CORRECTIVE ACTION
11 NECESSARY TO SATISFY THE PERFORMANCE OBJECTIVES OR OTHERWISE COMPLY
12 WITH THIS PART.

13 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE
14 STATE OR A LOCAL UNIT OF GOVERNMENT OR A LENDER WHO HAS NOT
15 PARTICIPATED IN THE MANAGEMENT OF THE PROPERTY IS NOT LIABLE UNDER
16 THIS PART FOR COSTS OR DAMAGES AS A RESULT OF CORRECTIVE ACTION
17 TAKEN IN RESPONSE TO A RELEASE OR THREAT OF RELEASE. FOR A LENDER,
18 THIS SUBSECTION APPLIES ONLY TO CORRECTIVE ACTION UNDERTAKEN PRIOR
19 TO FORECLOSURE. THIS SUBSECTION DOES NOT PRECLUDE LIABILITY FOR
20 COSTS OR DAMAGES AS A RESULT OF GROSS NEGLIGENCE, INCLUDING
21 RECKLESS, WILLFUL, OR WANTON MISCONDUCT, OR INTENTIONAL MISCONDUCT
22 BY THE STATE OR LOCAL UNIT OF GOVERNMENT.

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

25 (7) AN OWNER OR OPERATOR WHO WAS IN COMPLIANCE WITH SUBSECTION
26 (1) (B) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
27 THIS SUBSECTION IS CONSIDERED TO BE IN COMPLIANCE WITH SUBSECTION

1 (1) (B) .

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

5 (A) ALL COSTS OF CORRECTIVE ACTION LAWFULLY INCURRED BY THE
6 STATE RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE
7 ACTION UNDER THIS PART.

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

10 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,
11 OR LOSS OF NATURAL RESOURCES, INCLUDING THE REASONABLE COSTS OF
12 ASSESSING THE INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE
13 RELEASE.

14 (2) THE COSTS OF CORRECTIVE ACTION RECOVERABLE UNDER
15 SUBSECTION (1) SHALL ALSO INCLUDE ALL COSTS OF CORRECTIVE ACTION
16 REASONABLY INCURRED BY THE STATE PRIOR TO THE PROMULGATION OF RULES
17 RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE ACTION
18 UNDER THIS PART. A PERSON CHALLENGING THE RECOVERY OF COSTS UNDER
19 THIS SUBSECTION HAS THE BURDEN OF ESTABLISHING THAT THE COSTS WERE
20 NOT REASONABLY INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE
21 TIME THE COSTS WERE INCURRED.

22 (3) THE AMOUNTS RECOVERABLE IN AN ACTION UNDER THIS SECTION
23 MAY INCLUDE INTEREST, ATTORNEY FEES, WITNESS FEES, AND THE COSTS OF
24 LITIGATION TO THE PREVAILING OR SUBSTANTIALLY PREVAILING PARTY. THE
25 INTEREST SHALL ACCRUE FROM THE DATE PAYMENT IS DEMANDED IN WRITING,
26 OR THE DATE OF THE EXPENDITURE OR DAMAGE, WHICHEVER IS LATER. THE
27 RATE OF INTEREST ON THE OUTSTANDING UNPAID BALANCE OF THE AMOUNTS

1 RECOVERABLE UNDER THIS SECTION SHALL BE THE SAME RATE AS IS
2 SPECIFIED IN SECTION 6013(8) OF THE REVISED JUDICATURE ACT OF 1961,
3 1961 PA 236, MCL 600.6013.

4 (4) IN THE CASE OF INJURY TO, DESTRUCTION OF, OR LOSS OF
5 NATURAL RESOURCES UNDER SUBSECTION (1)(C), LIABILITY SHALL BE TO
6 THE STATE FOR NATURAL RESOURCES BELONGING TO, MANAGED BY,
7 CONTROLLED BY, APPERTAINING TO, OR HELD IN TRUST BY THE STATE OR A
8 LOCAL UNIT OF GOVERNMENT. SUMS RECOVERED BY THE STATE UNDER THIS
9 PART FOR NATURAL RESOURCE DAMAGES SHALL BE RETAINED BY THE
10 DEPARTMENT FOR USE ONLY TO RESTORE, REPAIR, REPLACE, OR ACQUIRE THE
11 EQUIVALENT OF THE NATURAL RESOURCES INJURED OR ACQUIRE SUBSTITUTE
12 OR ALTERNATIVE RESOURCES. THERE SHALL BE NO DOUBLE RECOVERY UNDER
13 THIS PART FOR NATURAL RESOURCE DAMAGES, INCLUDING THE COSTS OF
14 DAMAGE ASSESSMENT OR RESTORATION, REHABILITATION, REPLACEMENT, OR
15 ACQUISITION, FOR THE SAME RELEASE AND NATURAL RESOURCE.

16 (5) A PERSON SHALL NOT BE REQUIRED UNDER THIS PART TO
17 UNDERTAKE CORRECTIVE ACTION FOR A PERMITTED RELEASE. RECOVERY BY
18 ANY PERSON FOR CORRECTIVE ACTION COSTS OR DAMAGES RESULTING FROM A
19 PERMITTED RELEASE SHALL BE PURSUANT TO OTHER APPLICABLE LAW, IN
20 LIEU OF THIS PART. WITH RESPECT TO A PERMITTED RELEASE, THIS
21 SUBSECTION DOES NOT AFFECT OR MODIFY THE OBLIGATIONS OR LIABILITY
22 OF ANY PERSON UNDER ANY OTHER STATE LAW, INCLUDING COMMON LAW, FOR
23 DAMAGES, INJURY, OR LOSS RESULTING FROM A RELEASE OF A REGULATED
24 SUBSTANCE OR FOR CORRECTIVE ACTION OR THE COSTS OF CORRECTIVE
25 ACTION.

26 (6) IF THE DEPARTMENT DETERMINES THAT THERE MAY BE AN IMMINENT
27 AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR

1 WELFARE OR TO THE ENVIRONMENT BECAUSE OF AN ACTUAL OR THREATENED
2 RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM, THE ATTORNEY
3 GENERAL MAY BRING AN ACTION AGAINST ANY PERSON WHO IS LIABLE UNDER
4 SECTION 21323A OR ANY OTHER APPROPRIATE PERSON TO SECURE THE RELIEF
5 THAT MAY BE NECESSARY TO ABATE THE DANGER OR THREAT. THE COURT HAS
6 JURISDICTION TO GRANT SUCH RELIEF AS THE PUBLIC INTEREST AND THE
7 EQUITIES OF THE CASE MAY REQUIRE.

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

10 SEC. 21323C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
11 A PERSON WHO IS A CORRECTIVE ACTION CONTRACTOR FOR ANY RELEASE OR
12 THREATENED RELEASE IS NOT LIABLE TO ANY PERSON FOR INJURIES, COSTS,
13 DAMAGES, EXPENSES, OR OTHER LIABILITY, INCLUDING, BUT NOT LIMITED
14 TO, CLAIMS FOR INDEMNIFICATION OR CONTRIBUTION AND CLAIMS BY THIRD
15 PARTIES FOR DEATH, PERSONAL INJURIES, ILLNESS, OR LOSS OF OR
16 DAMAGES TO PROPERTY OR ECONOMIC LOSS THAT RESULT FROM THE RELEASE
17 OR THREATENED RELEASE. THIS SUBSECTION DOES NOT APPLY IF A RELEASE
18 OR THREATENED RELEASE IS CAUSED BY CONDUCT OF THE CORRECTIVE ACTION
19 CONTRACTOR THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT
20 CONSTITUTES INTENTIONAL MISCONDUCT.

21 (2) SUBSECTION (1) DOES NOT AFFECT THE LIABILITY OF A PERSON
22 UNDER ANY WARRANTY UNDER FEDERAL, STATE, OR COMMON LAW. THIS
23 SUBSECTION DOES NOT AFFECT THE LIABILITY OF AN EMPLOYER WHO IS A
24 CORRECTIVE ACTION CONTRACTOR TO ANY EMPLOYEE OF THE EMPLOYER UNDER
25 LAW, INCLUDING ANY LAW RELATING TO WORKER'S COMPENSATION.

26 (3) AN EMPLOYEE OF THIS STATE OR A LOCAL UNIT OF GOVERNMENT
27 WHO PROVIDES SERVICES RELATING TO A CORRECTIVE ACTION WHILE ACTING

1 WITHIN THE SCOPE OF HIS OR HER AUTHORITY AS A GOVERNMENTAL EMPLOYEE
2 HAS THE SAME EXEMPTION FROM LIABILITY AS IS PROVIDED TO THE
3 CORRECTIVE ACTION CONTRACTOR UNDER SUBSECTION (1).

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

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

8 (A) "CORRECTIVE ACTION CONTRACT" MEANS A CONTRACT OR AGREEMENT
9 ENTERED INTO BY A CORRECTIVE ACTION CONTRACTOR WITH 1 OR MORE OF
10 THE FOLLOWING:

11 (i) THE DEPARTMENT.

12 (ii) THE DEPARTMENT OF COMMUNITY HEALTH.

13 (iii) A PERSON WHO IS ARRANGING FOR CORRECTIVE ACTION UNDER THIS
14 PART.

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

16 (i) A PERSON WHO ENTERS INTO A CORRECTIVE ACTION CONTRACT WITH
17 RESPECT TO A RELEASE OR THREATENED RELEASE AND IS CARRYING OUT THE
18 TERMS OF A CONTRACT.

19 (ii) A PERSON WHO IS RETAINED OR HIRED BY A PERSON DESCRIBED IN
20 SUBPARAGRAPH (i) TO PROVIDE ANY SERVICE RELATING TO A CORRECTIVE
21 ACTION.

22 (iii) A QUALIFIED UNDERGROUND STORAGE TANK CONSULTANT.

23 (6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON IS
24 NOT LIABLE FOR CORRECTIVE ACTION COSTS OR DAMAGES THAT RESULT FROM
25 AN ACT OR A FAILURE TO ACT IN THE COURSE OF RENDERING CARE,
26 ASSISTANCE, OR ADVICE WITH RESPECT TO A RELEASE OF PETROLEUM INTO
27 OR ON THE SURFACE WATERS OF THE STATE OR ON THE ADJOINING

1 SHORELINES TO THE SURFACE WATERS OF THE STATE IF THE ACT OR FAILURE
2 TO ACT WAS CONSISTENT WITH THE NATIONAL CONTINGENCY PLAN OR AS
3 OTHERWISE DIRECTED BY THE FEDERAL ON-SCENE COORDINATOR OR THE
4 DIRECTOR. THIS SUBSECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

5 (A) A PERSON WHO IS LIABLE UNDER SECTION 21323A WHO IS A
6 RESPONSIBLE PARTY.

7 (B) AN ACTION WITH RESPECT TO PERSONAL INJURY OR WRONGFUL
8 DEATH.

9 (C) A PERSON THAT IS GROSSLY NEGLIGENT OR ENGAGES IN WILLFUL
10 MISCONDUCT.

11 (7) A PERSON WHO IS LIABLE UNDER SECTION 21323A WHO IS A
12 RESPONSIBLE PARTY IS LIABLE FOR ANY CORRECTIVE ACTION COSTS AND
13 DAMAGES THAT ANOTHER PERSON IS RELIEVED OF UNDER SUBSECTION (6).

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

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

18 (B) "FEDERAL ON-SCENE COORDINATOR" MEANS THE FEDERAL OFFICIAL
19 PREDESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
20 OR THE UNITED STATES COAST GUARD TO COORDINATE AND DIRECT FEDERAL
21 RESPONSES UNDER THE NATIONAL CONTINGENCY PLAN OR THE OFFICIAL
22 DESIGNATED BY THE LEAD AGENCY TO COORDINATE AND DIRECT CORRECTIVE
23 ACTION UNDER THE NATIONAL CONTINGENCY PLAN.

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

27 (9) THIS SECTION DOES NOT AFFECT A PLAINTIFF'S BURDEN OF

1 ESTABLISHING LIABILITY UNDER THIS PART.

2 SEC. 21323D. (1) IF 2 OR MORE PERSONS ACTING INDEPENDENTLY ARE
3 LIABLE UNDER SECTION 21323A AND THERE IS A REASONABLE BASIS FOR
4 DIVISION OF HARM ACCORDING TO THE CONTRIBUTION OF EACH PERSON, EACH
5 PERSON IS SUBJECT TO LIABILITY UNDER THIS PART ONLY FOR THE PORTION
6 OF THE TOTAL HARM ATTRIBUTABLE TO THAT PERSON. HOWEVER, A PERSON
7 SEEKING TO LIMIT HIS OR HER LIABILITY ON THE GROUNDS THAT THE
8 ENTIRE HARM IS CAPABLE OF DIVISION HAS THE BURDEN OF PROOF AS TO
9 THE DIVISIBILITY OF THE HARM AND AS TO THE APPORTIONMENT OF
10 LIABILITY.

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

14 (3) A PERSON MAY SEEK CONTRIBUTION FROM ANY OTHER PERSON WHO
15 IS LIABLE UNDER SECTION 21323A DURING OR FOLLOWING A CIVIL ACTION
16 BROUGHT UNDER THIS PART. THIS SUBSECTION DOES NOT DIMINISH THE
17 RIGHT OF A PERSON TO BRING AN ACTION FOR CONTRIBUTION IN THE
18 ABSENCE OF A CIVIL ACTION BY THE STATE UNDER THIS PART. IN A
19 CONTRIBUTION ACTION BROUGHT UNDER THIS PART, THE COURT SHALL
20 CONSIDER ALL OF THE FOLLOWING FACTORS IN ALLOCATING CORRECTIVE
21 ACTION COSTS AND DAMAGES AMONG LIABLE PERSONS:

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

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

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

27 (D) THE DEGREE OF COOPERATION BY THE PERSON WITH FEDERAL,

1 STATE, OR LOCAL OFFICIALS TO PREVENT, MINIMIZE, RESPOND TO, OR
2 REMEDY THE RELEASE OR THREAT OF RELEASE.

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

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

12 (5) A PERSON WHO HAS RESOLVED HIS OR HER LIABILITY TO THE
13 STATE IN AN ADMINISTRATIVE OR JUDICIALLY APPROVED CONSENT ORDER IS
14 NOT LIABLE FOR CLAIMS FOR CONTRIBUTION REGARDING MATTERS ADDRESSED
15 IN THE CONSENT ORDER. THE CONSENT ORDER DOES NOT DISCHARGE ANY OF
16 THE OTHER PERSONS LIABLE UNDER SECTION 21323A UNLESS THE TERMS OF
17 THE CONSENT ORDER PROVIDE FOR THIS DISCHARGE, BUT THE POTENTIAL
18 LIABILITY OF THE OTHER PERSONS IS REDUCED BY THE AMOUNT OF THE
19 CONSENT ORDER.

20 (6) A PERSON WHO IS NOT LIABLE UNDER THIS PART, INCLUDING A
21 PERSON WHO WAS ISSUED A WRITTEN DETERMINATION UNDER FORMER SECTION
22 20129A AFFIRMING THAT THE PERSON MEETS THE CRITERIA FOR AN
23 EXEMPTION FROM LIABILITY, AND WHO IS OTHERWISE IN COMPLIANCE WITH
24 SECTION 21204C, SHALL BE CONSIDERED TO HAVE RESOLVED HIS OR HER
25 LIABILITY TO THE STATE IN AN ADMINISTRATIVELY APPROVED SETTLEMENT
26 UNDER THE APPLICABLE FEDERAL LAW AND SHALL BY OPERATION OF LAW BE
27 GRANTED CONTRIBUTION PROTECTION UNDER FEDERAL LAW AND UNDER THIS

1 PART IN THE SAME MANNER THAT CONTRIBUTION PROTECTION IS PROVIDED
2 PURSUANT TO SUBSECTION (5).

3 (7) IF THE STATE OBTAINS LESS THAN COMPLETE RELIEF FROM A
4 PERSON WHO HAS RESOLVED HIS OR HER LIABILITY TO THE STATE IN AN
5 ADMINISTRATIVE OR JUDICIALLY APPROVED CONSENT ORDER UNDER THIS
6 PART, THE STATE MAY BRING AN ACTION AGAINST ANY OTHER PERSON LIABLE
7 UNDER SECTION 21323A WHO HAS NOT RESOLVED HIS OR HER LIABILITY.

8 (8) A PERSON WHO HAS RESOLVED HIS OR HER LIABILITY TO THE
9 STATE FOR SOME OR ALL OF A CORRECTIVE ACTION IN AN ADMINISTRATIVE
10 OR JUDICIALLY APPROVED CONSENT ORDER MAY SEEK CONTRIBUTION FROM ANY
11 PERSON WHO IS NOT A PARTY TO THE CONSENT ORDER DESCRIBED IN
12 SUBSECTION (5).

13 (9) IN AN ACTION FOR CONTRIBUTION UNDER THIS SECTION, THE
14 RIGHTS OF ANY PERSON WHO HAS RESOLVED HIS OR HER LIABILITY TO THE
15 STATE IS SUBORDINATE TO THE RIGHTS OF THE STATE, IF THE STATE FILES
16 AN ACTION UNDER THIS PART.

17 SEC. 21323E. (1) AN INDEMNIFICATION, HOLD HARMLESS, OR SIMILAR
18 AGREEMENT OR CONVEYANCE IS NOT EFFECTIVE TO TRANSFER FROM A PERSON
19 WHO IS LIABLE UNDER SECTION 21323A TO THE STATE FOR EVALUATION OR
20 CORRECTIVE ACTION COSTS OR DAMAGES FOR A RELEASE OR THREAT OF
21 RELEASE TO ANY OTHER PERSON THE LIABILITY IMPOSED UNDER THIS PART.
22 THIS SECTION DOES NOT BAR AN AGREEMENT TO INSURE, HOLD HARMLESS, OR
23 INDEMNIFY A PARTY TO THE AGREEMENT FOR LIABILITY UNDER THIS PART.

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

27 SEC. 21323F. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE

1 LIABILITY UNDER THIS PART FOR EACH RELEASE OR THREAT OF RELEASE
2 SHALL NOT EXCEED THE TOTAL OF ALL THE COSTS OF CORRECTIVE ACTION
3 AND FINES, PLUS \$50,000,000.00 DAMAGES FOR INJURY TO, DESTRUCTION
4 OF, OR LOSS OF NATURAL RESOURCES RESULTING FROM THE RELEASE OR
5 THREAT OF RELEASE, INCLUDING THE REASONABLE COSTS OF ASSESSING THE
6 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE RELEASE OR THREAT
7 OF RELEASE.

8 (2) NOTWITHSTANDING THE LIMITATIONS IN SUBSECTION (1), THE
9 LIABILITY OF A PERSON UNDER THIS PART SHALL BE THE FULL AND TOTAL
10 COSTS AND DAMAGES LISTED IN SUBSECTION (1), IN EITHER OF THE
11 FOLLOWING CIRCUMSTANCES:

12 (A) THE RELEASE OR THREATENED RELEASE OF A REGULATED SUBSTANCE
13 WAS THE RESULT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE
14 PARTY.

15 (B) THE PRIMARY CAUSE OF THE RELEASE OR THREAT OF RELEASE WAS
16 A KNOWING VIOLATION OF APPLICABLE SAFETY, CONSTRUCTION, OR
17 OPERATING STANDARDS OR REGULATIONS.

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

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

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

27 (C) THERE IS FULL COMPLIANCE WITH A CONSENT ORDER UNDER THIS

1 PART FOR RESPONSE TO THE RELEASE OR THREATENED RELEASE CONCERNED.

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

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

8 (3) IN ASSESSING THE APPROPRIATENESS OF A COVENANT NOT TO SUE
9 AND ANY CONDITION TO BE INCLUDED IN A COVENANT NOT TO SUE, THE
10 STATE SHALL CONSIDER WHETHER THE COVENANT OR CONDITION IS IN THE
11 PUBLIC INTEREST ON THE BASIS OF FACTORS SUCH AS THE FOLLOWING:

12 (A) THE EFFECTIVENESS AND RELIABILITY OF THE CORRECTIVE
13 ACTION, IN LIGHT OF THE OTHER ALTERNATIVE CORRECTIVE ACTIONS
14 CONSIDERED FOR THE PROPERTY CONCERNED.

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

16 (C) THE EXTENT TO WHICH PERFORMANCE STANDARDS ARE INCLUDED IN
17 THE CONSENT ORDER.

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

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

23 (F) WHETHER CORRECTIVE ACTION WILL BE CARRIED OUT, IN WHOLE OR
24 IN SIGNIFICANT PART, BY PERSONS WHO ARE LIABLE UNDER SECTION
25 21323A.

26 (4) A COVENANT NOT TO SUE UNDER THIS SECTION IS SUBJECT TO THE
27 SATISFACTORY PERFORMANCE BY A PERSON OF HIS OR HER OBLIGATIONS

1 UNDER THE AGREEMENT CONCERNED.

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

9 (6) IN EXTRAORDINARY CIRCUMSTANCES, THE STATE MAY DETERMINE,
10 AFTER ASSESSMENT OF RELEVANT FACTORS SUCH AS THOSE REFERRED TO IN
11 SUBSECTION (3) AND VOLUME, TOXICITY, MOBILITY, STRENGTH OF
12 EVIDENCE, ABILITY TO PAY, LITIGATIVE RISKS, PUBLIC INTEREST
13 CONSIDERATIONS, PRECEDENTIAL VALUE, AND INEQUITIES AND AGGRAVATING
14 FACTORS, NOT TO INCLUDE THE EXCEPTION IN SUBSECTION (5) IF OTHER
15 TERMS, CONDITIONS, OR REQUIREMENTS OF THE AGREEMENT CONTAINING THE
16 COVENANT NOT TO SUE ARE SUFFICIENT TO PROVIDE ALL REASONABLE
17 ASSURANCES THAT THE PUBLIC HEALTH AND THE ENVIRONMENT WILL BE
18 PROTECTED FROM ANY FUTURE RELEASES AT OR FROM THE PROPERTY.

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

23 SEC. 21323H. (1) THE STATE MAY PROVIDE A PERSON WHO PROPOSES
24 TO REDEVELOP OR REUSE PROPERTY CONTAMINATED BY A RELEASE FROM AN
25 UNDERGROUND STORAGE TANK SYSTEM, INCLUDING A VACANT MANUFACTURING
26 OR ABANDONED INDUSTRIAL SITE, WITH A COVENANT NOT TO SUE CONCERNING
27 LIABILITY UNDER SECTION 21323A, IF ALL OF THE FOLLOWING CONDITIONS

1 ARE MET:

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

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

5 (C) THE COVENANT NOT TO SUE WOULD, WHEN APPROPRIATE, EXPEDITE
6 CORRECTIVE ACTION CONSISTENT WITH THE RULES PROMULGATED UNDER THIS
7 PART.

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

11 (i) EXACERBATE OR CONTRIBUTE TO THE EXISTING RELEASE OR THREAT
12 OF RELEASE.

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

14 (iii) POSE HEALTH RISKS RELATED TO THE RELEASE OR THREAT OF
15 RELEASE TO PERSONS WHO MAY BE PRESENT AT OR IN THE VICINITY OF THE
16 PROPERTY.

17 (E) THE PROPOSAL TO REDEVELOP OR REUSE THE PROPERTY HAS
18 ECONOMIC DEVELOPMENT POTENTIAL.

19 (2) A PERSON WHO REQUESTS A COVENANT NOT TO SUE UNDER
20 SUBSECTION (1) SHALL DEMONSTRATE TO THE SATISFACTION OF THE STATE
21 ALL OF THE FOLLOWING:

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

24 (B) THAT THE PERSON IS NOT AFFILIATED IN ANY WAY WITH ANY
25 PERSON WHO IS LIABLE UNDER SECTION 21323A FOR A RELEASE OR THREAT
26 OF RELEASE AT THE PROPERTY.

27 (3) A COVENANT NOT TO SUE ISSUED UNDER THIS SECTION SHALL

1 ADDRESS ONLY PAST RELEASES OR THREATS OF RELEASE AT A PROPERTY AND
2 SHALL EXPRESSLY RESERVE THE RIGHT OF THE STATE TO ASSERT ALL OTHER
3 CLAIMS AGAINST THE PERSON THAT PROPOSES TO REDEVELOP OR REUSE THE
4 PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE CLAIMS ARISING FROM
5 ANY OF THE FOLLOWING:

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

9 (B) INTERFERENCE WITH OR FAILURE TO COOPERATE WITH THE
10 DEPARTMENT, ITS CONTRACTORS, OR OTHER PERSONS CONDUCTING CORRECTIVE
11 ACTION.

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

17 SEC. 21323I. (1) THE DEPARTMENT AND THE ATTORNEY GENERAL MAY
18 ENTER INTO A CONSENT ORDER WITH A PERSON WHO IS LIABLE UNDER
19 SECTION 21323A OR ANY GROUP OF PERSONS WHO ARE LIABLE UNDER SECTION
20 21323A TO PERFORM CORRECTIVE ACTION IF THE DEPARTMENT AND THE
21 ATTORNEY GENERAL DETERMINE THAT THE PERSONS WHO ARE LIABLE UNDER
22 SECTION 21323A WILL PROPERLY IMPLEMENT THE CORRECTIVE ACTION AND
23 THAT THE CONSENT ORDER IS IN THE PUBLIC INTEREST, WILL EXPEDITE
24 EFFECTIVE CORRECTIVE ACTION, AND WILL MINIMIZE LITIGATION. THE
25 CONSENT ORDER MAY, AS DETERMINED APPROPRIATE BY THE DEPARTMENT AND
26 THE ATTORNEY GENERAL, PROVIDE FOR IMPLEMENTATION BY A PERSON OR ANY
27 GROUP OF PERSONS WHO ARE LIABLE UNDER SECTION 21323A OF ANY PORTION

1 OF CORRECTIVE ACTION AT THE PROPERTY. A DECISION OF THE ATTORNEY
2 GENERAL NOT TO ENTER INTO A CONSENT ORDER UNDER THIS PART IS NOT
3 SUBJECT TO JUDICIAL REVIEW.

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

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

14 (i) THE AMOUNT OF THE REGULATED SUBSTANCES CONTRIBUTED BY THAT
15 PERSON TO THE PROPERTY.

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

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

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

22 (ii) THE PERSON DID NOT CONDUCT OR PERMIT THE GENERATION,
23 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY REGULATED
24 SUBSTANCE AT THE PROPERTY.

25 (iii) THE PERSON DID NOT CONTRIBUTE TO THE RELEASE OR THREAT OF
26 RELEASE OF A REGULATED SUBSTANCE AT THE PROPERTY THROUGH ANY ACTION
27 OR OMISSION.

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

6 (4) A SETTLEMENT UNDER SUBSECTION (2) MAY BE SET ASIDE IF
7 INFORMATION OBTAINED AFTER THE SETTLEMENT INDICATES THAT THE PERSON
8 SETTLING DOES NOT MEET THE CONDITIONS SET FORTH IN SUBSECTION
9 (2) (A) OR (B).

10 SEC. 21323J. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, A
11 PERSON, INCLUDING A LOCAL UNIT OF GOVERNMENT ON BEHALF OF ITS
12 CITIZENS, WHOSE HEALTH OR ENJOYMENT OF THE ENVIRONMENT IS OR MAY BE
13 ADVERSELY AFFECTED BY A RELEASE FROM AN UNDERGROUND STORAGE TANK
14 SYSTEM OR THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK
15 SYSTEM, BY A VIOLATION OF THIS PART OR A RULE PROMULGATED OR ORDER
16 ISSUED UNDER THIS PART, OR BY THE FAILURE OF THE DIRECTORS TO
17 PERFORM A NONDISCRETIONARY ACT OR DUTY UNDER THIS PART, MAY
18 COMMENCE A CIVIL ACTION AGAINST ANY OF THE FOLLOWING:

19 (A) AN OWNER OR OPERATOR WHO IS LIABLE UNDER SECTION 21323A
20 FOR INJUNCTIVE RELIEF NECESSARY TO PREVENT IRREPARABLE HARM TO THE
21 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT FROM A RELEASE
22 OR THREATENED RELEASE IN RELATION TO THAT UNDERGROUND STORAGE TANK
23 SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND STORAGE TANK SYSTEM
24 IS LOCATED.

25 (B) A PERSON WHO IS LIABLE UNDER SECTION 21323A FOR A
26 VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART OR AN
27 ORDER ISSUED UNDER THIS PART IN RELATION TO THAT UNDERGROUND

1 STORAGE TANK SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND
2 STORAGE TANK SYSTEM IS LOCATED.

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

6 (2) THE CIRCUIT COURT HAS JURISDICTION IN ACTIONS BROUGHT
7 UNDER SUBSECTION (1) (A) TO GRANT INJUNCTIVE RELIEF NECESSARY TO
8 PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT
9 FROM A RELEASE OR THREATENED RELEASE. THE CIRCUIT COURT HAS
10 JURISDICTION IN ACTIONS BROUGHT UNDER SUBSECTION (1) (B) TO ENFORCE
11 THIS PART OR A RULE PROMULGATED OR ORDER ISSUED UNDER THIS PART BY
12 ORDERING SUCH ACTION AS MAY BE NECESSARY TO CORRECT THE VIOLATION
13 AND TO IMPOSE ANY CIVIL FINE PROVIDED FOR IN THIS PART FOR THE
14 VIOLATION. A CIVIL FINE RECOVERED UNDER THIS SECTION SHALL BE
15 DEPOSITED IN THE GENERAL FUND. THE CIRCUIT COURT HAS JURISDICTION
16 IN ACTIONS BROUGHT UNDER SUBSECTION (1) (C) TO ORDER 1 OR MORE OF
17 THE DIRECTORS TO PERFORM THE NONDISCRETIONARY ACT OR DUTY
18 CONCERNED.

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

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

24 (i) THE DEPARTMENT.

25 (ii) THE ATTORNEY GENERAL.

26 (iii) THE PROPOSED DEFENDANTS.

27 (B) THE STATE HAS NOT COMMENCED AND IS NOT DILIGENTLY

1 PROSECUTING AN ACTION UNDER THIS PART OR UNDER OTHER APPROPRIATE
2 LEGAL AUTHORITY TO OBTAIN INJUNCTIVE RELIEF CONCERNING THE
3 UNDERGROUND STORAGE TANK SYSTEM OR THE PROPERTY ON WHICH THE
4 UNDERGROUND STORAGE TANK SYSTEM IS LOCATED OR TO REQUIRE COMPLIANCE
5 WITH THIS PART OR A RULE OR AN ORDER UNDER THIS PART.

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

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

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

16 (7) AN ACTION UNDER SUBSECTION (1) (A) OR (B) SHALL BE BROUGHT
17 IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE ALLEGED RELEASE,
18 THREATENED RELEASE, OR OTHER VIOLATION OCCURRED. AN ACTION UNDER
19 SUBSECTION (1) (C) SHALL BE BROUGHT IN THE CIRCUIT COURT FOR INGHAM
20 COUNTY.

21 (8) ALL UNPAID COSTS AND DAMAGES FOR WHICH A PERSON IS LIABLE
22 UNDER THIS SECTION CONSTITUTE A LIEN IN FAVOR OF THE STATE UPON A
23 PROPERTY THAT HAS BEEN THE SUBJECT OF CORRECTIVE ACTION BY THE
24 STATE AND IS OWNED BY THAT PERSON. A LIEN UNDER THIS SUBSECTION HAS
25 PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS AND
26 ENCUMBRANCES RECORDED BEFORE THE DATE THE LIEN UNDER THIS
27 SUBSECTION IS RECORDED. A LIEN UNDER THIS SUBSECTION ARISES WHEN

1 THE STATE FIRST INCURS COSTS FOR CORRECTIVE ACTION AT THE PROPERTY
2 FOR WHICH THE PERSON IS RESPONSIBLE.

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

9 (A) A LIEN UPON THE PROPERTY SUBJECT TO CORRECTIVE ACTION THAT
10 TAKES PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES THAT ARE OR
11 HAVE BEEN RECORDED ON THE PROPERTY.

12 (B) A LIEN UPON REAL OR PERSONAL PROPERTY OR RIGHTS TO REAL OR
13 PERSONAL PROPERTY, OTHER THAN THE PROPERTY WHICH WAS THE SUBJECT OF
14 CORRECTIVE ACTION, OWNED BY THE PERSON DESCRIBED IN SUBSECTION (8),
15 HAVING PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS
16 AND ENCUMBRANCES RECORDED PRIOR TO THE DATE THE LIEN UNDER THIS
17 SUBSECTION IS RECORDED. HOWEVER, THE FOLLOWING ARE NOT SUBJECT TO
18 THE LIEN PROVIDED FOR IN THIS SUBSECTION:

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

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

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

26 (10) A PETITION SUBMITTED PURSUANT TO SUBSECTION (9) SHALL SET
27 FORTH WITH AS MUCH SPECIFICITY AS POSSIBLE THE TYPE OF LIEN SOUGHT,

1 THE PROPERTY THAT WOULD BE AFFECTED, AND THE REASONS THE ATTORNEY
2 GENERAL BELIEVES THE LIEN IS NECESSARY. UPON RECEIPT OF A PETITION
3 UNDER SUBSECTION (3), THE COURT SHALL PROMPTLY SCHEDULE A HEARING
4 TO DETERMINE WHETHER THE PETITION SHOULD BE GRANTED. NOTICE OF THE
5 HEARING SHALL BE PROVIDED TO THE ATTORNEY GENERAL, THE PROPERTY
6 OWNER, AND ANY PERSONS HOLDING LIENS OR PERFECTED SECURITY INTEREST
7 IN THE REAL PROPERTY SUBJECT TO RESPONSE ACTIVITY. A LIEN SHALL NOT
8 BE GRANTED UNDER SUBSECTION (3) AGAINST THE OWNER OF THE PROPERTY
9 IF THE OWNER IS NOT LIABLE UNDER SECTION 21323A.

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

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

1 (13) A LIEN UNDER THIS SECTION CONTINUES UNTIL THE LIABILITY
2 FOR THE COSTS AND DAMAGES IS SATISFIED OR RESOLVED OR BECOMES
3 UNENFORCEABLE THROUGH THE OPERATION OF THE STATUTE OF LIMITATIONS
4 PROVIDED IN THIS PART.

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

8 (15) IF THE DEPARTMENT, AT THE TIME OR PRIOR TO THE TIME OF
9 FILING THE NOTICE OF RELEASE OF LIEN PURSUANT TO SUBSECTION (14),
10 HAS MADE A DETERMINATION THAT THE PERSON LIABLE UNDER SECTION
11 21323A HAS COMPLETED ALL OF THE CORRECTIVE ACTION, THE DEPARTMENT
12 SHALL EXECUTE AND FILE WITH THE NOTICE OF RELEASE OF LIEN A
13 DOCUMENT STATING THAT ALL CORRECTIVE ACTION HAS BEEN COMPLETED.

14 SEC. 21323K. (1) A PERSON WHO IS LIABLE UNDER SECTION 21323A
15 OR A LENDER THAT HAS A SECURITY INTEREST IN ALL OR A PORTION OF A
16 PROPERTY ON WHICH CONTAMINATION FROM A RELEASE OF REGULATED
17 SUBSTANCES FROM AN UNDERGROUND STORAGE TANK SYSTEM MAY FILE A
18 PETITION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PROPERTY
19 IS LOCATED SEEKING ACCESS TO THE PROPERTY IN ORDER TO CONDUCT
20 CORRECTIVE ACTION. IF THE COURT GRANTS ACCESS TO PROPERTY UNDER
21 THIS SECTION, THE COURT MAY DO ANY OF THE FOLLOWING:

22 (A) PROVIDE COMPENSATION TO THE PROPERTY OWNER OR OPERATOR FOR
23 DAMAGES RELATED TO THE GRANTING OF ACCESS TO THE PROPERTY,
24 INCLUDING COMPENSATION FOR LOSS OF USE OF THE PROPERTY.

25 (B) ENJOIN INTERFERENCE WITH THE CORRECTIVE ACTION.

26 (C) GRANT ANY OTHER APPROPRIATE RELIEF AS DETERMINED BY THE
27 COURT.

1 (2) IF A COURT GRANTS ACCESS TO PROPERTY UNDER THIS SECTION,
2 THE OWNER OR OPERATOR OF THE PROPERTY TO WHICH ACCESS IS GRANTED IS
3 NOT LIABLE FOR EITHER OF THE FOLLOWING:

4 (A) A RELEASE CAUSED BY THE CORRECTIVE ACTION FOR WHICH ACCESS
5 IS GRANTED UNLESS THE OWNER OR OPERATOR IS OTHERWISE LIABLE UNDER
6 SECTION 21323A.

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

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

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

16 (B) FOR 1 OR MORE SUBSEQUENT ACTIONS FOR RECOVERY OF
17 CORRECTIVE ACTION COSTS PURSUANT TO SECTION 20126, AT ANY TIME
18 DURING THE CORRECTIVE ACTION, IF COMMENCED NOT LATER THAN 3 YEARS
19 AFTER THE DATE OF COMPLETION OF ALL CORRECTIVE ACTION AT THE
20 PROPERTY.

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

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

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

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

3 (B) TORT CLAIMS FOR DAMAGES WHICH RESULT FROM CORRECTIVE
4 ACTION.

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

7 SEC. 21325. AN OWNER OR OPERATOR SHALL EMPLOY A QUALIFIED
8 UNDERGROUND STORAGE TANK CONSULTANT TO PERFORM CORRECTIVE ACTION
9 UNDER THIS PART. A PERSON SHALL BE CONSIDERED A QUALIFIED
10 UNDERGROUND STORAGE TANK CONSULTANT IF THE PERSON MEETS ALL OF THE
11 FOLLOWING REQUIREMENTS:

12 (A) EXPERIENCE IN ALL PHASES OF UNDERGROUND STORAGE TANK WORK,
13 INCLUDING TANK REMOVAL OVERSIGHT, SITE ASSESSMENT, SOIL REMOVAL,
14 FEASIBILITY, DESIGN, REMEDIAL SYSTEM INSTALLATION, REMEDIATION
15 MANAGEMENT ACTIVITIES, AND SITE CLOSURE AND POSSESSES OR EMPLOYS AT
16 LEAST 1 OF THE FOLLOWING:

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

20 (ii) A PROFESSIONAL GEOLOGIST CERTIFICATION OR A SIMILAR
21 APPROVED DESIGNATION SUCH AS A PROFESSIONAL HYDROLOGIST OR A
22 CERTIFIED GROUNDWATER PROFESSIONAL, WITH 3 OR MORE YEARS OF
23 RELEVANT CORRECTIVE ACTION EXPERIENCE, PREFERABLY INVOLVING
24 UNDERGROUND STORAGE TANKS.

25 (iii) A PERSON WITH A MASTER'S DEGREE FROM AN ACCREDITED
26 INSTITUTION OF HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR
27 SCIENCE AND 8 YEARS OF FULL-TIME RELEVANT EXPERIENCE OR A PERSON

1 WITH A BACCALAUREATE DEGREE FROM AN ACCREDITED INSTITUTION OF
2 HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND 10
3 YEARS OF FULL-TIME RELEVANT EXPERIENCE. THIS EXPERIENCE SHALL BE
4 DOCUMENTED WITH PROFESSIONAL AND PERSONAL REFERENCES, PAST
5 EMPLOYMENT REFERENCES AND HISTORIES, AND DOCUMENTATION THAT ALL
6 REQUIREMENTS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970,
7 PUBLIC LAW 91-596, 84 STAT. 1590, AND REGULATIONS PROMULGATED UNDER
8 THAT ACT, AND THE MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT, 1974
9 PA 154, MCL 408.1001 TO 408.1094, AND RULES PROMULGATED UNDER THAT
10 ACT HAVE BEEN MET.

11 (iv) A PERSON WHO WAS CERTIFIED BY THE DEPARTMENT AS AN
12 UNDERGROUND STORAGE TANK PROFESSIONAL PURSUANT TO SECTION 21543 AT
13 THE TIME OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
14 THIS SUBPARAGRAPH.

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

20 (i) WORKER'S COMPENSATION INSURANCE.

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

25 (iii) CONTRACTOR POLLUTION LIABILITY INSURANCE WITH LIMITS OF
26 NOT LESS THAN \$1,000,000.00 PER OCCURRENCE, IF NOT INCLUDED UNDER
27 THE PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE REQUIRED

1 UNDER SUBPARAGRAPH (ii). THE INSURANCE REQUIREMENT UNDER THIS
2 SUBPARAGRAPH IS NOT REQUIRED FOR CONSULTANTS WHO DO NOT PERFORM
3 CONTRACTING FUNCTIONS.

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

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

8 (C) HAS DEMONSTRATED COMPLIANCE WITH THE OCCUPATIONAL SAFETY
9 AND HEALTH ACT OF 1970, PUBLIC LAW 91-596, 84 STAT. 1590, AND THE
10 REGULATIONS PROMULGATED UNDER THAT ACT, AND THE MICHIGAN
11 OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO
12 408.1094, AND THE RULES PROMULGATED UNDER THAT ACT, AND IS ABLE TO
13 DEMONSTRATE THAT ALL SUCH RULES AND REGULATIONS HAVE BEEN COMPLIED
14 WITH DURING THE PERSON'S PREVIOUS CORRECTIVE ACTION ACTIVITY.

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

18 (a) Senate Bill No. 529.

19 (b) Senate Bill No. 530.

20 (c) Senate Bill No. 531.

21 (d) Senate Bill No. 532.

22 (e) Senate Bill No. 533.