

SENATE BILL No. 528

June 28, 2011, Introduced by Senators CASPERSON, PROOS, KOWALL, PAPPAGEORGE, MARLEAU and WALKER and referred to the Committee on Natural Resources, Environment and Great Lakes.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21301a. (1) This part is intended to provide ~~remedies~~**A**
2 **PROCESS AND ESTABLISH PROCEDURES AND CRITERIA SEPARATE AND DISTINCT**
3 **FROM THE PROCESS, PROCEDURES, AND CRITERIA ESTABLISHED UNDER PART**

1 201 for sites posing a threat to the public health, safety, or
2 welfare, or to the environment, **AS A RESULT OF A RELEASE FROM**
3 **UNDERGROUND STORAGE TANK SYSTEMS**, regardless of whether the release
4 or threat of release of a regulated substance occurred before or
5 after January 19, 1989, the effective date of the former leaking
6 underground storage tank act, ~~Act No. 478 of the Public Acts of~~
7 ~~1988, 1988 PA 478~~, and for this purpose, this part shall be given
8 retroactive application. However, criminal penalties provided in
9 ~~the amendatory act that added this section~~ **THIS PART** only apply to
10 violations of this part that occur after April 13, 1995.

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

14 Sec. 21304a. (1) Corrective action activities undertaken
15 pursuant to this part shall be conducted in accordance with the
16 process outlined in RBCA in a manner that is protective of the
17 public health, safety, and welfare, and the environment.

18 (2) Subject to subsections (3) and (4), the department shall
19 establish cleanup criteria for corrective action activities
20 undertaken under this part using the process outlined in RBCA. The
21 department shall utilize only reasonable and relevant exposure
22 assumptions and pathways in determining the cleanup criteria. **FOR**
23 **PURPOSES OF THIS PART, SURFACE WATER OR A SURFACE WATER PATHWAY**
24 **DOES NOT INCLUDE GROUNDWATER OR AN ENCLOSED SEWER OR OTHER UTILITY**
25 **LINE.**

26 (3) If a regulated substance poses a carcinogenic risk to
27 humans, the cleanup criteria derived for cancer risk shall be the

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

8 (4) If a cleanup criterion for groundwater differs from either
9 (a) the state drinking water standard established pursuant to
10 section 5 of the safe drinking water act, ~~Act No. 399 of the Public~~
11 ~~Acts of 1976, being section 325.1005 of the Michigan Compiled Laws,~~
12 **1976 PA 399, MCL 325.1005**, or (b) criteria for adverse aesthetic
13 characteristics derived pursuant to R 299.5709 of the Michigan
14 administrative code, the cleanup criterion shall be the more
15 stringent of (a) or (b) unless a consultant retained by the owner
16 or operator determines that compliance with (a) or (b) is not
17 necessary because the use of the groundwater is reliably restricted
18 pursuant to section 21310a.

19 (5) Notwithstanding any other provision of this part, if a
20 release or threat of release at a site is not solely the result of
21 a release or threat of release from an underground storage tank
22 system, the owner or operator of the underground storage tank
23 system may choose to perform response activities pursuant to part
24 201 in lieu of corrective actions pursuant to this part.

25 Sec. 21309a. (1) If initial response actions under section
26 21307 have not resulted in completion of corrective action, a
27 consultant retained by an owner or operator shall prepare a

1 corrective action plan to address contamination at the site. For
2 corrective action plans submitted as part of a final assessment
3 report pursuant to section 21311a after October 1, 1995, the
4 corrective action plan shall use the process described in RBCA.

5 (2) A corrective action plan shall include all of the
6 following:

7 (a) A description of the corrective action to be implemented,
8 including an explanation of how that action will meet the
9 requirements of the RBCA process. The corrective action plan shall
10 also include an analysis of the selection of indicator parameters
11 to be used in evaluating the implementation of the corrective
12 action plan, if indicator parameters are to be used. The corrective
13 action plan shall include a description of ambient air quality
14 monitoring activities to be undertaken during the corrective action
15 if such activities are appropriate.

16 (b) An operation and maintenance plan if any element of the
17 corrective action requires operation and maintenance. The operation
18 and maintenance plan shall include all of the following:

19 (i) Name, telephone number, and address of the person who is
20 responsible for operation and maintenance.

21 (ii) Operation and maintenance schedule.

22 (iii) Written and pictorial plan of operation and maintenance.

23 (iv) Design and construction plans.

24 (v) Equipment diagrams, specifications, and manufacturers'
25 guidelines.

26 (vi) Safety plan.

27 (vii) Emergency plan, including emergency contact telephone

1 numbers.

2 (viii) A list of spare parts available for emergency repairs.

3 (ix) Other information required by the department to determine
4 the adequacy of the operation and maintenance plan. Department
5 requests for information pursuant to this subparagraph shall be
6 limited to factors not adequately addressed by information required
7 by subparagraphs (i) through (viii) and shall be accompanied by an
8 explanation of the need for the additional information.

9 (c) A monitoring plan if monitoring of environmental media or
10 site activities or both is required to confirm the effectiveness
11 and integrity of the remedy. The monitoring plan shall include all
12 of the following:

13 (i) Location of monitoring points.

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

16 (iii) Monitoring schedule.

17 (iv) Monitoring methodology, including sample collection
18 procedures.

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

21 (vi) Laboratory methodology, including the name of the
22 laboratory responsible for analysis of monitoring samples, method
23 detection limits, and practical quantitation levels. Raw data used
24 to determine method detection limits shall be made available to the
25 department on request.

26 (vii) Quality control/quality assurance plan.

27 (viii) Data presentation and evaluation plan.

1 (ix) Contingency plan to address ineffective monitoring.

2 (x) Operation and maintenance plan for monitoring.

3 (xi) How the monitoring data will be used to demonstrate
4 effectiveness of corrective action activities.

5 (xii) Other elements required by the department to determine
6 the adequacy of the monitoring plan. Department requests for
7 information pursuant to this subparagraph shall be limited to
8 factors not adequately addressed by information required under
9 subparagraphs (i) through (xi) and shall be accompanied by an
10 explanation of the need for the additional information.

11 (d) An explanation of any land use or resource use
12 restrictions, if the restrictions are required pursuant to section
13 21310a.

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

15 (f) ~~A~~ **IF THE CORRECTIVE ACTION PLAN INCLUDES THE OPERATION OF**
16 **AN ACTIVE SOIL OR GROUNDWATER REMEDIATION SYSTEM, OR BOTH, A**
17 financial assurance mechanism ~~, as provided for in R 29.2161 to R~~
18 ~~29.2169 of the Michigan administrative code, in an amount approved~~
19 ~~by the department, to pay for monitoring, operation, and~~
20 ~~maintenance, oversight, and other costs if required by the~~
21 ~~department as necessary to assure the effectiveness and integrity~~
22 of the corrective action **REMEDATION SYSTEM.**

23 (g) If provisions for operation and maintenance, monitoring,
24 or financial assurance are included in the corrective action plan,
25 and those provisions are not complied with, the corrective action
26 plan is void from the time of lapse or violation unless the lapse
27 or violation is corrected to the satisfaction of the 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 and the proposed corrective action. The notice shall
7 include the name, address, and telephone number of a contact
8 person. A copy of the notice and proof of providing the notice
9 shall be submitted to the department. The department shall ensure
10 that site release information and corrective action plans that do
11 not result in an unrestricted use of property are made available to
12 the public for inspection upon request.

13 Sec. 21315. (1) The department shall design and implement a
14 program to selectively audit or oversee all aspects of corrective
15 actions undertaken under this part to assure compliance with this
16 part. ~~The~~ **WITHIN 90 DAYS AFTER ITS RECEIPT OF A SUBMISSION OR**
17 **REPORT REQUIRED UNDER THIS PART, INCLUDING A CLOSURE REPORT, THE**
18 department may audit ~~a site at any time prior to receipt of a~~
19 ~~closure report pursuant to section 21312a and within 6 months after~~
20 ~~receipt of the closure report.~~ **THE SUBMISSION OR REPORT.**

21 (2) If the department conducts an audit under this section,
22 ~~and the audit confirms that the cleanup criteria have been met,~~ the
23 department shall provide the owner or operator with a letter that
24 describes the audit and its results **WITHIN 14 DAYS AFTER THE**
25 **COMPLETION OF THE AUDIT.** Notwithstanding section 21312a, after
26 conducting an audit under this section, the department may issue a
27 closure letter for any site that meets the cleanup criteria

1 pursuant to section 21304a.

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

6 (a) Provide additional information related to any requirement
7 of this part.

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

11 (4) IF AN AUDIT CONDUCTED UNDER THIS SECTION DOES NOT CONFIRM
12 THAT CORRECTIVE ACTION HAS BEEN CONDUCTED IN COMPLIANCE WITH THIS
13 PART OR DOES NOT CONFIRM THAT CLEANUP CRITERIA HAVE BEEN MET, THE
14 DEPARTMENT SHALL INCLUDE BOTH OF THE FOLLOWING IN THE AUDIT LETTER
15 PROVIDED UNDER SUBSECTION (2):

16 (A) THE SPECIFIC DEFICIENCIES AND THE SECTION OR SECTIONS OF
17 THIS PART OR RULES PROMULGATED UNDER THIS PART THAT SUPPORT THE
18 DEPARTMENT'S CONCLUSION OF NONCOMPLIANCE OR THAT CLEANUP CRITERIA
19 HAVE NOT BEEN MET.

20 (B) SPECIFIC RECOMMENDATIONS ABOUT CORRECTIVE ACTIONS OR
21 DOCUMENTATION THAT WOULD ADDRESS THE DEFICIENCIES IDENTIFIED UNDER
22 SUBDIVISION (A).

23 (5) THE DEPARTMENT SHALL ONLY AUDIT A REPORT REQUIRED UNDER
24 THIS PART 1 TIME. IF THE DEPARTMENT'S AUDIT IDENTIFIES DEFICIENCIES
25 AS DESCRIBED IN SUBSECTION (4), THE DEPARTMENT MAY AUDIT A REVISED
26 REPORT IF REQUESTED BY THE OWNER OR OPERATOR TO EVALUATE WHETHER
27 THE IDENTIFIED DEFICIENCIES HAVE BEEN CORRECTED, WHICH SHALL BE

1 COMPLETED WITHIN 90 DAYS OF THE REPORT'S SUBMISSION TO THE
2 DEPARTMENT.

3 (6) ANY REPORT REQUIRED UNDER THIS PART SHALL BE CONSIDERED IN
4 COMPLIANCE WITH THIS PART UNLESS THE REPORT IS AUDITED AND FOUND TO
5 BE NONCOMPLIANT AS PROVIDED IN THIS SECTION.

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

9 Sec. 21316a. (1) A person shall not knowingly deliver a
10 regulated substance to an underground storage tank system ~~at any~~
11 ~~facility~~ that is not in compliance with this part and rules
12 promulgated under this part, and part 211 and rules promulgated
13 under part 211. A person who knowingly delivers a regulated
14 substance to an underground storage tank system **THAT IS NOT IN**
15 **COMPLIANCE WITH THIS PART** is guilty of a misdemeanor punishable by
16 imprisonment for not more than 90 days or a fine of not more than
17 \$500.00, or both.

18 (2) The department, upon discovery of ~~a~~ **THE OPERATION OF AN**
19 **UNDERGROUND STORAGE TANK SYSTEM IN** violation of this part, rules
20 promulgated under this part, part 211, or rules promulgated under
21 part 211, ~~at a facility having an underground storage tank system,~~
22 shall provide notification prohibiting delivery of regulated
23 substances to such ~~a facility~~ **UNDERGROUND STORAGE TANK SYSTEM** by
24 affixing a placard providing notice of the violation in plain view
25 to the underground storage tank system.

26 (3) A person shall not remove, deface, alter, or otherwise
27 tamper with a placard affixed to an underground storage tank system

1 pursuant to subsection (2). A person who knowingly removes,
2 defaces, alters, or otherwise tampers with a placard affixed to an
3 underground storage tank system pursuant to subsection (2) such
4 that the notification is not discernible is guilty of a misdemeanor
5 punishable by imprisonment for not more than 90 days or a fine of
6 not more than \$500.00, or both.

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

11 Sec. 21320. If the department learns of a suspected or
12 confirmed release from an underground storage tank system **THAT IS**
13 **NOT BEING ADDRESSED BY A PERSON LIABLE UNDER THIS PART**, the
14 department may undertake corrective actions necessary to protect
15 the public health, safety, or welfare, or the environment.

16 **SEC. 21323A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS**
17 **ACT, AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND SECTION**
18 **21323, THE FOLLOWING PERSONS ARE LIABLE UNDER THIS PART:**

19 (A) **THE OWNER OR OPERATOR IF THE OWNER OR OPERATOR IS**
20 **RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE OR THREAT OF RELEASE.**

21 (B) **AN OWNER OR OPERATOR WHO BECOMES AN OWNER OR OPERATOR ON**
22 **OR AFTER JUNE 5, 1995, UNLESS THE OWNER OR OPERATOR COMPLIES WITH**
23 **BOTH OF THE FOLLOWING:**

24 (i) **A BASELINE ENVIRONMENTAL ASSESSMENT IS CONDUCTED PRIOR TO**
25 **OR WITHIN 45 DAYS AFTER THE EARLIER OF THE DATE OF PURCHASE,**
26 **OCCUPANCY, OR FORECLOSURE. FOR PURPOSES OF THIS SECTION, ASSESSING**
27 **PROPERTY TO CONDUCT A BASELINE ENVIRONMENTAL ASSESSMENT DOES NOT**

1 CONSTITUTE OCCUPANCY.

2 (ii) THE OWNER OR OPERATOR PROVIDES A BASELINE ENVIRONMENTAL
3 ASSESSMENT TO THE DEPARTMENT AND SUBSEQUENT PURCHASER OR TRANSFEREE
4 WITHIN 6 MONTHS AFTER THE EARLIER OF THE DATE OF PURCHASE,
5 OCCUPANCY, OR FORECLOSURE.

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

8 (2) SUBJECT TO SECTION 21323K, AN OWNER OR OPERATOR WHO
9 COMPLIES WITH SUBSECTION (1)(B) IS NOT LIABLE FOR CONTAMINATION
10 EXISTING AT THE PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK
11 SYSTEM IS LOCATED AT THE EARLIER OF THE DATE OF PURCHASE,
12 OCCUPANCY, OR FORECLOSURE, UNLESS THE PERSON IS RESPONSIBLE FOR AN
13 ACTIVITY CAUSING THE CONTAMINATION. SUBSECTION (1)(B) DOES NOT
14 ALTER A PERSON'S LIABILITY WITH REGARD TO A SUBSEQUENT RELEASE OR
15 THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM IF THE
16 PERSON IS RESPONSIBLE FOR AN ACTIVITY CAUSING THE SUBSEQUENT
17 RELEASE OR THREAT OF RELEASE.

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

24 (A) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED
25 OWNERSHIP OR CONTROL OF THE PROPERTY INVOLUNTARILY THROUGH
26 BANKRUPTCY, TAX DELINQUENCY, ABANDONMENT, A TRANSFER FROM A LENDER
27 OR OTHER CIRCUMSTANCES IN WHICH THE GOVERNMENT INVOLUNTARILY

1 ACQUIRES TITLE OR CONTROL BY VIRTUE OF ITS GOVERNMENTAL FUNCTION OR
2 AS PROVIDED IN THIS PART, A LOCAL UNIT OF GOVERNMENT TO WHICH
3 OWNERSHIP OR CONTROL OF PROPERTY IS TRANSFERRED BY THE STATE OR BY
4 ANOTHER LOCAL UNIT OF GOVERNMENT THAT IS NOT LIABLE UNDER
5 SUBSECTION (1), OR THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT
6 ACQUIRED OWNERSHIP OR CONTROL OF PROPERTY BY SEIZURE, RECEIVERSHIP,
7 OR FORFEITURE PURSUANT TO THE OPERATION OF LAW OR BY COURT ORDER.

8 (B) A STATE OR LOCAL UNIT OF GOVERNMENT THAT HOLDS OR ACQUIRES
9 AN EASEMENT INTEREST IN PROPERTY, HOLDS OR ACQUIRES AN INTEREST IN
10 PROPERTY BY DEDICATION IN A PLAT, OR BY DEDICATION PURSUANT TO MCL
11 220.1 TO 239.6, OR OTHERWISE HOLDS OR ACQUIRES AN INTEREST IN
12 PROPERTY FOR A TRANSPORTATION OR UTILITY CORRIDOR, INCLUDING
13 SEWERS, PIPES, AND PIPELINES, OR PUBLIC RIGHT-OF-WAY.

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

19 (D) A PERSON WHO OWNS SEVERED SUBSURFACE MINERAL RIGHTS OR
20 SEVERED SUBSURFACE FORMATIONS OR WHO LEASES SUBSURFACE MINERAL
21 RIGHTS OR FORMATIONS.

22 (E) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT LEASES
23 PROPERTY TO A PERSON IF THE STATE OR THE LOCAL UNIT OF GOVERNMENT
24 IS NOT LIABLE UNDER THIS PART FOR ENVIRONMENTAL CONTAMINATION AT
25 THE PROPERTY.

26 (F) A PERSON WHO ACQUIRES PROPERTY AS A RESULT OF THE DEATH OF
27 THE PRIOR OWNER OR OPERATOR OF THE PROPERTY, WHETHER BY

1 INHERITANCE, DEVISE, OR TRANSFER FROM AN INTER VIVOS OR
2 TESTAMENTARY TRUST.

3 (G) A PERSON WHO DID NOT KNOW AND HAD NO REASON TO KNOW THAT
4 THE PROPERTY WAS CONTAMINATED. TO ESTABLISH THAT THE PERSON DID NOT
5 KNOW AND DID NOT HAVE A REASON TO KNOW THAT THE PROPERTY WAS
6 CONTAMINATED, THE PERSON SHALL HAVE UNDERTAKEN AT THE TIME OF
7 ACQUISITION ALL APPROPRIATE INQUIRY INTO THE PREVIOUS OWNERSHIP AND
8 USES OF THE PROPERTY CONSISTENT WITH GOOD COMMERCIAL OR CUSTOMARY
9 PRACTICE. A DETERMINATION OF LIABILITY UNDER THIS SECTION SHALL
10 TAKE INTO ACCOUNT ANY SPECIALIZED KNOWLEDGE OR EXPERIENCE ON THE
11 PART OF THE PERSON, THE RELATIONSHIP OF THE PURCHASE PRICE TO THE
12 VALUE OF THE PROPERTY IF UNCONTAMINATED BY A REGULATED SUBSTANCE,
13 COMMONLY KNOWN OR REASONABLE ASCERTAINABLE INFORMATION ABOUT THE
14 PROPERTY, THE OBVIOUSNESS OF THE PRESENCE OR LIKELY PRESENCE OF A
15 RELEASE OR THREAT OF RELEASE AT THE PROPERTY, AND THE ABILITY TO
16 DETECT A RELEASE OR THREAT OF RELEASE BY APPROPRIATE INSPECTION.

17 (H) A UTILITY PERFORMING NORMAL CONSTRUCTION, MAINTENANCE, AND
18 REPAIR ACTIVITIES IN THE NORMAL COURSE OF ITS UTILITY SERVICE
19 BUSINESS. THIS SUBDIVISION DOES NOT APPLY TO PROPERTY OWNED BY THE
20 UTILITY.

21 (I) A LESSEE WHO USES THE LEASED PROPERTY FOR A RETAIL,
22 OFFICE, OR COMMERCIAL PURPOSE REGARDLESS OF THE LEVEL OF THE
23 LESSEE'S REGULATED SUBSTANCE USE.

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

26 (A) A LENDER THAT ENGAGES IN OR CONDUCTS A LAWFUL MARSHALLING
27 OR LIQUIDATION OF PERSONAL PROPERTY IF THE LENDER DOES NOT CAUSE OR

1 CONTRIBUTE TO THE ENVIRONMENTAL CONTAMINATION. THIS INCLUDES
2 HOLDING A SALE OF PERSONAL PROPERTY ON A PORTION OF THE PROPERTY.

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

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

9 (i) AN ACT OF GOD.

10 (ii) AN ACT OF WAR.

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

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

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

21 (ii) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE
22 CLOSURE REPORT AND FOR WHICH THE PERSON IS OTHERWISE LIABLE UNDER
23 THIS PART.

24 (iii) IF THE CLOSURE REPORT RELIES ON LAND USE OR RESOURCE USE
25 RESTRICTIONS, AN OWNER OR OPERATOR WHO DESIRES TO CHANGE THOSE
26 RESTRICTIONS IS RESPONSIBLE FOR ANY CORRECTIVE ACTION NECESSARY TO
27 COMPLY WITH THIS PART FOR ANY LAND USE OR RESOURCE USE OTHER THAN

1 THE LAND USE OR RESOURCE USE THAT WAS THE BASIS FOR THE NO FURTHER
2 ACTION REPORT.

3 (iv) IF THE CLOSURE REPORT RELIES ON MONITORING NECESSARY TO
4 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE CORRECTIVE ACTION, AN
5 OWNER OR OPERATOR WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL
6 CONTAMINATION ADDRESSED IN A CLOSURE REPORT IS LIABLE UNDER THIS
7 PART FOR ADDITIONAL CORRECTIVE ACTION ACTIVITIES NECESSARY TO
8 ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL CONTAMINATION
9 DEMONSTRATED BY THE MONITORING IN EXCESS OF THE LEVELS RELIED ON IN
10 THE CLOSURE REPORT.

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

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

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

3 (7) NOTWITHSTANDING SUBSECTION (1) (B), IF THE OWNER OR
4 OPERATOR OF THE PROPERTY BECAME THE OWNER OR OPERATOR OF THE
5 PROPERTY ON OR AFTER JUNE 5, 1995 AND PRIOR TO MARCH 6, 1996 AND
6 THE PROPERTY CONTAINS AN UNDERGROUND STORAGE TANK SYSTEM, THAT
7 OWNER OR OPERATOR IS LIABLE UNDER THIS PART ONLY IF THE OWNER OR
8 OPERATOR IS RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE OR THREAT
9 OF RELEASE.

10 (8) AN OWNER OR OPERATOR WHO WAS IN COMPLIANCE WITH SUBSECTION
11 (1) (B) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
12 THIS SUBSECTION IS CONSIDERED TO BE IN COMPLIANCE WITH SUBSECTION
13 (1) (B).

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

17 (A) ALL COSTS OF CORRECTIVE ACTION LAWFULLY INCURRED BY THE
18 STATE RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE
19 ACTION UNDER THIS PART.

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

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

26 (2) THE COSTS OF CORRECTIVE ACTION RECOVERABLE UNDER
27 SUBSECTION (1) SHALL ALSO INCLUDE ALL COSTS OF CORRECTIVE ACTION

1 REASONABLY INCURRED BY THE STATE PRIOR TO THE PROMULGATION OF RULES
2 RELATING TO THE SELECTION AND IMPLEMENTATION OF CORRECTIVE ACTION
3 UNDER THIS PART. A PERSON CHALLENGING THE RECOVERY OF COSTS UNDER
4 THIS SUBSECTION HAS THE BURDEN OF ESTABLISHING THAT THE COSTS WERE
5 NOT REASONABLY INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE
6 TIME THE COSTS WERE INCURRED.

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

16 (4) IN THE CASE OF INJURY TO, DESTRUCTION OF, OR LOSS OF
17 NATURAL RESOURCES UNDER SUBSECTION (1)(C), LIABILITY SHALL BE TO
18 THE STATE FOR NATURAL RESOURCES BELONGING TO, MANAGED BY,
19 CONTROLLED BY, APPERTAINING TO, OR HELD IN TRUST BY THE STATE OR A
20 LOCAL UNIT OF GOVERNMENT. SUMS RECOVERED BY THE STATE UNDER THIS
21 PART FOR NATURAL RESOURCE DAMAGES SHALL BE RETAINED BY THE
22 DEPARTMENT FOR USE ONLY TO RESTORE, REPAIR, REPLACE, OR ACQUIRE THE
23 EQUIVALENT OF THE NATURAL RESOURCES INJURED OR ACQUIRE SUBSTITUTE
24 OR ALTERNATIVE RESOURCES. THERE SHALL BE NO DOUBLE RECOVERY UNDER
25 THIS PART FOR NATURAL RESOURCE DAMAGES, INCLUDING THE COSTS OF
26 DAMAGE ASSESSMENT OR RESTORATION, REHABILITATION, REPLACEMENT, OR
27 ACQUISITION, FOR THE SAME RELEASE AND NATURAL RESOURCE.

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

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

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

22 SEC. 21323C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
23 A PERSON WHO IS A CORRECTIVE ACTION CONTRACTOR FOR ANY RELEASE OR
24 THREATENED RELEASE IS NOT LIABLE TO ANY PERSON FOR INJURIES, COSTS,
25 DAMAGES, EXPENSES, OR OTHER LIABILITY, INCLUDING, BUT NOT LIMITED
26 TO, CLAIMS FOR INDEMNIFICATION OR CONTRIBUTION AND CLAIMS BY THIRD
27 PARTIES FOR DEATH, PERSONAL INJURIES, ILLNESS, OR LOSS OF OR

1 DAMAGES TO PROPERTY OR ECONOMIC LOSS THAT RESULT FROM THE RELEASE
2 OR THREATENED RELEASE. THIS SUBSECTION DOES NOT APPLY IF A RELEASE
3 OR THREATENED RELEASE IS CAUSED BY CONDUCT OF THE CORRECTIVE ACTION
4 CONTRACTOR THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT
5 CONSTITUTES INTENTIONAL MISCONDUCT.

6 (2) SUBSECTION (1) DOES NOT AFFECT THE LIABILITY OF A PERSON
7 UNDER ANY WARRANTY UNDER FEDERAL, STATE, OR COMMON LAW. THIS
8 SUBSECTION DOES NOT AFFECT THE LIABILITY OF AN EMPLOYER WHO IS A
9 CORRECTIVE ACTION CONTRACTOR TO ANY EMPLOYEE OF THE EMPLOYER UNDER
10 LAW, INCLUDING ANY LAW RELATING TO WORKER'S COMPENSATION.

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

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

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

20 (A) "CORRECTIVE ACTION CONTRACT" MEANS A CONTRACT OR AGREEMENT
21 ENTERED INTO BY A CORRECTIVE ACTION CONTRACTOR WITH 1 OR MORE OF
22 THE FOLLOWING:

23 (i) THE DEPARTMENT.

24 (ii) THE DEPARTMENT OF COMMUNITY HEALTH.

25 (iii) A PERSON WHO IS ARRANGING FOR CORRECTIVE ACTION UNDER THIS
26 PART.

27 (B) "CORRECTIVE ACTION CONTRACTOR" MEANS 1 OR BOTH OF THE

1 FOLLOWING:

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

5 (ii) A PERSON WHO IS RETAINED OR HIRED BY A PERSON DESCRIBED IN
6 SUBPARAGRAPH (i) TO PROVIDE ANY SERVICE RELATING TO A CORRECTIVE
7 ACTION.

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

17 (A) A PERSON WHO IS LIABLE UNDER SECTION 21323A WHO IS A
18 RESPONSIBLE PARTY.

19 (B) AN ACTION WITH RESPECT TO PERSONAL INJURY OR WRONGFUL
20 DEATH.

21 (C) A PERSON THAT IS GROSSLY NEGLIGENT OR ENGAGES IN WILLFUL
22 MISCONDUCT.

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

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

27 (A) "DAMAGES" MEANS DAMAGES OF ANY KIND FOR WHICH LIABILITY

1 MAY EXIST UNDER THE LAWS OF THIS STATE RESULTING FROM, ARISING OUT
2 OF, OR RELATED TO THE RELEASE OR THREATENED RELEASE OF PETROLEUM.

3 (B) "FEDERAL ON-SCENE COORDINATOR" MEANS THE FEDERAL OFFICIAL
4 PREDESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
5 OR THE UNITED STATES COAST GUARD TO COORDINATE AND DIRECT FEDERAL
6 RESPONSES UNDER THE NATIONAL CONTINGENCY PLAN OR THE OFFICIAL
7 DESIGNATED BY THE LEAD AGENCY TO COORDINATE AND DIRECT CORRECTIVE
8 ACTION UNDER THE NATIONAL CONTINGENCY PLAN.

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

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

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

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

26 (3) A PERSON MAY SEEK CONTRIBUTION FROM ANY OTHER PERSON WHO
27 IS LIABLE UNDER SECTION 21323A DURING OR FOLLOWING A CIVIL ACTION

1 BROUGHT UNDER THIS PART. THIS SUBSECTION DOES NOT DIMINISH THE
2 RIGHT OF A PERSON TO BRING AN ACTION FOR CONTRIBUTION IN THE
3 ABSENCE OF A CIVIL ACTION BY THE STATE UNDER THIS PART. IN A
4 CONTRIBUTION ACTION BROUGHT UNDER THIS PART, THE COURT SHALL
5 CONSIDER ALL OF THE FOLLOWING FACTORS IN ALLOCATING CORRECTIVE
6 ACTION COSTS AND DAMAGES AMONG LIABLE PERSONS:

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

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

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

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

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

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

24 (5) A PERSON WHO HAS RESOLVED HIS OR HER LIABILITY TO THE
25 STATE IN AN ADMINISTRATIVE OR JUDICIALLY APPROVED CONSENT ORDER IS
26 NOT LIABLE FOR CLAIMS FOR CONTRIBUTION REGARDING MATTERS ADDRESSED
27 IN THE CONSENT ORDER. THE CONSENT ORDER DOES NOT DISCHARGE ANY OF

1 THE OTHER PERSONS LIABLE UNDER SECTION 21323A UNLESS THE TERMS OF
2 THE CONSENT ORDER PROVIDE FOR THIS DISCHARGE, BUT THE POTENTIAL
3 LIABILITY OF THE OTHER PERSONS IS REDUCED BY THE AMOUNT OF THE
4 CONSENT ORDER.

5 (6) A PERSON WHO IS NOT LIABLE UNDER THIS PART SHALL BE
6 CONSIDERED TO HAVE RESOLVED HIS OR HER LIABILITY TO THE STATE IN AN
7 ADMINISTRATIVELY APPROVED SETTLEMENT UNDER THE APPLICABLE FEDERAL
8 LAW AND SHALL BY OPERATION OF LAW BE GRANTED CONTRIBUTION
9 PROTECTION UNDER FEDERAL LAW AND UNDER THIS PART IN THE SAME MANNER
10 THAT CONTRIBUTION PROTECTION IS PROVIDED PURSUANT TO SUBSECTION
11 (5).

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

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

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

26 SEC. 21323E. (1) AN INDEMNIFICATION, HOLD HARMLESS, OR SIMILAR
27 AGREEMENT OR CONVEYANCE IS NOT EFFECTIVE TO TRANSFER FROM A PERSON

1 WHO IS LIABLE UNDER SECTION 21323A TO THE STATE FOR EVALUATION OR
2 CORRECTIVE ACTION COSTS OR DAMAGES FOR A RELEASE OR THREAT OF
3 RELEASE TO ANY OTHER PERSON THE LIABILITY IMPOSED UNDER THIS PART.
4 THIS SECTION DOES NOT BAR AN AGREEMENT TO INSURE, HOLD HARMLESS, OR
5 INDEMNIFY A PARTY TO THE AGREEMENT FOR LIABILITY UNDER THIS PART.

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

9 SEC. 21323F. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE
10 LIABILITY UNDER THIS PART FOR EACH RELEASE OR THREAT OF RELEASE
11 SHALL NOT EXCEED THE TOTAL OF ALL THE COSTS OF CORRECTIVE ACTION
12 AND FINES, PLUS \$5,000,000.00 DAMAGES FOR INJURY TO, DESTRUCTION
13 OF, OR LOSS OF NATURAL RESOURCES RESULTING FROM THE RELEASE OR
14 THREAT OF RELEASE, INCLUDING THE REASONABLE COSTS OF ASSESSING THE
15 INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE RELEASE OR THREAT
16 OF RELEASE.

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

21 (A) THE RELEASE OR THREATENED RELEASE OF A REGULATED SUBSTANCE
22 WAS THE RESULT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE
23 PARTY.

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

27 SEC. 21323G. (1) THE STATE MAY PROVIDE A PERSON WITH A

1 COVENANT NOT TO SUE CONCERNING ANY LIABILITY TO THE STATE UNDER
2 THIS PART, INCLUDING FUTURE LIABILITY, RESULTING FROM A RELEASE OR
3 THREATENED RELEASE ADDRESSED BY CORRECTIVE ACTION, WHETHER THAT
4 ACTION IS ON OR OFF THE PROPERTY ON WHICH AN UNDERGROUND STORAGE
5 TANK SYSTEM IS LOCATED, IF EACH OF THE FOLLOWING IS MET:

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

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

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

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

12 (2) A COVENANT NOT TO SUE CONCERNING FUTURE LIABILITY TO THE
13 STATE SHALL NOT TAKE EFFECT UNTIL THE DEPARTMENT CERTIFIES THAT
14 CORRECTIVE ACTION HAS BEEN COMPLETED IN ACCORDANCE WITH THE
15 REQUIREMENTS OF THIS PART AT THE PROPERTY THAT IS THE SUBJECT OF
16 THE COVENANT.

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

21 (A) THE EFFECTIVENESS AND RELIABILITY OF THE CORRECTIVE
22 ACTION, IN LIGHT OF THE OTHER ALTERNATIVE CORRECTIVE ACTIONS
23 CONSIDERED FOR THE PROPERTY CONCERNED.

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

25 (C) THE EXTENT TO WHICH PERFORMANCE STANDARDS ARE INCLUDED IN
26 THE CONSENT ORDER.

27 (D) THE EXTENT TO WHICH THE CORRECTIVE ACTION PROVIDES A

1 COMPLETE REMEDY FOR THE PROPERTY, INCLUDING A REDUCTION IN THE
2 HAZARDOUS NATURE OF THE SUBSTANCES AT THE PROPERTY.

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

5 (F) WHETHER CORRECTIVE ACTION WILL BE CARRIED OUT, IN WHOLE OR
6 IN SIGNIFICANT PART, BY PERSONS WHO ARE LIABLE UNDER SECTION
7 21323A.

8 (4) A COVENANT NOT TO SUE UNDER THIS SECTION IS SUBJECT TO THE
9 SATISFACTORY PERFORMANCE BY A PERSON OF HIS OR HER OBLIGATIONS
10 UNDER THE AGREEMENT CONCERNED.

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

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

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

5 SEC. 21323H. (1) THE STATE MAY PROVIDE A PERSON WHO PROPOSES
6 TO REDEVELOP OR REUSE PROPERTY CONTAMINATED BY A RELEASE FROM AN
7 UNDERGROUND STORAGE TANK SYSTEM, INCLUDING A VACANT MANUFACTURING
8 OR ABANDONED INDUSTRIAL SITE, WITH A COVENANT NOT TO SUE CONCERNING
9 LIABILITY UNDER SECTION 21323A, IF ALL OF THE FOLLOWING CONDITIONS
10 ARE MET:

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

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

14 (C) THE COVENANT NOT TO SUE WOULD, WHEN APPROPRIATE, EXPEDITE
15 CORRECTIVE ACTION CONSISTENT WITH THE RULES PROMULGATED UNDER THIS
16 PART.

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

20 (i) EXACERBATE OR CONTRIBUTE TO THE EXISTING RELEASE OR THREAT
21 OF RELEASE.

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

23 (iii) POSE HEALTH RISKS RELATED TO THE RELEASE OR THREAT OF
24 RELEASE TO PERSONS WHO MAY BE PRESENT AT OR IN THE VICINITY OF THE
25 PROPERTY.

26 (E) THE PROPOSAL TO REDEVELOP OR REUSE THE PROPERTY HAS
27 ECONOMIC DEVELOPMENT POTENTIAL.

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

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

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

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

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

18 (B) INTERFERENCE WITH OR FAILURE TO COOPERATE WITH THE
19 DEPARTMENT, ITS CONTRACTORS, OR OTHER PERSONS CONDUCTING CORRECTIVE
20 ACTION.

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

26 SEC. 21323I. (1) THE DEPARTMENT AND THE ATTORNEY GENERAL MAY
27 ENTER INTO A CONSENT ORDER WITH A PERSON WHO IS LIABLE UNDER

1 SECTION 21323A OR ANY GROUP OF PERSONS WHO ARE LIABLE UNDER SECTION
2 21323A TO PERFORM CORRECTIVE ACTION IF THE DEPARTMENT AND THE
3 ATTORNEY GENERAL DETERMINE THAT THE PERSONS WHO ARE LIABLE UNDER
4 SECTION 21323A WILL PROPERLY IMPLEMENT THE CORRECTIVE ACTION AND
5 THAT THE CONSENT ORDER IS IN THE PUBLIC INTEREST, WILL EXPEDITE
6 EFFECTIVE CORRECTIVE ACTION, AND WILL MINIMIZE LITIGATION. THE
7 CONSENT ORDER MAY, AS DETERMINED APPROPRIATE BY THE DEPARTMENT AND
8 THE ATTORNEY GENERAL, PROVIDE FOR IMPLEMENTATION BY A PERSON OR ANY
9 GROUP OF PERSONS WHO ARE LIABLE UNDER SECTION 21323A OF ANY PORTION
10 OF CORRECTIVE ACTION AT THE PROPERTY. A DECISION OF THE ATTORNEY
11 GENERAL NOT TO ENTER INTO A CONSENT ORDER UNDER THIS PART IS NOT
12 SUBJECT TO JUDICIAL REVIEW.

13 (2) WHENEVER PRACTICAL AND IN THE PUBLIC INTEREST, AS
14 DETERMINED BY THE DEPARTMENT, THE DEPARTMENT AND THE ATTORNEY
15 GENERAL SHALL AS PROMPTLY AS POSSIBLE REACH A FINAL SETTLEMENT WITH
16 A PERSON IN AN ADMINISTRATIVE OR CIVIL ACTION UNDER THIS PART IF
17 THIS SETTLEMENT INVOLVES ONLY A MINOR PORTION OF THE RESPONSE COSTS
18 AT THE PROPERTY CONCERNED AND, IN THE JUDGMENT OF THE DEPARTMENT
19 AND THE ATTORNEY GENERAL, THE CONDITIONS IN EITHER OF THE FOLLOWING
20 ARE MET:

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

23 (i) THE AMOUNT OF THE REGULATED SUBSTANCES CONTRIBUTED BY THAT
24 PERSON TO THE PROPERTY.

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

27 (B) EXCEPT AS PROVIDED IN SUBSECTION (3), THE PERSON MEETS ALL

1 OF THE FOLLOWING CONDITIONS:

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

4 (ii) THE PERSON DID NOT CONDUCT OR PERMIT THE GENERATION,
5 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY REGULATED
6 SUBSTANCE AT THE PROPERTY.

7 (iii) THE PERSON DID NOT CONTRIBUTE TO THE RELEASE OR THREAT OF
8 RELEASE OF A REGULATED SUBSTANCE AT THE PROPERTY THROUGH ANY ACTION
9 OR OMISSION.

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

15 (4) A SETTLEMENT UNDER SUBSECTION (2) MAY BE SET ASIDE IF
16 INFORMATION OBTAINED AFTER THE SETTLEMENT INDICATES THAT THE PERSON
17 SETTLING DOES NOT MEET THE CONDITIONS SET FORTH IN SUBSECTION
18 (2) (A) OR (B).

19 SEC. 21323J. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, A
20 PERSON, INCLUDING A LOCAL UNIT OF GOVERNMENT ON BEHALF OF ITS
21 CITIZENS, WHOSE HEALTH OR ENJOYMENT OF THE ENVIRONMENT IS OR MAY BE
22 ADVERSELY AFFECTED BY A RELEASE FROM AN UNDERGROUND STORAGE TANK
23 SYSTEM OR THREAT OF RELEASE FROM AN UNDERGROUND STORAGE TANK
24 SYSTEM, BY A VIOLATION OF THIS PART OR A RULE PROMULGATED OR ORDER
25 ISSUED UNDER THIS PART, OR BY THE FAILURE OF THE DIRECTORS TO
26 PERFORM A NONDISCRETIONARY ACT OR DUTY UNDER THIS PART, MAY
27 COMMENCE A CIVIL ACTION AGAINST ANY OF THE FOLLOWING:

1 (A) AN OWNER OR OPERATOR WHO IS LIABLE UNDER SECTION 21323A
2 FOR INJUNCTIVE RELIEF NECESSARY TO PREVENT IRREPARABLE HARM TO THE
3 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT FROM A RELEASE
4 OR THREATENED RELEASE IN RELATION TO THAT UNDERGROUND STORAGE TANK
5 SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND STORAGE TANK SYSTEM
6 IS LOCATED.

7 (B) A PERSON WHO IS LIABLE UNDER SECTION 21323A FOR A
8 VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART OR AN
9 ORDER ISSUED UNDER THIS PART IN RELATION TO THAT UNDERGROUND
10 STORAGE TANK SYSTEM ON THE PROPERTY ON WHICH THE UNDERGROUND
11 STORAGE TANK SYSTEM IS LOCATED.

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

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

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

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

6 (i) THE DEPARTMENT.

7 (ii) THE ATTORNEY GENERAL.

8 (iii) THE PROPOSED DEFENDANTS.

9 (B) THE STATE HAS NOT COMMENCED AND IS NOT DILIGENTLY
10 PROSECUTING AN ACTION UNDER THIS PART OR UNDER OTHER APPROPRIATE
11 LEGAL AUTHORITY TO OBTAIN INJUNCTIVE RELIEF CONCERNING THE
12 UNDERGROUND STORAGE TANK SYSTEM OR THE PROPERTY ON WHICH THE
13 UNDERGROUND STORAGE TANK SYSTEM IS LOCATED OR TO REQUIRE COMPLIANCE
14 WITH THIS PART OR A RULE OR AN ORDER UNDER THIS PART.

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

19 (5) IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT PURSUANT TO
20 THIS SECTION, THE COURT SHALL AWARD COSTS OF LITIGATION, INCLUDING
21 REASONABLE ATTORNEY AND EXPERT WITNESS FEES, TO THE PREVAILING OR
22 SUBSTANTIALLY PREVAILING PARTY.

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

25 (7) AN ACTION UNDER SUBSECTION (1) (A) OR (B) SHALL BE BROUGHT
26 IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE ALLEGED RELEASE,
27 THREATENED RELEASE, OR OTHER VIOLATION OCCURRED. AN ACTION UNDER

1 SUBSECTION (1) (C) SHALL BE BROUGHT IN THE CIRCUIT COURT FOR INGHAM
2 COUNTY.

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

11 (A) PROVIDE COMPENSATION TO THE PROPERTY OWNER OR OPERATOR FOR
12 DAMAGES RELATED TO THE GRANTING OF ACCESS TO THE PROPERTY,
13 INCLUDING COMPENSATION FOR LOSS OF USE OF THE PROPERTY.

14 (B) ENJOIN INTERFERENCE WITH THE CORRECTIVE ACTION.

15 (C) GRANT ANY OTHER APPROPRIATE RELIEF AS DETERMINED BY THE
16 COURT.

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

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

23 (B) FOR CONDITIONS ASSOCIATED WITH THE RESPONSE ACTIVITY THAT
24 MAY PRESENT A THREAT TO PUBLIC HEALTH OR SAFETY.

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

27 (A) FOR THE RECOVERY OF CORRECTIVE ACTION COSTS AND NATURAL

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

5 (B) FOR 1 OR MORE SUBSEQUENT ACTIONS FOR RECOVERY OF
6 CORRECTIVE ACTION COSTS PURSUANT TO SECTION 20126, AT ANY TIME
7 DURING THE CORRECTIVE ACTION, IF COMMENCED NOT LATER THAN 3 YEARS
8 AFTER THE DATE OF COMPLETION OF ALL CORRECTIVE ACTION AT THE
9 PROPERTY.

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

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

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

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

19 (B) TORT CLAIMS FOR DAMAGES WHICH RESULT FROM CORRECTIVE
20 ACTION.

21 (C) TORT CLAIMS RELATED TO THE EXERCISE OR FAILURE TO EXERCISE
22 RESPONSIBILITIES UNDER SECTION 20107A.

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

26 (a) Senate Bill No. 529.

27

1 (b) Senate Bill No. 531.

2

3 (c) Senate Bill No. 533.

4

5 (d) Senate Bill No. 530.

6

7 (d) Senate Bill No. 532.

8