



# SENATE BILL No. 140

January 17, 1995, Introduced by Senator PETERS, BERRYMAN, CHERRY and DINGELL and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend sections 10a, 10c, 10e, and 12a of Act No. 307 of the Public Acts of 1982, entitled as amended "The environmental response act," sections 10a, 10c, and 10e as added by Act No. 233 of the Public Acts of 1990 and section 12a as amended by Act No. 310 of the Public Acts of 1993, being sections 299.610a, 299.610c, 299.610e, and 299.612a of the Michigan Compiled Laws; and to add sections 10g, 10h, 10i, and 10j.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 10a, 10c, 10e, and 12a of Act No. 307  
2 of the Public Acts of 1982, sections 10a, 10c, and 10e as added  
3 by Act No. 233 of the Public Acts of 1990 and section 12a as  
4 amended by Act No. 310 of the Public Acts of 1993, being sections  
5 299.610a, 299.610c, 299.610e, and 299.612a of the Michigan

1 Compiled Laws, are amended and sections 10g, 10h, 10i, and 10j  
2 are added to read as follows:

3       Sec. 10a. (1) Except as provided in subsection (3), an  
4 owner or operator of a facility who obtains information that  
5 there may be a release at that facility shall immediately take  
6 appropriate action, consistent with applicable laws and rules  
7 promulgated by the department, to do all of the following:

8       (a) Confirm the existence of the release.

9       (b) Determine the nature and extent of the release.

10       (c) Report the release to the department within 24 hours  
11 after obtaining knowledge of the release. The requirements of  
12 this subdivision shall apply to reportable quantities of hazard-  
13 ous substances established pursuant to 40 C.F.R. 302.4 (1989),  
14 unless the department establishes through rules alternate or  
15 additional reportable quantities as necessary to protect the  
16 public health, safety, or welfare, or the environment.

17       (d) Immediately stop or prevent the release at the source.

18       (E) IMMEDIATELY IMPLEMENT SOURCE CONTROL OR REMOVAL MEASURES  
19 TO REMOVE OR CONTAIN HAZARDOUS SUBSTANCES THAT HAVE BEEN RELEASED  
20 WHEN THOSE MEASURES ARE TECHNICALLY PRACTICABLE, COST EFFECTIVE,  
21 AND PROVIDE ENVIRONMENTAL BENEFIT. AT A FACILITY WHERE HAZARDOUS  
22 SUBSTANCES HAVE BEEN RELEASED, AND THOSE HAZARDOUS SUBSTANCES  
23 HAVE NOT YET AFFECTED GROUNDWATER BUT ARE LIKELY TO, GROUNDWATER  
24 CONTAMINATION SHALL BE PREVENTED IF IT CAN BE PREVENTED BY MEA-  
25 SURES THAT ARE TECHNICALLY PRACTICABLE, COST EFFECTIVE, AND PRO-  
26 VIDE ENVIRONMENTAL BENEFIT.

1 (F) ~~(e)~~ Immediately identify and eliminate any threat of  
2 fire or explosion or any direct contact hazards.

3 (G) ~~(f)~~ Immediately initiate removal of a hazardous sub-  
4 stance that is in a liquid phase, that is not dissolved in water,  
5 and that has been released.

6 (2) Except as provided in subsection (3), a person that  
7 holds an easement interest in a portion of a property that has  
8 knowledge that there may be a release within that easement shall  
9 report the release to the department within 24 hours after  
10 obtaining knowledge of the release. Unless the department estab-  
11 lishes through rules alternate or additional reportable quanti-  
12 ties as necessary to protect the public health, safety, or wel-  
13 fare, or the environment, this subsection shall apply to report-  
14 able quantities of hazardous substances established pursuant to  
15 40 C.F.R. 302.4 (1989).

16 (3) The requirements of subsections (1) and (2) do not apply  
17 to a permitted release or a release in compliance with applicable  
18 federal, state, and local air pollution control laws.

19 (4) An owner or operator of a facility or a person notified  
20 by the department as potentially liable pursuant to section 12,  
21 upon written request by the director, shall take the following  
22 additional actions:

23 (a) Provide a plan for and undertake interim response  
24 activities.

25 (b) Provide a plan for and undertake evaluation activities.

1 (c) Take any other response activity determined by the  
2 department to be technically sound and necessary to protect the  
3 public health, safety, welfare, or the environment.

4 (d) Submit to the department for approval a remedial action  
5 plan that, when implemented, will achieve the cleanup levels  
6 specified in rules promulgated under this act.

7 (e) Implement an approved remedial action plan in accordance  
8 with a schedule approved by the department pursuant to this act.

9 (5) Upon a determination by the department that a person has  
10 completed all response activity at a facility pursuant to an  
11 approved remedial action plan prepared and implemented in compli-  
12 ance with rules promulgated under this act, the department, upon  
13 request of a person, shall execute and present a document stating  
14 that all response activities required in the approved remedial  
15 action plan have been completed.

16 (6) A person in charge of a facility from which a hazardous  
17 substance is released that is determined to be reportable under  
18 subsection (1)(c), other than a permitted release, that fails to  
19 notify the department within 24 hours after obtaining knowledge  
20 of the release or that submits in such notification any informa-  
21 tion that the person knows to be false or misleading is subject  
22 to a civil fine of not more than \$25,000.00 for each day in which  
23 the violation occurs or the failure to comply continues. A fine  
24 imposed under this subsection shall be based upon the seriousness  
25 of the violation and any good faith efforts by the violator to  
26 comply with this subsection.

1           (7) If a state or local unit of government obtains  
2 information that there is a release or threat of release on  
3 public property, and is requested by the department to undertake  
4 response activity, or takes emergency action that has been  
5 approved by the department, and the state or local unit of gov-  
6 ernment incurs expenses in taking the actions, the expenses of  
7 the state or local unit of government shall be reimbursed from  
8 the Michigan environmental assurance fund if enabling legislation  
9 creating the fund is enacted into law and if each of the follow-  
10 ing is established:

11           (a) The release or threat of release was not discovered or  
12 should not have been discovered pursuant to section  
13 12a(2)(b)(ii).

14           (b) The state or local unit of government did not cause or  
15 contribute to the release or threat of release.

16           (c) The state or local unit of government is not liable  
17 under section 12 for the release or threat of release.

18           (8) This section shall not do either of the following:

19           (a) Limit the authority of the department to take or conduct  
20 response activities pursuant to this act.

21           (b) Limit the liability of a person that may be liable under  
22 section 12.

23           Sec. 10c. (1) A person that has knowledge or information or  
24 is on notice through a recorded instrument that a parcel of his  
25 or her real property is a facility at which there has been a  
26 release, in a quantity required to be reported pursuant to  
27 section 10a(1)(c), shall not transfer an interest in that real

1 property unless he or she provides written notice to the  
2 purchaser or other person to whom the property is transferred  
3 that the real property is such a facility and discloses the gen-  
4 eral nature and extent of the release. The written notice pro-  
5 vided by the transferor shall be a separate instrument and, if  
6 the instrument conveying the interest in real property is  
7 recorded, the written notice shall be recorded with the register  
8 of deeds in the same county.

9 (2) The owner of real property for which a notice required  
10 in subsection (1) has been recorded may, upon completion of all  
11 response activities for the facility as approved by the depart-  
12 ment, record with the register of deeds for the appropriate  
13 county a certification that all response activity required in an  
14 approved remedial action plan has been completed.

15 (3) A PERSON SHALL NOT TRANSFER AN INTEREST IN REAL PROPERTY  
16 UNLESS THE PERSON FULLY DISCLOSES ANY LAND OR RESOURCE USE  
17 RESTRICTIONS THAT APPLY TO THAT REAL PROPERTY AS A PART OF REME-  
18 DIAL ACTION THAT HAS BEEN IMPLEMENTED IN COMPLIANCE WITH  
19 SECTION 10G.

20 Sec. 10e. (1) The department may take response activity or  
21 approve of response activity proposed by a person that is consis-  
22 tent with any rules promulgated under this act relating to the  
23 selection and implementation of response activity that the  
24 department concludes is necessary and appropriate to protect the  
25 public health, safety, welfare, or the environment.

26 (2) Remedial action undertaken under subsection (1) shall at  
27 a minimum accomplish all of the following:

1 (a) Assure the protection of the public health, safety,  
2 welfare, or the environment.

3 (b) ~~Attain~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5)  
4 AND (6), ATTAIN a degree of cleanup and control of hazardous sub-  
5 stances that complies with all applicable or relevant and appro-  
6 priate requirements, rules, criteria, limitations, and standards  
7 of state and federal environmental law.

8 (c) ~~Be~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5) AND  
9 (6), BE consistent with any cleanup standards incorporated in any  
10 rules promulgated under this act.

11 (3) The cost effectiveness of alternative means of complying  
12 with this section shall be considered by the department only in  
13 selecting among alternatives that meet all of the criteria of  
14 subsection (2).

15 (4) Remedial actions that permanently and significantly  
16 reduce the volume, toxicity, or mobility of the hazardous sub-  
17 stances are to be preferred.

18 (5) FOR SITES CONTAMINATED PRIOR TO THE EFFECTIVE DATE OF  
19 SECTION 10G, THE DIRECTOR MAY SELECT OR APPROVE OF A REMEDIAL  
20 ACTION PLAN MEETING THE CRITERIA PROVIDED FOR IN SECTION 10G THAT  
21 DOES NOT ATTAIN A DEGREE OF CONTROL OR CLEANUP OF HAZARDOUS SUB-  
22 STANCES THAT COMPLIES WITH R 299.5705(5) OR R 299.5705(6) OF THE  
23 MICHIGAN ADMINISTRATIVE CODE, OR BOTH, IF THE DIRECTOR MAKES A  
24 FINDING THAT THE REMEDIAL ACTION IS PROTECTIVE OF THE PUBLIC  
25 HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT. NOTWITHSTANDING  
26 ANY OTHER PROVISION OF THIS SUBSECTION, THE DIRECTOR SHALL NOT  
27 APPROVE OF A REMEDIAL ACTION PLAN WHICH DOES NOT ATTAIN A DEGREE

1 OF CONTROL OR CLEANUP OF HAZARDOUS SUBSTANCES THAT COMPLIES WITH  
2 R 299.5705(5) OR R 299.5705(6) OF THE MICHIGAN ADMINISTRATIVE  
3 CODE IF THE RELEASE WAS NEGLIGENT, GROSSLY NEGLIGENT, OR INTEN-  
4 TIONAL, UNLESS ATTAINING THAT DEGREE OF CONTROL IS TECHNICALLY  
5 INFEASIBLE, OR THE ADVERSE ENVIRONMENTAL IMPACT OF IMPLEMENTING A  
6 REMEDIAL ACTION TO SATISFY THE RULE WOULD EXCEED THE ENVIRONMEN-  
7 TAL BENEFIT OF THAT REMEDIAL ACTION.

8 (6) A REMEDIAL ACTION PLAN MAY BE SELECTED OR APPROVED PUR-  
9 SUANT TO SUBSECTION (5) WITH REGARD TO R 299.5705(5) OF THE  
10 MICHIGAN ADMINISTRATIVE CODE, IF THE DIRECTOR DETERMINES, BASED  
11 ON THE ADMINISTRATIVE RECORD, THAT 1 OR BOTH OF THE FOLLOWING  
12 CONDITIONS ARE SATISFIED:

13 (A) COMPLIANCE WITH THE REQUIREMENT IS TECHNICALLY  
14 IMPRACTICABLE.

15 (B) THE ADVERSE ENVIRONMENTAL IMPACT OF IMPLEMENTING A REME-  
16 DIAL ACTION TO SATISFY THE RULE WOULD EXCEED THE ENVIRONMENTAL  
17 BENEFIT OF THAT REMEDIAL ACTION.

18 (7) A REMEDIAL ACTION PLAN MAY BE SELECTED OR APPROVED PUR-  
19 SUANT TO SUBSECTION (5) WITH REGARD TO R 299.5705(6) OF THE  
20 MICHIGAN ADMINISTRATIVE CODE, IF THE DIRECTOR DETERMINES, BASED  
21 ON THE ADMINISTRATIVE RECORD, THAT 1 OR MORE OF THE FOLLOWING  
22 CONDITIONS ARE SATISFIED:

23 (A) COMPLIANCE WITH AN APPLICABLE RULE IS TECHNICALLY  
24 IMPRACTICABLE.

25 (B) THE REMEDIAL ACTION SELECTED OR APPROVED WILL, WITHIN A  
26 REASONABLE PERIOD OF TIME, ATTAIN A STANDARD OF PERFORMANCE THAT



1 IS EQUIVALENT TO THAT REQUIRED UNDER AN OTHERWISE APPLICABLE  
2 RULE.

3 (C) THE ADVERSE ENVIRONMENTAL IMPACT OF IMPLEMENTING A REME-  
4 DIAL ACTION TO SATISFY THE RULE WOULD EXCEED THE ENVIRONMENTAL  
5 BENEFIT OF THE REMEDIAL ACTION.

6 (D) THE REMEDIAL ACTION PROVIDES FOR THE REDUCTION OF HAZ-  
7 ARDOUS SUBSTANCE CONCENTRATIONS IN THE AQUIFER THROUGH A NATU-  
8 RALLY OCCURRING PROCESS THAT IS DOCUMENTED TO OCCUR AT THE FACIL-  
9 ITY AND BOTH OF THE FOLLOWING CONDITIONS ARE MET:

10 (i) IT HAS BEEN DEMONSTRATED THAT THERE WILL BE NO ADVERSE  
11 IMPACT ON THE ENVIRONMENT AS THE RESULT OF MIGRATION OF THE HAZ-  
12 ARDOUS SUBSTANCES DURING THE REMEDIAL ACTION, EXCEPT FOR THAT  
13 PART OF THE AQUIFER SPECIFIED IN AND APPROVED BY THE DIRECTOR IN  
14 THE REMEDIAL ACTION PLAN.

15 (ii) THE REMEDIAL ACTION INCLUDES ENFORCEABLE LAND USE  
16 RESTRICTIONS OR OTHER INSTITUTIONAL CONTROLS NECESSARY TO PREVENT  
17 UNACCEPTABLE RISK FROM EXPOSURE TO THE HAZARDOUS SUBSTANCES, AS  
18 DEFINED BY THE CLEANUP STANDARDS APPROVED AS PART OF THE REMEDIAL  
19 ACTION PLAN.

20 (8) IF THE DIRECTOR APPROVES OF A REMEDIAL ACTION PLAN PUR-  
21 SUANT, IN PART, TO SUBSECTION (5), (6), OR (7), THE ADMINISTRA-  
22 TIVE RECORD FOR THE FACILITY SHALL INCLUDE A COMPLETE EXPLANATION  
23 OF THE BASIS OF THE DIRECTOR'S DECISION UNDER SUBSECTION (5),  
24 (6), OR (7). IN ADDITION, THE INTENT OF AND THE BASIS FOR THE  
25 EXERCISE OF AUTHORITY PROVIDED FOR IN SUBSECTIONS (5), (6), AND  
26 (7) SHALL BE PART OF AN ANALYSIS OF THE RECOMMENDED ALTERNATIVES

1 IF 1 IS REQUIRED PURSUANT TO R 299.5605(1)(A) OF THE MICHIGAN  
2 ADMINISTRATIVE CODE.

3 (9) A REMEDIAL ACTION PLAN APPROVED BY THE DEPARTMENT SHALL  
4 INCLUDE AN ANALYSIS OF SOURCE CONTROL MEASURES ALREADY IMPL-  
5 MENTED OR PROPOSED, AS APPROPRIATE. A REMEDIAL ACTION PLAN MAY  
6 INCORPORATE BY REFERENCE AN ANALYSIS OF SOURCE CONTROL MEASURES  
7 PROVIDED IN A FEASIBILITY STUDY.

8 (10) ANY LIABILITY A PERSON MAY HAVE UNDER THIS ACT SHALL BE  
9 UNAFFECTED BY A DECISION OF THE DIRECTOR PURSUANT TO  
10 SUBSECTION (5), (6), OR (7), INCLUDING LIABILITY FOR NATURAL  
11 RESOURCES DAMAGES PURSUANT TO SECTION 12(2)(C).

12 (11) A MONITORING PLAN SHALL BE PART OF ALL REMEDIAL ACTION  
13 PLANS WHICH ADDRESS AQUIFER CONTAMINATION. THAT MONITORING PLAN  
14 SHALL INCLUDE ALL OF THE FOLLOWING:

15 (A) INFORMATION ADDRESSED BY THE PROVISIONS OF  
16 R 299.5519(2)(A) TO (1) OF THE MICHIGAN ADMINISTRATIVE CODE.

17 (B) IDENTIFICATION OF POINTS OF COMPLIANCE FOR JUDGING THE  
18 EFFECTIVENESS OF THE REMEDIAL ACTION.

19 (C) IDENTIFICATION OF POINTS OF COMPLIANCE IF STANDARDS  
20 BASED ON SECTION 10G(1)(A) ARE REQUIRED TO BE MET AS PART OF THE  
21 REMEDIAL ACTION.

22 (12) THE DEPARTMENT MAY DETERMINE THAT A MONITORING PLAN IS  
23 NOT REQUIRED PURSUANT TO SUBSECTION (9) IF THE PERSON CONDUCTING  
24 THE REMEDIAL ACTION DEMONSTRATES THAT THE HORIZONTAL AND VERTICAL  
25 EXTENT OF HAZARDOUS SUBSTANCE CONCENTRATIONS IN THE AQUIFER ABOVE  
26 THOSE ALLOWED BY THE STANDARDS BASED ON SECTION 10G(1)(A) WILL  
27 NOT SIGNIFICANTLY INCREASE IN THE ABSENCE OF ACTIVE REMOVAL OF

1 THOSE HAZARDOUS SUBSTANCES FROM THE AQUIFER. THE DEPARTMENT'S  
2 DETERMINATION PURSUANT TO THIS SUBSECTION SHALL BE BASED ON THE  
3 ADMINISTRATIVE RECORD AND INCLUDE AN EXPLANATION OF THE BASIS FOR  
4 THE DETERMINATION.

5 (13) ~~(5)~~ The department shall encourage the use of innova-  
6 tive cleanup technologies. Before July 1, 1995, the department  
7 shall undertake 3 pilot projects to demonstrate innovative  
8 cleanup technologies at facilities where money from the fund is  
9 used.

10 ~~(6) At a facility where state funds will be spent to plan~~  
11 ~~or implement a remedial action plan or where the director deter-~~  
12 ~~mines there is a significant public interest, within 30 days~~  
13 ~~after the completion of a remedial investigation for the facili-~~  
14 ~~ty, the department shall provide the county and the township,~~  
15 ~~city, or village in which the facility is located a notice of the~~  
16 ~~completion of the remedial investigation, a summary of the reme-~~  
17 ~~dial investigation, and notice of an opportunity for the people~~  
18 ~~in the local unit of government to meet with the department~~  
19 ~~regarding the remedial investigation and any proposed feasibility~~  
20 ~~study for the facility. Upon a request for a public meeting by~~  
21 ~~the governing body of the local unit of government or by 25 citi-~~  
22 ~~zens of the local unit of government, the department shall,~~  
23 ~~within 30 days of the request, meet with persons in the local~~  
24 ~~unit of government. The person or persons requesting the public~~  
25 ~~meeting shall publicize and provide accommodations for the~~  
26 ~~meeting. The meeting shall be held in the local unit of~~  
27 ~~government in which the facility is located. The department~~

~~1 shall provide copies of the notices and summary required in this  
2 subsection to the governing body of the local unit of government,  
3 to the known persons that may be liable under section 12, and to  
4 the main public library of the local unit of government in which  
5 the facility is located. The department shall send representa-  
6 tives to the meeting who are familiar with the facility and who  
7 are involved with determining the appropriate remedial actions to  
8 be taken at the facility. Persons that may be responsible under  
9 section 12 for the facility may send representatives to the  
10 meeting.~~

~~11 (7) Before approval of a proposed remedial action plan at a  
12 facility included on the list pursuant to section 6 that is not  
13 an interim response activity, if money from the fund is to be  
14 used or as specified in rules promulgated under this act, the  
15 department shall do all of the following:~~

~~16 (a) Publish a notice and brief summary of the proposed reme-  
17 dial action plan.~~

~~18 (b) Provide for public review and comment pertinent to docu-  
19 ments relating to the proposed remedial action plan, including,  
20 if applicable, the feasibility study that outlines alternative  
21 remedial action measures considered.~~

~~22 (c) Provide an opportunity for a public meeting at or near  
23 the facility when any of the following occur:~~

~~24 (i) The department determines that there is a significant  
25 public interest or that for any other reason a public meeting is  
26 appropriate.~~

1       ~~(ii) A city, township, or village in which the facility is~~  
2 ~~located, by a majority vote of its governing body, requests a~~  
3 ~~public meeting.~~

4       ~~(iii) A local health department with jurisdiction in the~~  
5 ~~area in which the facility is located requests a public meeting.~~

6       ~~(d) Provide a document that summarizes the major issues~~  
7 ~~raised by the public and how they are to be addressed by the~~  
8 ~~final approved remedial action plan.~~

9       ~~(8) For purposes of this section, publication shall include,~~  
10 ~~at a minimum, publication in a major local newspaper of general~~  
11 ~~circulation in this state. In addition, the administrative~~  
12 ~~record shall be made available by the department for inspection~~  
13 ~~by members of the public at or near the facility and in Lansing.~~

14       ~~(9) The department shall prepare a summary document that~~  
15 ~~explains the reasons for the selection or approval of a remedial~~  
16 ~~action plan. In addition, the department shall compile an admin-~~  
17 ~~istrative record of the decision process that results in the~~  
18 ~~selection of a remedial action plan. The administrative record~~  
19 ~~shall contain all of the following:~~

20       ~~(a) Remedial investigation data regarding the facility.~~

21       ~~(b) If applicable, a feasibility study and potential reme-~~  
22 ~~dial actions.~~

23       ~~(c) If applicable, a summary document that explains the rea-~~  
24 ~~sons why a remedial investigation or feasibility study was not~~  
25 ~~conducted.~~

26       ~~(d) Applicable comments and information received from the~~  
27 ~~public, if any.~~

1 ~~(e) If applicable, a document that summarizes the~~  
2 ~~significant concerns raised by the members of the public and how~~  
3 ~~they are to be addressed.~~

4 ~~(f) Other information appropriate to the facility.~~

5 ~~(10) If comments or information are submitted for inclusion~~  
6 ~~in the administrative record that are not included in the admin-~~  
7 ~~istrative record, a brief explanation of why the information was~~  
8 ~~not considered relevant shall be sent to the party by the depart-~~  
9 ~~ment and included in the record.~~

10 SEC. 10G. (1) THE DEPARTMENT MAY ESTABLISH CLEANUP STAN-  
11 DARDS OR APPROVE OF REMEDIAL ACTIONS IN THE CATEGORIES LISTED IN  
12 THIS SUBSECTION. THE CATEGORY OF CLEANUP STANDARD PROPOSED SHALL  
13 BE THE OPTION OF THE PERSON PROPOSING THE REMEDIAL ACTION,  
14 SUBJECT TO DEPARTMENT APPROVAL, CONSIDERING THE APPROPRIATENESS  
15 OF THE CATEGORICAL STANDARD TO THE FACILITY. THE CATEGORIES ARE  
16 AS FOLLOWS:

17 (A) RESIDENTIAL.

18 (B) COMMERCIAL.

19 (C) RECREATIONAL.

20 (D) INDUSTRIAL.

21 (E) OTHER CATEGORIES ESTABLISHED IN GUIDELINES BY THE  
22 DEPARTMENT PURSUANT TO SUBSECTION (2).

23 (F) LIMITED RESIDENTIAL.

24 (G) LIMITED COMMERCIAL.

25 (H) LIMITED RECREATIONAL.

26 (I) LIMITED INDUSTRIAL.

1 (J) OTHER LIMITED CATEGORIES ESTABLISHED IN GUIDELINES BY  
2 THE DEPARTMENT.

3 (K) SITE SPECIFIC STANDARDS BASED ON THE REQUIREMENTS OF  
4 R 299.5717 OF THE MICHIGAN ADMINISTRATIVE CODE

5 (2) CLEANUP STANDARDS DEVELOPED PURSUANT TO SUBSECTION  
6 (1) (A) TO (E) SHALL BE BASED ON GENERIC HUMAN HEALTH RISK ASSESS-  
7 MENT ASSUMPTIONS DETERMINED BY THE DEPARTMENT TO APPROPRIATELY  
8 CHARACTERIZE PATTERNS OF EXPOSURE ASSOCIATED WITH CERTAIN LAND  
9 USES. THE DEPARTMENT MAY PRESCRIBE CLEANUP STANDARDS APPLICABLE  
10 TO MORE THAN 1 GENERIC SET OF EXPOSURE ASSUMPTIONS WITHIN EACH  
11 CATEGORY DESCRIBED IN SUBSECTION (1). THE DEPARTMENT SHALL SPEC-  
12 IFY SITE CHARACTERISTICS THAT DEFINE THE APPLICABILITY OF STAN-  
13 DARDS FROM THESE CATEGORIES OR SUBCATEGORIES. THE ALGORITHMS AND  
14 EXPOSURE ASSUMPTIONS TO BE USED FOR CALCULATION OF CATEGORICAL  
15 CLEANUP STANDARDS PURSUANT TO THIS SECTION SHALL BE SET FORTH IN  
16 GUIDELINES.

17 (3) THE DEPARTMENT SHALL NOT APPROVE OF A REMEDIAL ACTION  
18 PLAN IN CATEGORIES SET FORTH IN SUBSECTION (1) (A) TO (J), UNLESS  
19 THE PERSON PROPOSING THE PLAN DOCUMENTS THAT THE CURRENT ZONING  
20 OF THE PROPERTY IS CONSISTENT WITH THE CATEGORICAL STANDARD BEING  
21 PROPOSED, OR THAT THE GOVERNING ZONING AUTHORITY HAS CHANGED THE  
22 ZONING DESIGNATION SO THAT THE PROPOSED STANDARDS ARE CONSISTENT  
23 WITH THE NEW ZONING DESIGNATION, OR THE CURRENT PROPERTY USE IS A  
24 LEGAL NONCONFORMING USE. THE DEPARTMENT MAY APPROVE OF A REME-  
25 DIAL ACTION THAT ACHIEVES A CATEGORICAL STANDARD THAT IS BASED ON  
26 GREATER EXPOSURE POTENTIAL THAN THE STANDARD APPLICABLE TO  
27 CURRENT ZONING. THE DEPARTMENT SHALL NOT GRANT FINAL APPROVAL

1 FOR A REMEDIAL ACTION PLAN THAT RELIES ON A CHANGE IN ZONING  
2 DESIGNATION UNTIL A FINAL DETERMINATION OF THAT ZONING CHANGE HAS  
3 BEEN MADE BY THE LOCAL UNIT OF GOVERNMENT. IN ADDITION, THE  
4 REMEDIAL ACTION PLAN SHALL INCLUDE DOCUMENTATION THAT THE CURRENT  
5 PROPERTY USE IS CONSISTENT WITH THE CURRENT ZONING. ABANDONED OR  
6 INACTIVE PROPERTY SHALL BE CONSIDERED ON THE BASIS OF ZONING  
7 CLASSIFICATIONS AS DESCRIBED ABOVE.

8 (4) CLEANUP STANDARDS FROM 1 OR MORE CATEGORIES IN  
9 SUBSECTION (1) MAY BE APPLIED AT A FACILITY, IF ALL RELEVANT  
10 REQUIREMENTS ARE SATISFIED FOR APPLICATION OF A PERTINENT  
11 STANDARD.

12 (5) STANDARDS FOR THE RESIDENTIAL CATEGORY IN  
13 SUBSECTION (1)(A) SHALL BE THOSE SPECIFIED IN R 299.5709 THROUGH  
14 R 299.5715 AND R 299.5723 THROUGH R 299.5727 OF THE MICHIGAN  
15 ADMINISTRATIVE CODE, EXCEPT AS PROVIDED IN SUBSECTIONS (6) TO  
16 (9). THE NEED FOR SOIL REMEDIATION TO PROTECT AN AQUIFER FROM  
17 HAZARDOUS SUBSTANCES IN SOIL SHALL BE DETERMINED BY R 299.5711(2)  
18 OF THE MICHIGAN ADMINISTRATIVE CODE, CONSIDERING THE VULNERABIL-  
19 ITY OF THE AQUIFER OR AQUIFERS POTENTIALLY AFFECTED IF THE SOIL  
20 REMAINS AT THE FACILITY. MIGRATION OF HAZARDOUS SUBSTANCES IN  
21 SOIL TO AN AQUIFER IS A PERTINENT PATHWAY IF APPROPRIATE BASED ON  
22 CONSIDERATION OF SITE SPECIFIC FACTORS.

23 (6) THE DEPARTMENT MAY ESTABLISH IN GUIDELINES CLEANUP STAN-  
24 DARDS FOR A HAZARDOUS SUBSTANCE USING THE INTEGRATED UPTAKE BIO-  
25 KINETIC MODEL DEVELOPED BY THE UNITED STATES ENVIRONMENTAL PRO-  
26 TECTION AGENCY IF THE DEPARTMENT DETERMINES ALL OF THE  
27 FOLLOWING:



1 (A) THAT APPLICATION OF THE MODEL RESULTS IN A STANDARD THAT  
2 MORE ACCURATELY REFLECTS THE RISK POSED.

3 (B) THAT DATA OF SUFFICIENT QUANTITY AND QUALITY ARE AVAIL-  
4 ABLE FOR A SPECIFIED HAZARDOUS SUBSTANCE TO ALLOW THE SCIENTIF-  
5 ICALLY VALID APPLICATION OF THE MODEL.

6 (C) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS  
7 DETERMINED THAT APPLICATION OF THE MODEL IS APPROPRIATE FOR THE  
8 HAZARDOUS SUBSTANCE IN QUESTION.

9 (7) IF THE CLEANUP STANDARD FOR A HAZARDOUS SUBSTANCE DETER-  
10 MINED BY R 299.5707 OF THE MICHIGAN ADMINISTRATIVE CODE IS  
11 GREATER THAN A CLEANUP STANDARD DEVELOPED FOR A CATEGORY PURSUANT  
12 TO SUBSECTION (1), THE STANDARD DETERMINED PURSUANT TO R 299.5707  
13 OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE CLEANUP STANDARD  
14 FOR THAT HAZARDOUS SUBSTANCE IN THAT CATEGORY.

15 (8) IF THE CLEANUP STANDARD FOR POLYCHLORINATED BIPHENYLS  
16 DETERMINED PURSUANT TO R 299.5711(8) OF THE MICHIGAN ADMINISTRA-  
17 TIVE CODE IS GREATER THAN THE STANDARD DEVELOPED FOR A CATEGORY  
18 PURSUANT TO SUBSECTION (1), THE STANDARD DETERMINED PURSUANT TO  
19 R 299.5711(8) OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE  
20 CLEANUP STANDARD FOR POLYCHLORINATED BIPHENYLS, PROVIDED THAT THE  
21 REQUIREMENTS OF THE FEDERAL REGULATION CITED IN R 299.5711(8) OF  
22 THE MICHIGAN ADMINISTRATIVE CODE ARE APPLICABLE TO THE RELEASE  
23 BEING ADDRESSED.

24 (9) RESPONSE ACTIVITY TO ADDRESS THE RELEASE OF UNCONTAMI-  
25 NATED MINERAL OIL SATISFIES R 299.5709 FOR GROUNDWATER OR  
26 R 299.5711 FOR SOIL UNDER THE MICHIGAN ADMINISTRATIVE CODE IF ALL

1 VISIBLE TRACES OF MINERAL OIL ARE REMOVED FROM GROUNDWATER OR  
2 SOIL.

3 (10) APPROVAL BY THE DEPARTMENT OF A REMEDIAL ACTION PLAN  
4 FOR THE RESIDENTIAL, COMMERCIAL, RECREATIONAL, OR INDUSTRIAL CAT-  
5 EGORY IN SUBSECTION (1) SHALL BE GRANTED ONLY IF THE PERTINENT  
6 STANDARDS ARE SATISFIED THROUGHOUT THE AFFECTED MEDIA. THE  
7 DEPARTMENT MAY USE TESTS OF STATISTICAL SIGNIFICANCE AND OTHER  
8 SCIENTIFIC METHODS OF EVALUATING ENVIRONMENTAL DATA WHEN DETER-  
9 MINING COMPLIANCE WITH A PERTINENT CLEANUP STANDARD IF THE  
10 METHODS ARE DETERMINED BY THE DEPARTMENT TO BE RELIABLE AND BEST  
11 REPRESENT ACTUAL SITE CONDITIONS.

12 (11) A REMEDIAL ACTION PLAN SHALL PROVIDE RESPONSE ACTIVITY  
13 TO MEET THE RESIDENTIAL CATEGORICAL STANDARDS, OR PROVIDE FOR  
14 ACCEPTABLE LAND USE OR RESOURCE USE RESTRICTIONS PURSUANT TO SEC-  
15 TION 10H.

16 (12) A REMEDIAL ACTION PLAN THAT RELIES ON CATEGORICAL  
17 CLEANUP STANDARDS DEVELOPED PURSUANT TO SUBSECTION (1) SHALL ALSO  
18 CONSIDER OTHER FACTORS NECESSARY TO PROTECT THE PUBLIC HEALTH,  
19 SAFETY, WELFARE, AND THE ENVIRONMENT AS SPECIFIED BY THE DEPART-  
20 MENT, IF THE DEPARTMENT DETERMINES BASED ON DATA AND EXISTING  
21 INFORMATION THAT SUCH CONSIDERATIONS ARE RELEVANT TO A SPECIFIC  
22 SITE. THESE FACTORS INCLUDE, BUT ARE NOT LIMITED TO, THE PROTEC-  
23 TION OF SURFACE WATER QUALITY AND CONSIDERATION OF ECOLOGICAL  
24 RISKS IF PERTINENT TO THE FACILITY BASED ON THE REQUIREMENTS OF  
25 R 299.5717 OF THE MICHIGAN ADMINISTRATIVE CODE.

26 SEC. 10H. (1) IF A REMEDIAL ACTION PLAN IS SELECTED OR  
27 APPROVED BY THE DEPARTMENT BASED ON STANDARDS FOR THE RESIDENTIAL

1 CATEGORY PROVIDED FOR IN SECTION 10G(1) (A), LAND USE RESTRICTIONS  
2 OR MONITORING ARE NOT REQUIRED ONCE THOSE STANDARDS HAVE BEEN  
3 ACHIEVED BY THE REMEDIAL ACTION.

4 (2) IF A REMEDIAL ACTION PLAN IS SELECTED OR APPROVED BY THE  
5 DEPARTMENT BASED ON STANDARDS IN CATEGORIES PROVIDED FOR IN  
6 SECTION 10G(1) (B) TO (E), A NOTICE OF APPROVED ENVIRONMENTAL  
7 REMEDIATION SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE  
8 COUNTY IN WHICH THE FACILITY IS LOCATED WITHIN 21 DAYS AFTER  
9 SELECTION OR APPROVAL BY THE DEPARTMENT OF THE REMEDIAL ACTION,  
10 OR WITHIN 21 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE REME-  
11 DIAL ACTION AS APPROPRIATE TO THE CIRCUMSTANCES. A NOTICE SHALL  
12 BE FILED PURSUANT TO THIS SECTION ONLY BY THE PROPERTY OWNER OR  
13 WITH THE EXPRESS WRITTEN PERMISSION OF THE PROPERTY OWNER. THE  
14 FORM AND CONTENT OF THE NOTICE ARE SUBJECT TO APPROVAL BY THE  
15 STATE. ANY RESTRICTIONS CONTAINED IN THE NOTICE SHALL BE BINDING  
16 ON THE OWNER'S SUCCESSORS, ASSIGNS, AND LESSEES, AND SHALL RUN  
17 WITH THE LAND. A NOTICE OF ENVIRONMENTAL REMEDIATION RECORDED  
18 PURSUANT TO THIS SUBSECTION SHALL STATE THE DEPARTMENT'S DETERMI-  
19 NATION, AS THE RESULT OF THE APPROVAL OF A REMEDIAL ACTION PLAN  
20 PURSUANT TO SECTION 10E, AS TO WHICH OF THE CATEGORIES OF LAND  
21 USE SPECIFIED IN SECTION 10G(1) (B) TO (D) ARE CONSISTENT WITH THE  
22 ENVIRONMENTAL CONDITIONS AT THE PROPERTY TO WHICH THE NOTICE  
23 APPLIES, AND THAT A CHANGE FROM THAT LAND USE OR USES MAY NECES-  
24 SITATE FURTHER EVALUATION OF POTENTIAL RISKS TO THE PUBLIC  
25 HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT. THE NOTICE OF  
26 APPROVED ENVIRONMENTAL REMEDIATION SHALL INCLUDE A SURVEY AND  
27 PROPERTY DESCRIPTION THAT DEFINE THE AREAS ADDRESSED BY THE

1 REMEDIAL ACTION PLAN AND THE SCOPE OF ANY LAND USE OR RESOURCE  
2 USE LIMITATIONS. ADDITIONAL REQUIREMENTS FOR FINANCIAL ASSUR-  
3 ANCE, MONITORING, OR OPERATION, AND MAINTENANCE DO NOT APPLY IF A  
4 REMEDIAL ACTION COMPLIES WITH STANDARDS PROVIDED FOR IN  
5 SECTION 10G(1)(B) TO (E), UNLESS MONITORING OR OPERATION AND  
6 MAINTENANCE ARE REQUIRED TO ASSURE THE COMPLIANCE WITH STANDARDS  
7 THAT APPLY OUTSIDE THE BOUNDARY OF THE PROPERTY THAT IS THE  
8 SOURCE OF THE RELEASE.

9 (3) IF A REMEDIAL ACTION PLAN IS SELECTED OR APPROVED BY THE  
10 DEPARTMENT BASED ON STANDARDS PROVIDED FOR IN SECTION 10G(1)(F)  
11 TO (K), PROVISIONS CONCERNING SUBDIVISIONS (A) THROUGH (E) SHALL  
12 BE STIPULATED IN A LEGALLY ENFORCEABLE AGREEMENT WITH THE  
13 DEPARTMENT. IF THE DEPARTMENT CONCURS WITH AN ANALYSIS PROVIDED  
14 IN A REMEDIAL ACTION PLAN THAT 1 OR MORE OF THE REQUIREMENTS  
15 SPECIFIED IN SUBDIVISIONS (B) TO (E) IS NOT NECESSARY TO PROTECT  
16 THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT AND TO  
17 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL ACTION,  
18 THAT ELEMENT MAY BE OMITTED FROM THE AGREEMENT. IF PROVISIONS  
19 FOR ANY OF THE FOLLOWING, DETERMINED BY THE DEPARTMENT TO BE  
20 APPLICABLE FOR A FACILITY, LAPSE OR ARE NOT COMPLIED WITH AS PRO-  
21 VIDED IN THE AGREEMENT OR REMEDIAL ACTION PLAN, THE DEPARTMENT'S  
22 APPROVAL OF THE REMEDIAL ACTION PLAN IS VOID FROM THE TIME OF THE  
23 LAPSE OR VIOLATION, UNLESS THE LAPSE OR VIOLATION IS CORRECTED TO  
24 THE SATISFACTION OF THE DEPARTMENT:

25 (A) LAND USE RESTRICTIONS.

26 (B) MONITORING.

1 (C) OPERATION AND MAINTENANCE.

2 (D) PERMANENT MARKERS TO DESCRIBE RESTRICTED AREAS OF THE  
3 SITE AND THE NATURE OF ANY RESTRICTIONS.

4 (E) FINANCIAL ASSURANCE, IN A MECHANISM ACCEPTABLE TO THE  
5 DEPARTMENT TO PAY FOR MONITORING, OPERATION AND MAINTENANCE,  
6 OVERSIGHT, AND OTHER COSTS DETERMINED BY THE DEPARTMENT TO BE  
7 NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REME-  
8 DIAL ACTION.

9 (4) IF A REMEDIAL ACTION PLAN RELIES IN WHOLE OR IN PART ON  
10 CLEANUP STANDARDS APPROVED PURSUANT TO SECTION 10G (1)(F) TO (K),  
11 LAND USE OR RESOURCE USE RESTRICTIONS TO ASSURE THE EFFECTIVENESS  
12 AND INTEGRITY OF ANY CONTAINMENT, EXPOSURE BARRIER, OR OTHER LAND  
13 USE OR RESOURCE USE RESTRICTIONS NECESSARY TO ASSURE THE EFFEC-  
14 TIVENESS AND INTEGRITY OF THE REMEDY SHALL BE DESCRIBED IN A  
15 RESTRICTIVE COVENANT. THE RESTRICTIVE COVENANT SHALL BE RECORDED  
16 WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE PROPERTY  
17 IS LOCATED WITHIN 21 DAYS OF THE DEPARTMENT'S SELECTION OR  
18 APPROVAL OF THE REMEDIAL ACTION PLAN, OR WITHIN 21 DAYS OF THE  
19 COMPLETION OF CONSTRUCTION OF THE CONTAINMENT OR BARRIER, AS  
20 APPROPRIATE TO THE CIRCUMSTANCES. THE RESTRICTIVE COVENANT SHALL  
21 BE FILED BY THE PROPERTY OWNER OR WITH THE EXPRESS WRITTEN PER-  
22 MISSION OF THE PROPERTY OWNER. THE RESTRICTIONS SHALL RUN WITH  
23 THE LAND AND BE BINDING ON THE OWNER'S SUCCESSORS, ASSIGNS, AND  
24 LESSEES. SUCH RESTRICTIONS SHALL APPLY UNTIL THE DEPARTMENT  
25 DETERMINES THAT HAZARDOUS SUBSTANCES THAT ARE CONTROLLED BY THE  
26 BARRIER OR CONTAINED NO LONGER PRESENT AN UNACCEPTABLE RISK TO  
27 THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT AS DEFINED

1 BY THE STANDARDS AND EXPOSURE CONTROL REQUIREMENTS SET FORTH IN  
2 THE REMEDIAL ACTION PLAN. THE RESTRICTIVE COVENANT SHALL INCLUDE  
3 A SURVEY AND PROPERTY DESCRIPTION THAT DEFINE THE AREAS ADDRESSED  
4 BY THE REMEDIAL ACTION PLAN AND THE SCOPE OF ANY LAND USE OR  
5 RESOURCE USE LIMITATIONS. THE FORM AND CONTENT OF THE RESTRICTIVE  
6 COVENANT ARE SUBJECT TO APPROVAL BY THE DEPARTMENT AND SHALL  
7 INCLUDE PROVISIONS TO ACCOMPLISH ALL OF THE FOLLOWING:

8 (A) RESTRICT ACTIVITIES AT THE FACILITY THAT MAY INTERFERE  
9 WITH A REMEDIAL ACTION, OPERATION AND MAINTENANCE, MONITORING, OR  
10 OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEG-  
11 RITY OF THE REMEDIAL ACTION.

12 (B) RESTRICT ACTIVITIES THAT MAY RESULT IN EXPOSURES ABOVE  
13 LEVELS ESTABLISHED IN THE REMEDIAL ACTION PLAN.

14 (C) REQUIRE NOTICE TO THE DEPARTMENT OF THE OWNER'S INTENT  
15 TO CONVEY ANY INTEREST IN THE FACILITY 14 DAYS PRIOR TO CONSUM-  
16 MATING THE CONVEYANCE. A CONVEYANCE OF TITLE, AN EASEMENT, OR  
17 OTHER INTEREST IN THE PROPERTY SHALL NOT BE CONSUMMATED BY THE  
18 PROPERTY OWNER WITHOUT ADEQUATE AND COMPLETE PROVISION FOR COM-  
19 PLIANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT DESCRIBED  
20 IN SUBSECTION (3) AND THE PREVENTION OF RELEASES AND EXPOSURES  
21 DESCRIBED IN SUBDIVISION (B).

22 (D) GRANT TO THE DEPARTMENT AND ITS DESIGNATED REPRESENTA-  
23 TIVES THE RIGHT TO ENTER THE PROPERTY AT REASONABLE TIMES FOR THE  
24 PURPOSE OF DETERMINING AND MONITORING COMPLIANCE WITH THE REME-  
25 DIAL ACTION PLAN, INCLUDING THE RIGHT TO TAKE SAMPLES, INSPECT  
26 THE OPERATION OF THE REMEDIAL ACTION MEASURES, AND INSPECT  
27 RECORDS.

1 (E) ALLOW THE STATE TO ENFORCE THE RESTRICTION SET FORTH IN  
2 THE COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE  
3 JURISDICTION.

4 (F) DESCRIBE GENERALLY THE USES OF THE PROPERTY THAT ARE  
5 CONSISTENT WITH THE CATEGORICAL STANDARDS AND LIMITATIONS  
6 APPROVED AS PART OF A REMEDIAL ACTION PLAN.

7 (5) IF THE DEPARTMENT DETERMINES THAT EXPOSURE TO HAZARDOUS  
8 SUBSTANCES MAY BE RELIABLY RESTRICTED BY AN INSTITUTIONAL CONTROL  
9 IN LIEU OF A RESTRICTIVE COVENANT, AND THAT IMPOSITION OF LAND  
10 USE OR RESOURCE USE RESTRICTIONS THROUGH RESTRICTIVE COVENANTS IS  
11 IMPRACTICAL, THE DEPARTMENT MAY APPROVE OF A REMEDIAL ACTION PLAN  
12 UNDER SECTION 10G(1)(F) TO (K) THAT RELIES ON SUCH INSTITUTIONAL  
13 CONTROL. MECHANISMS THAT MAY BE CONSIDERED PURSUANT TO THIS SUB-  
14 SECTION INCLUDE, BUT ARE NOT LIMITED TO, AN ORDINANCE THAT PRO-  
15 HIBITS THE USE OF GROUNDWATER OR AN AQUIFER IN A MANNER AND TO A  
16 DEGREE THAT PROTECTS AGAINST UNACCEPTABLE EXPOSURES AS DEFINED BY  
17 THE STANDARDS APPROVED AS PART OF THE REMEDIAL ACTION PLAN. AN  
18 ORDINANCE THAT SERVES AS AN EXPOSURE CONTROL PURSUANT TO THIS  
19 SUBSECTION SHALL BE FILED WITH THE REGISTER OF DEEDS AS AN ORDI-  
20 NANCE AFFECTING MULTIPLE PROPERTIES AND SHALL INCLUDE A REQUIRE-  
21 MENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY THE DEPARTMENT AT  
22 LEAST 30 DAYS PRIOR TO ADOPTING A MODIFICATION TO THE ORDINANCE,  
23 OR TO THE LAPSING OR REVOCATION OF THE ORDINANCE.

24 (6) SELECTION OR APPROVAL BY THE DEPARTMENT OF A REMEDIAL  
25 ACTION DOES NOT RELIEVE A PERSON THAT MAY BE LIABLE UNDER  
26 SECTION 12 OF THAT PERSON'S RESPONSIBILITY TO REPORT AND PROVIDE

1 FOR RESPONSE ACTIVITY TO ADDRESS A SUBSEQUENT RELEASE OR THREAT  
2 OF RELEASE AT THE FACILITY.

3 (7) A REMEDIAL ACTION SHALL NOT BE CONSIDERED APPROVED BY  
4 THE DEPARTMENT UNLESS A REMEDIAL ACTION PLAN IS SUBMITTED TO THE  
5 DEPARTMENT AND THE DEPARTMENT APPROVES THE PLAN. IMPLEMENTATION  
6 BY ANY PERSON OF RESPONSE ACTIVITY WITHOUT DEPARTMENT APPROVAL  
7 DOES NOT RELIEVE THAT PERSON OF AN OBLIGATION TO UNDERTAKE  
8 RESPONSE ACTION OR LIMIT THE ABILITY OF THE DEPARTMENT TO TAKE  
9 ACTION TO REQUIRE RESPONSE ACTIVITY NECESSARY TO COMPLY WITH THIS  
10 ACT BY A PERSON THAT MAY BE LIABLE UNDER SECTION 12.

11 (8) A PERSON SHALL NOT FILE A NOTICE OF APPROVED ENVIRONMEN-  
12 TAL REMEDIATION INDICATING APPROVAL OR A DETERMINATION OF THE  
13 DEPARTMENT UNLESS THE DEPARTMENT HAS APPROVED OF THE FILING OF  
14 THE NOTICE. FILING OF THE NOTICE WITHOUT DEPARTMENT APPROVAL IS  
15 A VIOLATION OF THIS ACT SUBJECT TO CRIMINAL PENALTIES UNDER  
16 SECTION 16B AND OTHER REMEDIES PROVIDED FOR IN THIS ACT.

17 (9) A PERSON THAT IMPLEMENTS A REMEDIAL ACTION PLAN APPROVED  
18 BY THE DEPARTMENT PURSUANT TO SUBSECTIONS (2) TO (5) SHALL PRO-  
19 VIDE NOTICE OF THE LAND USE RESTRICTIONS THAT ARE PART OF THE  
20 REMEDIAL ACTION PLAN TO THE ZONING AUTHORITY FOR THE LOCAL UNIT  
21 OF GOVERNMENT IN WHICH THE FACILITY IS LOCATED WITHIN 30 DAYS OF  
22 APPROVAL OF THE PLAN.

23 SEC. 10I. (1) AN OWNER OR OPERATOR, NOTWITHSTANDING ANY  
24 EXEMPTION UNDER LAW, SHALL NOT REMOVE SOIL, OR ALLOW SOIL TO BE  
25 REMOVED, FROM A SITE OF ENVIRONMENTAL CONTAMINATION TO AN  
26 OFF-SITE LOCATION UNLESS THAT PERSON OWNS THE OFF-SITE LOCATION  
27 AND DETERMINES THAT THE SOIL CAN BE LAWFULLY RELOCATED WITHOUT



1 POSING A THREAT TO THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE  
2 ENVIRONMENT. THE DETERMINATION SHALL CONSIDER WHETHER THE SOIL  
3 IS SUBJECT TO REGULATION PURSUANT TO THE HAZARDOUS WASTE MANAGE-  
4 MENT ACT, ACT NO. 64 OF THE PUBLIC ACTS OF 1979, BEING  
5 SECTIONS 299.501 TO 299.551 OF THE MICHIGAN COMPILED LAWS.

6 (2) FOR THE PURPOSES OF SUBSECTION (1), SOIL POSES A THREAT  
7 TO THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT IF CON-  
8 CENTRATIONS OF HAZARDOUS SUBSTANCES IN THE SOIL EXCEED THE CATE-  
9 GORICAL CLEANUP STANDARD DETERMINED PURSUANT TO SECTION 10G(1)  
10 THAT APPLY TO THE LOCATION TO WHICH THE SOIL WILL BE MOVED OR  
11 RELOCATED, EXCEPT THAT IF THE SOIL IS TO BE REMOVED FROM THE SITE  
12 FOR DISPOSAL OR TREATMENT, THE SOIL SHALL SATISFY THE APPROPRIATE  
13 REGULATORY CRITERIA FOR DISPOSAL OR TREATMENT. ANY LAND USE  
14 RESTRICTIONS THAT WOULD BE REQUIRED FOR THE APPLICATION OF A CAT-  
15 EGORICAL STANDARD PURSUANT TO SECTION 10G(1) SHALL BE IN PLACE AT  
16 THE LOCATION TO WHICH THE SOIL WILL BE MOVED. SOIL MAY BE RELO-  
17 CATED ONLY TO ANOTHER FACILITY THAT IS SIMILARLY CONTAMINATED,  
18 CONSIDERING THE NATURE, CONCENTRATION, AND MOBILITY OF HAZARDOUS  
19 SUBSTANCES PRESENT AT THE LOCATION TO WHICH CONTAMINATED SOIL  
20 WILL BE MOVED. CONTAMINATED SOIL SHALL NOT BE MOVED TO A LOCA-  
21 TION THAT IS NOT A SITE OF ENVIRONMENTAL CONTAMINATION UNLESS IT  
22 IS TAKEN THERE FOR TREATMENT OR DISPOSAL IN CONFORMANCE WITH  
23 APPLICABLE LAWS AND REGULATIONS.

24 (3) AN OWNER OR OPERATOR OF A SITE SHALL NOT RELOCATE SOIL,  
25 OR ALLOW SOIL TO BE RELOCATED, WITHIN A SITE OF ENVIRONMENTAL  
26 CONTAMINATION WHERE A REMEDIAL ACTION PLAN HAS BEEN APPROVED  
27 UNLESS THAT PERSON DETERMINES THAT THE SAME DEGREE OF CONTROL

1 REQUIRED FOR APPLICATION OF THE STANDARDS OF SECTION 10G(1) WILL  
2 BE PROVIDED FOR THE CONTAMINATED SOIL.

3 (4) THE PROHIBITION IN SUBSECTION (3) AGAINST RELOCATION OF  
4 CONTAMINATED SOIL WITHIN A SITE OF ENVIRONMENTAL CONTAMINATION  
5 DOES NOT APPLY TO SOILS THAT ARE TEMPORARILY RELOCATED FOR THE  
6 PURPOSE OF IMPLEMENTING RESPONSE ACTIVITY IF THE RESPONSE ACTIV-  
7 ITY IS COMPLETED IN A TIMELY FASHION AND THE SHORT-TERM HAZARDS  
8 ARE APPROPRIATELY CONTROLLED.

9 (5) IF SOIL IS BEING MOVED OFF SITE FROM, MOVED TO, OR RELO-  
10 CATED ON SITE AT A FACILITY WHERE A REMEDIAL ACTION PLAN HAS BEEN  
11 APPROVED BY THE DIRECTOR BASED ON A CLEANUP STANDARD CATEGORY IN  
12 SECTION 10G(1)(F) TO (K), THE SOIL SHALL NOT BE MOVED WITHOUT  
13 PRIOR DEPARTMENT APPROVAL.

14 (6) IF SOIL IS BEING MOVED OFF SITE FROM, MOVED TO, OR RELO-  
15 CATED ON SITE AT A FACILITY WHERE A REMEDIAL ACTION PLAN HAS BEEN  
16 APPROVED BY THE DEPARTMENT BASED ON A CLEANUP STANDARD CATEGORY  
17 IN SECTION 10G(1)(F) TO (K), THE SOIL SHALL NOT BE MOVED WITHOUT  
18 PRIOR DEPARTMENT APPROVAL.

19 (7) IF SOIL IS BEING RELOCATED IN A MANNER NOT ADDRESSED BY  
20 SUBSECTION (6), THE OWNER OR OPERATOR OF THE FACILITY FROM WHICH  
21 SOIL IS BEING MOVED MUST PROVIDE NOTICE TO THE DEPARTMENT. THE  
22 NOTICE SHALL INCLUDE ALL OF THE FOLLOWING:

23 (A) THE LOCATION FROM WHICH SOIL WILL BE REMOVED.

24 (B) THE LOCATION TO WHICH THE SOIL WILL BE TAKEN.

25 (C) THE VOLUME OF SOIL TO BE MOVED.

26 (D) A SUMMARY OF INFORMATION OR DATA ON WHICH THE OWNER OR  
27 OPERATOR IS BASING THE DETERMINATION REQUIRED IN SUBSECTION (2)

1 THAT THE SOIL DOES NOT PRESENT A THREAT TO THE PUBLIC HEALTH,  
2 SAFETY, WELFARE, OR THE ENVIRONMENT.

3 (E) IF LAND USE RESTRICTIONS WOULD APPLY PURSUANT TO  
4 SECTION 10G(1) TO THE SOIL WHEN IT IS RELOCATED, THE NOTICE SHALL  
5 INCLUDE DOCUMENTATION THAT THOSE RESTRICTIONS ARE IN PLACE.

6 (8) THE DETERMINATION REQUIRED BY SUBSECTIONS (1) AND (3)  
7 SHALL BE BASED ON KNOWLEDGE OF THE PERSON UNDERTAKING OR APPROV-  
8 ING OF THE REMOVAL OR RELOCATION OF SOIL, OR ON CHARACTERIZATION  
9 OF THE SOIL FOR THE PURPOSE OF COMPLIANCE WITH THIS SECTION.

10 SEC. 10J. (1) AT A FACILITY WHERE STATE FUNDS WILL BE SPENT  
11 TO PLAN OR IMPLEMENT A REMEDIAL ACTION PLAN OR WHERE THE DIRECTOR  
12 DETERMINES THERE IS A SIGNIFICANT PUBLIC INTEREST, WITHIN 30 DAYS  
13 AFTER THE COMPLETION OF A REMEDIAL INVESTIGATION FOR THE FACILI-  
14 TY, THE DEPARTMENT SHALL PROVIDE THE COUNTY AND THE TOWNSHIP,  
15 CITY, OR VILLAGE IN WHICH THE FACILITY IS LOCATED A NOTICE OF THE  
16 COMPLETION OF THE REMEDIAL INVESTIGATION, A SUMMARY OF THE REME-  
17 DIAL INVESTIGATION, AND NOTICE OF AN OPPORTUNITY FOR THE PEOPLE  
18 IN THE LOCAL UNIT OF GOVERNMENT TO MEET WITH THE DEPARTMENT  
19 REGARDING THE REMEDIAL INVESTIGATION AND ANY PROPOSED FEASIBILITY  
20 STUDY FOR THE FACILITY. UPON A REQUEST FOR A PUBLIC MEETING BY  
21 THE GOVERNING BODY OF THE LOCAL UNIT OF GOVERNMENT OR BY 25 CITI-  
22 ZENS OF THE LOCAL UNIT OF GOVERNMENT, THE DEPARTMENT SHALL,  
23 WITHIN 30 DAYS OF THE REQUEST, MEET WITH PERSONS IN THE LOCAL  
24 UNIT OF GOVERNMENT. THE PERSON OR PERSONS REQUESTING THE PUBLIC  
25 MEETING SHALL PUBLICIZE AND PROVIDE ACCOMMODATIONS FOR THE  
26 MEETING. THE MEETING SHALL BE HELD IN THE LOCAL UNIT OF  
27 GOVERNMENT IN WHICH THE FACILITY IS LOCATED. THE DEPARTMENT

1 SHALL PROVIDE COPIES OF THE NOTICES AND SUMMARY REQUIRED IN THIS  
2 SUBSECTION TO THE GOVERNING BODY OF THE LOCAL UNIT OF GOVERNMENT,  
3 TO THE KNOWN PERSONS THAT MAY BE LIABLE UNDER SECTION 12, AND TO  
4 THE MAIN PUBLIC LIBRARY OF THE LOCAL UNIT OF GOVERNMENT IN WHICH  
5 THE FACILITY IS LOCATED. THE DEPARTMENT SHALL SEND REPRESENTA-  
6 TIVES TO THE MEETING WHO ARE FAMILIAR WITH THE FACILITY AND WHO  
7 ARE INVOLVED WITH DETERMINING THE APPROPRIATE REMEDIAL ACTIONS TO  
8 BE TAKEN AT THE FACILITY. PERSONS THAT MAY BE RESPONSIBLE UNDER  
9 SECTION 12 FOR THE FACILITY MAY SEND REPRESENTATIVES TO THE  
10 MEETING.

11 (2) THE DEPARTMENT SHALL MAINTAIN, AND PERIODICALLY PUBLISH,  
12 A LIST OF REMEDIAL ACTION PLANS SUBMITTED FOR APPROVAL THAT  
13 COMPLY WITH THE REQUIREMENTS OF R 299.5515 OF THE MICHIGAN ADMIN-  
14 ISTRATIVE CODE. BEFORE APPROVAL OF A PROPOSED REMEDIAL ACTION  
15 PLAN WHICH IS TO BE IMPLEMENTED WITH MONEY FROM THE FUND, OR IS  
16 BASED ON CATEGORICAL STANDARDS PROVIDED FOR IN SECTION 10G(1)(F)  
17 TO (K), OR IF SECTION 10E(5), (6), OR (7) APPLIES, OR THE DEPART-  
18 MENT DETERMINES THAT THERE IS SIGNIFICANT PUBLIC INTEREST, THE  
19 DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

20 (A) PUBLISH A NOTICE AND BRIEF SUMMARY OF THE PROPOSED REME-  
21 DIAL ACTION PLAN.

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

26 (C) PROVIDE AN OPPORTUNITY FOR A PUBLIC MEETING AT OR NEAR  
27 THE FACILITY WHEN ANY OF THE FOLLOWING OCCUR:

1 (i) THE DEPARTMENT DETERMINES THAT THERE IS A SIGNIFICANT  
2 PUBLIC INTEREST OR THAT FOR ANY OTHER REASON A PUBLIC MEETING IS  
3 APPROPRIATE.

4 (ii) A CITY, TOWNSHIP, OR VILLAGE IN WHICH THE FACILITY IS  
5 LOCATED, BY A MAJORITY VOTE OF ITS GOVERNING BODY, REQUESTS A  
6 PUBLIC MEETING.

7 (iii) A LOCAL HEALTH DEPARTMENT WITH JURISDICTION IN THE  
8 AREA IN WHICH THE FACILITY IS LOCATED REQUESTS A PUBLIC MEETING.

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

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

17 (4) THE DEPARTMENT SHALL TAKE REASONABLE MEASURES TO PRO-  
18 VIDE, AT LEAST 30 DAYS PRIOR TO APPROVAL OF A REMEDIAL ACTION  
19 PLAN, NOTICE TO PERSONS WHO RESIDE OR OPERATE BUSINESSES ON OR  
20 IMMEDIATELY ADJACENT TO A FACILITY FOR WHICH A REMEDIAL ACTION  
21 PLAN IS PROPOSED, AND TO THE OWNERS OR OCCUPANTS OF PROPERTY FOR  
22 WHICH A PRIVATE DRINKING WATER SUPPLY IS THREATENED BY A RELEASE  
23 ADDRESSED IN THE REMEDIAL ACTION PLAN. THE NOTICE SHALL CONSIST  
24 OF A DESCRIPTION OF THE SITE, A SUMMARY OF THE NATURE AND EXTENT  
25 OF CONTAMINATION AND THE MEDIA AFFECTED, A SUMMARY OF THE CLEANUP  
26 STANDARDS PROPOSED TO BE APPLIED, AND A SUMMARY OF THE REMEDIAL  
27 ACTION PROPOSED. IT SHALL ALSO IDENTIFY A CONTACT AT THE

1 DEPARTMENT REGARDING THE FACILITY AND THE LOCATION AT WHICH  
2 INFORMATION ABOUT THE REMEDIAL ACTION PLAN MAY BE REVIEWED.  
3 NOTICE MAY BE DISTRIBUTED BY MAIL OR BY HAND DELIVERY TO THE RES-  
4 IDENCES AND BUSINESSES ON OR IMMEDIATELY ADJACENT TO THE  
5 FACILITY.

6 (5) THE DEPARTMENT SHALL PREPARE A SUMMARY DOCUMENT THAT  
7 EXPLAINS THE REASONS FOR THE SELECTION OR APPROVAL OF A REMEDIAL  
8 ACTION PLAN. IN ADDITION, THE DEPARTMENT SHALL COMPILE AN ADMIN-  
9 ISTRATIVE RECORD OF THE DECISION PROCESS THAT RESULTS IN THE  
10 SELECTION OF A REMEDIAL ACTION PLAN. THE ADMINISTRATIVE RECORD  
11 SHALL CONTAIN ALL OF THE FOLLOWING:

12 (A) REMEDIAL INVESTIGATION DATA REGARDING THE FACILITY.

13 (B) IF APPLICABLE, A FEASIBILITY STUDY AND POTENTIAL REME-  
14 DIAL ACTIONS.

15 (C) IF APPLICABLE, A SUMMARY DOCUMENT THAT EXPLAINS THE REA-  
16 SONS WHY A REMEDIAL INVESTIGATION OR FEASIBILITY STUDY WAS NOT  
17 CONDUCTED.

18 (D) APPLICABLE COMMENTS AND INFORMATION RECEIVED FROM THE  
19 PUBLIC, IF ANY.

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

23 (F) OTHER INFORMATION APPROPRIATE TO THE FACILITY.

24 (6) IF COMMENTS OR INFORMATION ARE SUBMITTED FOR INCLUSION  
25 IN THE ADMINISTRATIVE RECORD THAT ARE NOT INCLUDED IN THE ADMIN-  
26 ISTRATIVE RECORD, A BRIEF EXPLANATION OF WHY THE INFORMATION WAS

1 NOT CONSIDERED RELEVANT SHALL BE SENT TO THE PARTY BY THE  
2 DEPARTMENT AND INCLUDED IN THE RECORD.

3       Sec. 12a. (1) A person shall not be liable under section 12  
4 if that person establishes by a preponderance of the evidence  
5 that the release or threat of release was caused solely by:

6       (a) An act of God.

7       (b) An act of war.

8       (c) An act or omission of a third party other than an  
9 employee or agent of the person that may be liable under  
10 section 12, or other than one whose act or omission occurs in  
11 connection with a contractual relationship, existing directly or  
12 indirectly, with the person that may be liable under section 12  
13 if the person that may be liable under section 12 establishes by  
14 a preponderance of the evidence both of the following:

15       (i) That he or she exercised due care with respect to the  
16 hazardous substance, taking into consideration the characteris-  
17 tics of the hazardous substance, in light of all relevant facts  
18 and circumstances.

19       (ii) That he or she took reasonable precautions against rea-  
20 sonably foreseeable acts or omissions of a third party and the  
21 consequences that foreseeably could result from those acts or  
22 omissions.

23       (d) Any combination of subdivision (a), (b), or (c).

24       (2) The term contractual relationship, as used in subsection  
25 (1)(c), includes, but is not limited to, land contracts, deeds,  
26 or other instruments transferring title or possession, unless  
27 both of the following are established:

1 (a) The real property on which the facility is located was  
2 acquired by the person that may be liable under section 12 after  
3 the disposal or placement of the hazardous substance on, in, or  
4 at the property.

5 (b) The person that may be liable under section 12 by a pre-  
6 ponderance of the evidence proves 1 or more of the following:

7 (i) At the time the person that may be liable under  
8 section 12 acquired the property, that person did not know and  
9 had no reason to know that a hazardous substance that is the  
10 subject of the release or threat of a release was disposed of on,  
11 in, or at the facility.

12 (ii) The person that may be liable under section 12 is a  
13 state or local unit of government that acquired the property by  
14 purchase, gift, transfer, dedication, or condemnation, and, for  
15 property acquired after July 1, 1991, the state or local unit of  
16 government does all of the following:

17 (A) Conducts or causes to be conducted a visual inspection  
18 of the property and a review of the ownership and use history of  
19 the property to determine whether a probability exists that the  
20 property is a facility. If the visual inspection or the owner-  
21 ship and use history, or both, show that there may be a release  
22 or threat of release, the state or local unit of government shall  
23 conduct, or cause to be conducted, an environmental assessment of  
24 the property that includes an on-site evaluation of the nature  
25 and extent, if any, of the release or threat of release, and an  
26 inspection of all permanent structures on the property for the  
27 presence of a hazardous substance.



1 (B) Prior to final acquisition, if the environmental  
2 assessment required in subparagraph (ii)(A) discloses a release  
3 or threat of release, the state or local unit of government shall  
4 do all of the following:

5 (I) Provide a report of the findings and conclusions of the  
6 environmental assessment to the governing body of the unit of  
7 government.

8 (II) Provide a public notice of the availability of the  
9 report of the findings and conclusions of the environmental  
10 assessment.

11 (III) Submit the report and the environmental assessment to  
12 the department.

13 (C) After final acquisition, if the environmental assessment  
14 required in subparagraph (ii)(A) disclosed a release or threat of  
15 release, the state or local unit of government shall provide the  
16 department with a right of entry to the property at all reason-  
17 able times for any of the purposes listed in section 10d(3)(a)  
18 through (e).

19 (D) After final acquisition, unless waived by the director  
20 through the exercise of his or her discretion, if the environmen-  
21 tal assessment required in subparagraph (ii)(A) disclosed a  
22 release or threat of release, the state or local unit of govern-  
23 ment shall not transfer any legal interest, or any equitable or  
24 possessory interest that relinquishes control over that property  
25 for more than 45 days, unless the state or local unit of govern-  
26 ment does all of the following:

1 (I) Provide any transferee with a copy of the environmental  
2 assessment required in subparagraph (ii)(A) prior to the transfer  
3 of the property.

4 (II) Include in any contract for transfer of the property a  
5 statement that, absent a covenant not to sue from the state as  
6 provided by section 14a, the transferee will be a person that may  
7 be liable under section 12 of this act.

8 (III) Include as a condition to the transfer in any contract  
9 for the transfer of the property that the transferee agrees to  
10 provide the department with a right of entry to the property at  
11 all reasonable times for any of the purposes listed in  
12 section 10d(3)(a) through (e) related to a release or threat of  
13 release disclosed in the environmental assessment required in  
14 subparagraph (ii)(A).

15 (IV) Provide the department with a copy of the contract for  
16 transfer of the property and a description of the intended use of  
17 the property by the transferee within 14 days of the execution of  
18 the transfer.

19 (iii) The person that may be liable under section 12  
20 acquired the property by inheritance.

21 (3) In addition to establishing 1 or more of the circum-  
22 stances described in subsection (2)(b)(i), (ii), or (iii), the  
23 person that may be liable under section 12 shall establish that  
24 he or she has satisfied the requirements of subsection (1)(c)(i)  
25 and (ii).

26 (4) To establish that the person that may be liable under  
27 section 12 had no reason to know, as required under subsection

1 (2)(b)(i), the person that may be liable under section 12 shall  
2 have undertaken, at the time of acquisition, all appropriate  
3 inquiry into the previous ownership and uses of the property con-  
4 sistent with good commercial or customary practice in an effort  
5 to minimize liability. For purposes of the preceding sentence,  
6 the court shall take into account any specialized knowledge or  
7 experience on the part of the person that may be liable under  
8 section 12, the relationship of the purchase price to the value  
9 of the property if uncontaminated by a hazardous substance, com-  
10 monly known or reasonably ascertainable information about the  
11 property, the obviousness of the presence or likely presence of a  
12 release or threat of release at the property, and the ability to  
13 detect a release or threat of release by appropriate inspection.

14 (5) This section shall not diminish the liability of a pre-  
15 vious owner or operator of a facility that would otherwise be  
16 liable under this act. Notwithstanding this section, if the  
17 person that may be liable under section 12 obtained actual knowl-  
18 edge of the release or threat of release at the facility when  
19 that person owned the real property and then transferred owner-  
20 ship of the property to another person without disclosing this  
21 knowledge, the person shall be liable under section 12 and a  
22 defense under this section shall not be available to that  
23 person. Nothing in this section shall affect the liability under  
24 this act of a person that may be liable under section 12 that, by  
25 an act or omission, caused or contributed to the release or  
26 threat of release that is the subject of a response activity at  
27 the facility.

1 (6) The state or a local unit of government shall not be  
2 liable under this act for costs or damages as a result of  
3 response activity taken in response to a release or threat of  
4 release. This subsection shall not preclude liability for costs  
5 or damages as a result of gross negligence, including reckless,  
6 willful, or wanton misconduct, or intentional misconduct by the  
7 state or local unit of government.

8 (7) A commercial lending institution that has not partici-  
9 pated in the management of a facility prior to taking title  
10 acquires a property that is a facility through foreclosure or  
11 through acceptance of a deed in lieu of foreclosure for the sole  
12 purpose of realizing on a security interest shall not be liable  
13 under this act, if 1 or more of the following are true:

14 (a) The property is a residential property.

15 (b) The property is an agricultural property.

16 (c) The commercial lending institution acquired ownership or  
17 control of the property involuntarily through a court order or  
18 other involuntary circumstance.

19 (d) The commercial lending institution would otherwise be  
20 liable solely under section 12(1)(c) and the commercial lending  
21 institution acquired ownership or control of the property prior  
22 to August 1, 1990.

23 (8) If a commercial lending institution that has not partici-  
24 ipated in the management of a facility prior to taking title,  
25 other than those properties described in subsection (7)(a) or  
26 (b), ~~conducts~~ COMMENCES AND COMPLETES, within 180 days before  
27 or after ~~taking title to the property~~ FORECLOSURE, a valid

1 foreclosure environmental assessment prior to disposition of that  
2 property, and that foreclosure environmental assessment does not  
3 indicate that there was a release or threat of release on the  
4 property, there is a rebuttable presumption that the commercial  
5 lending institution has satisfied the criteria specified in  
6 subsection (1)(c) with respect to that property. The defense to  
7 liability in this subsection does not apply to a release that  
8 started after the date on which the commercial lending institu-  
9 tion acquired title to the property and during the time the com-  
10 mercial lending institution held title to the property.

11 (9) If a commercial lending institution that prior to taking  
12 title of a property through foreclosure or through acceptance of  
13 a deed in lieu of foreclosure has not participated in the manage-  
14 ment of property, other than a property described in  
15 subsection (7)(a) or (b), ~~performs~~ COMMENCES AND COMPLETES a  
16 foreclosure environmental assessment on the property within 180  
17 days before or after ~~taking title to the property~~ FORECLOSURE,  
18 and that foreclosure environmental assessment indicates that  
19 there is a release or threat of release on that property, the  
20 commercial lending institution shall not dispose of that property  
21 unless the commercial lending institution ~~provides the depart-~~  
22 ~~ment with a complete copy of the results of the foreclosure envi-~~  
23 ~~ronmental assessment, and the commercial lending institution~~  
24 ~~enters into an agreement with the department regarding disposi-~~  
25 ~~tion of the property. If a commercial lending institution sub-~~  
26 ~~mits a proposal to the department regarding disposition of the~~  
27 ~~property, the department shall, within 6 months, review the~~

1 ~~proposal and either approve the proposal or submit changes to the~~  
2 ~~commercial lending institution that would result in approval of~~  
3 ~~the proposal. However, if the commercial lending institution and~~  
4 ~~the department are unable to reach an agreement pertaining to~~  
5 ~~disposition of the property, the commercial lending institution~~  
6 ~~shall not transfer the property, other than to the state.~~ DOES  
7 BOTH OF THE FOLLOWING:

8 (A) PROVIDES TO THE PERSON TO WHOM THE PROPERTY IS BEING  
9 TRANSFERRED BEFORE THE PROPERTY DISPOSITION IS FINALIZED, A COPY  
10 OF THE RESULTS OF THE FORECLOSURE ENVIRONMENTAL ASSESSMENT.

11 (B) PROVIDES THE DEPARTMENT, WITHIN 15 DAYS AFTER THE PROP-  
12 erty disposition is complete, all of the following:

13 (i) A COPY OF THE RESULTS OF THE FORECLOSURE ENVIRONMENTAL  
14 ASSESSMENT.

15 (ii) THE NAME AND ADDRESS OF THE PERSON TO WHOM THE PROPERTY  
16 WAS TRANSFERRED.

17 (iii) A STATEMENT INDICATING THE ANTICIPATED USE OF THE  
18 PROPERTY, IF KNOWN BY THE COMMERCIAL LENDING INSTITUTION.

19 (iv) A STATEMENT DESCRIBING ANY PLANS OR AGREEMENTS REGARD-  
20 ING INDEMNITY FOR RESPONSE ACTIVITY COSTS, RESPONSE ACTIVITY COST  
21 ESCROW, OR RESPONSE ACTIVITY COST ALLOCATION WHICH WERE ENTERED  
22 INTO BY THE COMMERCIAL LENDING INSTITUTION.

23 (10) A commercial lending institution that establishes that  
24 it has met the requirements of ~~this~~ subsection (9) is not  
25 liable under section 12 with respect to that property. After  
26 meeting all the provisions of ~~this~~ subsection (9), a commercial  
27 lending institution may immediately transfer to the state

1 property on which there has been a release or a threat of a  
2 release if the commercial lending institution complies with all  
3 of the following:

4 (a) Within 9 months following foreclosure and for a period  
5 of at least 120 days, the commercial lending institution either  
6 lists the facility with a broker, dealer, or agent who deals with  
7 the type of property in question, or advertises the facility as  
8 being for sale or disposition on at least a monthly basis in  
9 either a real estate publication, a trade or other publication  
10 suitable for the facility in question, or a newspaper of general  
11 circulation of over 10,000 covering the area where the property  
12 is located.

13 (b) The commercial lending institution has taken reasonable  
14 care in maintaining and preserving the real estate and permanent  
15 fixtures.

16 (c) The commercial lending institution provides to the  
17 department a complete copy of the foreclosure environmental  
18 assessment and all other environmental information related to the  
19 facility that is available to the commercial lending  
20 institution.

21 (d) If the department has issued an order pursuant to sec-  
22 tion 10f, the commercial lending institution has complied with  
23 the order to the department's satisfaction.

24 (e) If conditions on the property pose a threat of fire or  
25 explosion or present an imminent hazard through direct contact  
26 with hazardous substances, the commercial lending institution has

1 undertaken appropriate response activities to abate the threat or  
2 hazard.

3 (11) IF A COMMERCIAL LENDING INSTITUTION IS REFUSED ACCESS  
4 TO THE PROPERTY TO CONDUCT A FORECLOSURE ENVIRONMENTAL ASSESS-  
5 MENT, THE COMMERCIAL LENDING INSTITUTION SHALL NOTIFY THE DEPART-  
6 MENT IN WRITING WITHIN 30 DAYS AFTER THE REFUSAL OF ACCESS. IF  
7 THE COMMERCIAL LENDING INSTITUTION HAS PROVIDED THE DEPARTMENT  
8 WITH SUCH WRITTEN NOTIFICATION, THE FORECLOSURE ENVIRONMENTAL  
9 ASSESSMENT MUST THEN BE COMMENCED AND COMPLETED WITHIN 180 DAYS  
10 AFTER THE COMMERCIAL LENDING INSTITUTION GAINS ACCESS SUFFICIENT  
11 TO CONDUCT THE FORECLOSURE ENVIRONMENTAL ASSESSMENT, OR WITHIN  
12 180 DAYS AFTER THE EXPIRATION OF THE REDEMPTION PERIOD FOR THE  
13 FORECLOSURE. HOWEVER, A FORECLOSURE ENVIRONMENTAL ASSESSMENT  
14 SHALL NOT BE COMPLETE MORE THAN 360 DAYS AFTER FORECLOSURE.

15 (12) ~~(10)~~ A commercial lending institution or other person  
16 that has not participated in the management of a property prior  
17 to assuming ownership or control of the property as a fiduciary,  
18 as defined by section 5, or in a representative capacity for a  
19 disabled person under section 495, of the revised probate code,  
20 Act No. 642 of the Public Acts of 1978, being sections 700.5 and  
21 700.495 of the Michigan Compiled Laws, and that is acting or has  
22 acted in a capacity permitted by the revised probate code, Act  
23 No. 642 of the Public Acts of 1978, being sections 700.1 to  
24 700.993 of the Michigan Compiled Laws, shall not be personally  
25 liable as an owner or operator of the property under this act.  
26 This subsection shall not do either of the following:



1 (a) Relieve the fiduciary from personal liability as the  
2 result of the fiduciary's assumption of personal liability, or  
3 negligence, gross negligence, or reckless, willful, or inten-  
4 tional misconduct.

5 (b) Prevent claims against the assets that are part of or  
6 all of the estate or trust that contains the facility; any other  
7 estate or trust of the decedent, grantor, ward, or other person  
8 whose estate or trust contains the facility that is administered  
9 by the commercial lending institution or other person; or any  
10 other estate or trust of the decedent, grantor, ward, or other  
11 person whose estate or trust contains the facility. Such claims  
12 may be asserted against the fiduciary in its representative  
13 capacity, whether or not the fiduciary is personally liable.

14 (13) ~~(11)~~ A commercial lending institution that has not  
15 participated in the management of a property prior to assuming  
16 ownership or control of the property in a fiduciary capacity, and  
17 pursuant to a fiduciary agreement entered into on or before  
18 August 1, 1990 owns or controls the property in a fiduciary  
19 capacity that is not regulated by Act No. 642 of the Public Acts  
20 of 1978 but is authorized by the banking code of 1969, Act  
21 No. 319 of the Public Acts of 1969, being sections 487.301 to  
22 487.598 of the Michigan Compiled Laws, or the national bank act,  
23 chapter 106, 13 Stat. 99, shall not be personally liable as an  
24 owner or operator of the property under this act. This subsec-  
25 tion shall not do either of the following:

26 (a) Relieve the fiduciary from personal liability as the  
27 result of the fiduciary's assumption of personal liability,

1 negligence, gross negligence, or reckless, willful, or  
2 intentional misconduct.

3 (b) Prevent claims against the assets that are part of or  
4 all of the estate or trust that contains the facility; any other  
5 estate or trust of the decedent, grantor, ward, or other person  
6 whose estate or trust contains the facility that is administered  
7 by the commercial lending institution; or any other estate or  
8 trust of the decedent, grantor, ward, or other person whose  
9 estate or trust contains the facility. Such claims may be  
10 asserted against the fiduciary in its representative capacity,  
11 whether or not the fiduciary is personally liable.

12 (14) ~~(12)~~ A commercial lending institution that has not  
13 participated in the management of a property prior to assuming  
14 ownership or control of the property in a fiduciary capacity, and  
15 pursuant to a fiduciary agreement entered into after August 1,  
16 1990 owns or controls the property in a fiduciary capacity that  
17 is not regulated by Act No. 642 of the Public Acts of 1978 but is  
18 authorized by Act No. 319 of the Public Acts of 1969, or the  
19 national bank act, chapter 106, 13 Stat. 99, that has served only  
20 in an administrative, custodial, or financial capacity with  
21 respect to the property, and has not exercised sufficient  
22 involvement to control the owner's or operator's handling of a  
23 hazardous substance, shall not be personally liable as an owner  
24 or operator of the property under this act. This subsection  
25 shall not do either of the following:

26 (a) Relieve the fiduciary from personal liability as the  
27 result of the fiduciary's assumption of personal liability,

1 negligence, gross negligence, or reckless, willful, or  
2 intentional misconduct.

3 (b) Prevent claims against the assets that are part of or  
4 all of the estate or trust that contains the facility; any other  
5 estate or trust of the decedent, grantor, ward, or other person  
6 whose estate or trust contains the facility that is administered  
7 by the commercial lending institution; or any other estate or  
8 trust of the decedent, grantor, ward, or other person whose  
9 estate or trust contains the facility. Such claims may be  
10 asserted against the fiduciary in its representative capacity,  
11 whether or not the fiduciary is personally liable.

12 (15) ~~(13)~~ The defenses to liability under section ~~12~~ in  
13 ~~subsections (7)~~ 12(7) to (12) in regard to a facility do not  
14 apply when a commercial lending institution, or its agent,  
15 employee, or a person retained by the commercial lending institu-  
16 tion, caused or contributed to a release or threat of release.

17 (16) ~~(14)~~ As used in ~~subsections (8) and (9)~~ THIS  
18 SECTION, "foreclosure environmental assessment" means to conduct,  
19 or cause to be conducted, a visual inspection of property and a  
20 review of the ownership and use history of the property to deter-  
21 mine whether there is a release or threat of release. If a  
22 visual inspection or the ownership and use history, or both, show  
23 that there may be a release or threat of release, a site specific  
24 on-site evaluation of the nature and extent, if any, of the  
25 release or threat of release shall be conducted, and an inspec-  
26 tion of all permanent structures on the property to determine the  
27 presence of a hazardous substance shall be conducted.

1           (17) FOR THE PURPOSES OF THIS SECTION, "FORECLOSURE" MEANS  
2 THE PURCHASE OF PROPERTY AT A FORECLOSURE SALE CONDUCTED PURSUANT  
3 TO A FORECLOSURE OF A MORTGAGE UPON THE PROPERTY, WHETHER THE  
4 FORECLOSURE IS BY JUDICIAL PROCESS OR BY ADVERTISEMENT, OR WHEN A  
5 DEED IN LIEU OF FORECLOSURE IS RECEIVED BY THE COMMERCIAL LENDING  
6 INSTITUTION.