

HOUSE BILL No. 6359

July 28, 2010, Introduced by Rep. Clemente and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20126 and 20126a (MCL 324.20126 and 324.20126a), section 20126 as amended by 1999 PA 196 and section 20126a as added by 1995 PA 71, and by adding section 20114e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 20114E. (1) THE DIRECTOR SHALL ESTABLISH A RESPONSE**
2 **ACTIVITY REVIEW PANEL TO ADVISE HIM OR HER ON TECHNICAL OR**
3 **SCIENTIFIC DISPUTES, INCLUDING DISPUTES REGARDING ASSESSMENT OF**
4 **RISK, CONCERNING RESPONSE ACTIVITY PLANS AND NO FURTHER ACTION**
5 **REPORTS.**

6 **(2) THE PANEL SHALL CONSIST OF 15 INDIVIDUALS, APPOINTED BY**
7 **THE DIRECTOR. EACH MEMBER OF THE PANEL SHALL MEET ALL OF THE**
8 **FOLLOWING MINIMUM REQUIREMENTS:**

9 **(A) MEET 1 OR MORE OF THE FOLLOWING:**

1 (i) HOLD A CURRENT PROFESSIONAL ENGINEER'S OR PROFESSIONAL
2 GEOLOGIST'S LICENSE OR REGISTRATION FROM A STATE, TRIBE, OR UNITED
3 STATES TERRITORY, OR THE COMMONWEALTH OF PUERTO RICO, AND HAVE THE
4 EQUIVALENT OF 6 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

5 (ii) HAVE A BACCALAUREATE DEGREE FROM AN ACCREDITED INSTITUTION
6 OF HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND
7 THE EQUIVALENT OF 10 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

8 (iii) HAVE A MASTER'S DEGREE FROM AN ACCREDITED INSTITUTION OF
9 HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND THE
10 EQUIVALENT OF 8 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

11 (B) REMAIN CURRENT IN HIS OR HER FIELD THROUGH PARTICIPATION
12 IN CONTINUING EDUCATION OR OTHER ACTIVITIES.

13 (3) AN INDIVIDUAL IS NOT ELIGIBLE TO BE A MEMBER OF THE PANEL
14 IF ANY 1 OF THE FOLLOWING IS TRUE:

15 (A) THE INDIVIDUAL IS A CURRENT EMPLOYEE OF ANY OFFICE,
16 DEPARTMENT, OR AGENCY OF THE STATE.

17 (B) THE INDIVIDUAL IS A PARTY TO 1 OR MORE CONTRACTS WITH THE
18 DEPARTMENT AND THE COMPENSATION PAID UNDER THOSE CONTRACTS
19 REPRESENTED MORE THAN 5% OF THE INDIVIDUAL'S ANNUAL GROSS REVENUE
20 IN ANY OF THE PRECEDING 3 YEARS.

21 (C) THE INDIVIDUAL IS EMPLOYED BY AN ENTITY THAT IS A PARTY TO
22 1 OR MORE CONTRACTS WITH THE DEPARTMENT AND THE COMPENSATION PAID
23 TO THE INDIVIDUAL'S EMPLOYER UNDER THESE CONTRACTS REPRESENTED MORE
24 THAN 5% OF THE EMPLOYER'S ANNUAL GROSS REVENUE IN ANY OF THE
25 PRECEDING 3 YEARS.

26 (D) THE INDIVIDUAL WAS EMPLOYED BY THE DEPARTMENT WITHIN THE
27 PRECEDING 3 YEARS.

1 (4) AN INDIVIDUAL APPOINTED TO THE PANEL SHALL SERVE FOR A
2 TERM OF 3 YEARS AND MAY BE REAPPOINTED FOR 1 ADDITIONAL 3-YEAR
3 TERM. AFTER SERVING 2 CONSECUTIVE TERMS, THE INDIVIDUAL MAY NOT BE
4 A MEMBER OF THE PANEL FOR A PERIOD OF AT LEAST 2 YEARS BEFORE BEING
5 ELIGIBLE TO BE APPOINTED TO THE PANEL AGAIN. THE TERMS FOR MEMBERS
6 FIRST APPOINTED SHALL BE STAGGERED SO THAT NOT MORE THAN 5
7 VACANCIES ARE SCHEDULED TO OCCUR IN A SINGLE YEAR. INDIVIDUALS
8 APPOINTED TO THE PANEL SHALL SERVE WITHOUT COMPENSATION. HOWEVER,
9 MEMBERS OF THE PANEL MAY BE REIMBURSED FOR THEIR ACTUAL AND
10 NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL
11 DUTIES AS MEMBERS OF THE PANEL.

12 (5) A VACANCY ON THE PANEL SHALL BE FILLED IN THE SAME MANNER
13 AS THE ORIGINAL APPOINTMENT.

14 (6) THE BUSINESS THAT THE PANEL MAY PERFORM SHALL BE CONDUCTED
15 AT A PUBLIC MEETING OF THE PANEL HELD IN COMPLIANCE WITH THE OPEN
16 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

17 (7) A PERSON WHO SUBMITTED A RESPONSE ACTIVITY PLAN OR A NO
18 FURTHER ACTION REPORT MAY APPEAL A DECISION MADE BY THE DEPARTMENT
19 REGARDING A TECHNICAL OR SCIENTIFIC DISPUTE, INCLUDING A DISPUTE
20 REGARDING ASSESSMENT OF RISK, CONCERNING THE RESPONSE ACTIVITY PLAN
21 OR NO FURTHER ACTION REPORT BY SUBMITTING A PETITION TO THE
22 DIRECTOR. THE PETITION SHALL INCLUDE THE ISSUES IN DISPUTE, THE
23 RELEVANT FACTS UPON WHICH THE DISPUTE IS BASED, FACTUAL DATA,
24 ANALYSIS, OPINION, AND SUPPORTING DOCUMENTATION FOR THE
25 PETITIONER'S POSITION. THE PETITIONER SHALL ALSO SUBMIT A FEE OF
26 \$3,500.00. IF THE DIRECTOR BELIEVES THAT THE DISPUTE MAY BE ABLE TO
27 BE RESOLVED WITHOUT CONVENING THE PANEL, THE DIRECTOR MAY CONTACT

1 THE PETITIONER REGARDING THE ISSUES IN DISPUTE AND MAY NEGOTIATE A
2 RESOLUTION OF THE DISPUTE. THIS NEGOTIATION PERIOD SHALL NOT EXCEED
3 45 DAYS. IF THE DISPUTE IS RESOLVED WITHOUT CONVENING THE PANEL,
4 ANY FEE THAT IS SUBMITTED WITH THE PETITION SHALL BE RETURNED.

5 (8) IF A DISPUTE IS NOT RESOLVED PURSUANT TO SUBSECTION (7),
6 THE DIRECTOR SHALL SCHEDULE A MEETING OF 5 MEMBERS OF THE PANEL,
7 SELECTED ON THE BASIS OF THEIR RELEVANT EXPERTISE, WITHIN 45 DAYS
8 AFTER RECEIVING THE ORIGINAL PETITION. A MEMBER SELECTED FOR THE
9 DISPUTE RESOLUTION PROCESS SHALL AGREE NOT TO ACCEPT EMPLOYMENT BY
10 THE PERSON BRINGING THE DISPUTE BEFORE THE PANEL, OR TO UNDERTAKE
11 ANY EMPLOYMENT CONCERNING THE FACILITY IN QUESTION FOR A PERIOD OF
12 1 YEAR AFTER THE DECISION HAS BEEN RENDERED ON THE MATTER IF THAT
13 EMPLOYMENT WOULD REPRESENT MORE THAN 5% OF THE MEMBER'S GROSS
14 REVENUE IN ANY OF THE PRECEDING 3 YEARS. THE DIRECTOR SHALL PROVIDE
15 A COPY OF ALL SUPPORTING DOCUMENTATION TO MEMBERS OF THE PANEL WHO
16 WILL HEAR THE DISPUTE. AN ALTERNATIVE MEMBER MAY BE SELECTED BY THE
17 DIRECTOR TO REPLACE A MEMBER WHO IS UNABLE TO PARTICIPATE IN THE
18 DISPUTE RESOLUTION PROCESS. ANY ACTION BY THE MEMBERS SELECTED TO
19 HEAR THE DISPUTE SHALL REQUIRE A MAJORITY OF THE VOTES CAST. THE
20 MEMBERS SELECTED FOR THE DISPUTE RESOLUTION PROCESS SHALL ELECT A
21 CHAIRPERSON OF THE DISPUTE RESOLUTION PROCESS. AT A MEETING
22 SCHEDULED TO HEAR THE DISPUTE, REPRESENTATIVES OF THE PETITIONER
23 AND THE DEPARTMENT SHALL EACH BE AFFORDED AN OPPORTUNITY TO PRESENT
24 THEIR POSITIONS TO THE PANEL. THE FEE THAT IS RECEIVED BY THE
25 DIRECTOR ALONG WITH THE PETITION SHALL BE FORWARDED TO THE STATE
26 TREASURER FOR DEPOSIT INTO THE FUND.

27 (9) WITHIN 45 DAYS AFTER HEARING THE DISPUTE, THE MEMBERS OF

1 THE PANEL WHO WERE SELECTED FOR AND PARTICIPATED IN THE DISPUTE
2 RESOLUTION PROCESS SHALL MAKE A RECOMMENDATION REGARDING THE
3 PETITION AND PROVIDE WRITTEN NOTICE OF THE RECOMMENDATION TO THE
4 DIRECTOR OF THE DEPARTMENT AND THE PETITIONER. THE WRITTEN
5 RECOMMENDATION SHALL INCLUDE THE SPECIFIC SCIENTIFIC OR TECHNICAL
6 RATIONALE FOR THE RECOMMENDATION. THE PANEL'S RECOMMENDATION
7 REGARDING THE PETITION MAY BE TO ADOPT, MODIFY, OR REVERSE, IN
8 WHOLE OR IN PART, THE DEPARTMENT'S DECISION THAT IS THE SUBJECT OF
9 THE PETITION. IF THE PANEL DOES NOT MAKE ITS RECOMMENDATION WITHIN
10 THIS 45-DAY TIME PERIOD, THE DECISION OF THE DEPARTMENT IS THE
11 FINAL DECISION OF THE DIRECTOR.

12 (10) WITHIN 60 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE
13 PANEL'S RECOMMENDATION, THE DIRECTOR SHALL ISSUE A FINAL DECISION,
14 IN WRITING, REGARDING THE PETITION. HOWEVER, THIS TIME PERIOD MAY
15 BE EXTENDED BY WRITTEN AGREEMENT BETWEEN THE DIRECTOR AND THE
16 PETITIONER. IF THE DIRECTOR AGREES WITH THE RECOMMENDATION OF THE
17 PANEL, THE DEPARTMENT SHALL INCORPORATE THE RECOMMENDATION INTO ITS
18 RESPONSE TO THE RESPONSE ACTIVITY PLAN OR THE NO FURTHER ACTION
19 REPORT. IF THE DIRECTOR REJECTS THE RECOMMENDATION OF THE PANEL,
20 THE DIRECTOR SHALL ISSUE A WRITTEN DECISION TO THE PETITIONER WITH
21 A SPECIFIC RATIONALE FOR REJECTING THE RECOMMENDATION OF THE PANEL.
22 IF THE DIRECTOR FAILS TO ISSUE A FINAL DECISION WITHIN THE TIME
23 PERIOD PROVIDED FOR IN THIS SUBSECTION, THE RECOMMENDATION OF THE
24 PANEL SHALL BE CONSIDERED THE FINAL DECISION OF THE DIRECTOR. THE
25 FINAL DECISION OF THE DIRECTOR UNDER THIS SUBSECTION IS SUBJECT TO
26 REVIEW PURSUANT TO SECTION 631 OF THE REVISED JUDICATURE ACT OF
27 1961, 1961 PA 236, MCL 600.631.

1 (11) UPON REQUEST OF THE DIRECTOR, THE PANEL SHALL MAKE A
2 RECOMMENDATION TO THE DEPARTMENT ON WHETHER A MEMBER SHOULD BE
3 REMOVED FROM THE PANEL. PRIOR TO MAKING THIS RECOMMENDATION, THE
4 PANEL MAY CONVENE A PEER REVIEW PANEL TO EVALUATE THE CONDUCT OF
5 THE MEMBER WITH REGARD TO COMPLIANCE WITH THIS PART.

6 (12) A MEMBER OF THE PANEL SHALL NOT PARTICIPATE IN THE
7 DISPUTE RESOLUTION PROCESS FOR ANY APPEAL IN WHICH THAT MEMBER HAS
8 A CONFLICT OF INTEREST. THE DIRECTOR SHALL SELECT A MEMBER OF THE
9 PANEL TO REPLACE A MEMBER WHO HAS A CONFLICT OF INTEREST UNDER THIS
10 SUBSECTION. FOR PURPOSES OF THIS SUBSECTION, A MEMBER HAS A
11 CONFLICT OF INTEREST IF A PETITIONER HAS HIRED THAT MEMBER OR THE
12 MEMBER'S EMPLOYER ON ANY ENVIRONMENTAL MATTER WITHIN THE PRECEDING
13 3 YEARS.

14 (13) AS USED IN THIS SECTION, "RELEVANT EXPERIENCE" MEANS
15 ACTIVE PARTICIPATION IN THE PREPARATION, DESIGN, IMPLEMENTATION,
16 AND ASSESSMENT OF REMEDIAL INVESTIGATIONS, FEASIBILITY STUDIES,
17 INTERIM RESPONSE ACTIVITIES, AND REMEDIAL ACTIONS UNDER THIS PART.
18 THIS EXPERIENCE MUST DEMONSTRATE THE EXERCISE OF SOUND PROFESSIONAL
19 JUDGMENT AND KNOWLEDGE OF THE REQUIREMENTS OF THIS PART.

20 Sec. 20126. (1) Notwithstanding any other provision or rule of
21 law and except as provided in subsections (2), (3), (4), and (5)
22 and section 20128, the following persons are liable under this
23 part:

24 (a) The owner or operator of a facility if the owner or
25 operator is responsible for an activity causing a release or threat
26 of release.

27 (b) The owner or operator of a facility at the time of

1 disposal of a hazardous substance if the owner or operator is
2 responsible for an activity causing a release or threat of release.

3 (c) An owner or operator of a facility who becomes an owner or
4 operator on or after June 5, 1995, unless the owner or operator
5 complies with both of the following:

6 (i) A baseline environmental assessment is conducted prior to
7 or within 45 days after the earlier of the date of purchase,
8 occupancy, or foreclosure. For purposes of this section, assessing
9 property to conduct a baseline environmental assessment does not
10 constitute occupancy.

11 (ii) The owner or operator ~~discloses the results of~~ **PROVIDES** a
12 baseline environmental assessment to the department and subsequent
13 purchaser or transferee ~~if the baseline environmental assessment~~
14 ~~confirms that the property is a facility.~~ **WITHIN 6 MONTHS AFTER THE**
15 **EARLIER OF THE DATE OF PURCHASE, OCCUPANCY, OR FORECLOSURE.**

16 (d) A person who by contract, agreement, or otherwise arranged
17 for disposal or treatment, or arranged with a transporter for
18 transport for disposal or treatment, of a hazardous substance owned
19 or possessed by the person, by any other person, at a facility
20 owned or operated by another person and containing the hazardous
21 substance. This subdivision does not include any of the following:

22 (i) A person who, on or after June 5, 1995, arranges for the
23 sale or transport of a secondary material for use in producing a
24 new product. As used in this subparagraph, secondary material means
25 scrap metal, paper, plastic, glass, textiles, or rubber, which has
26 demonstrated reuse or recycling potential and has been separated or
27 removed from the solid waste stream for reuse or recycling, whether

1 or not subsequent separation and processing is required, if
2 substantial amounts of the material are consistently used in the
3 manufacture of products which may otherwise be produced from a raw
4 or virgin material.

5 (ii) A person who, prior to June 5, 1995, arranges for the sale
6 or transport of a secondary material for use in producing a new
7 product unless the state has incurred response activity costs
8 associated with these secondary materials prior to ~~the effective~~
9 ~~date of the 1999 amendments to this section~~ **DECEMBER 17, 1999**. As
10 used in this subparagraph, secondary material means scrap metal,
11 paper, plastic, glass, textiles, or rubber, which has demonstrated
12 reuse or recycling potential and has been separated or removed from
13 the solid waste stream for reuse or recycling, whether or not
14 subsequent separation and processing is required, if substantial
15 amounts of the material are consistently used in the manufacture of
16 products which may otherwise be produced from a raw or virgin
17 material.

18 (iii) A person who arranges the lawful transport or disposal of
19 any product or container commonly used in a residential household,
20 which is in a quantity commonly used in a residential household,
21 and which was used in the person's residential household.

22 (e) A person who accepts or accepted any hazardous substance
23 for transport to a facility selected by that person.

24 (f) The estate or trust of a person described in subdivisions
25 (a) to (e).

26 (2) Subject to section 20107a, an owner or operator who
27 complies with subsection (1)(c) is not liable for contamination

1 existing at the facility at the earlier of the date of purchase,
2 occupancy, or foreclosure, unless the person is responsible for an
3 activity causing the contamination existing at the facility.

4 Subsection (1)(c) does not alter a person's liability with regard
5 to a subsequent release or threat of release at a facility if the
6 person is responsible for an activity causing the subsequent
7 release or threat of release.

8 (3) Notwithstanding subsection (1), the following persons are
9 not liable under this part **WITH RESPECT TO CONTAMINATION AT A**
10 **FACILITY RESULTING FROM A RELEASE OR THREAT OF RELEASE** unless the
11 person is responsible for an activity causing ~~a-THAT release at the~~
12 ~~facility-OR THREAT OF RELEASE:~~

13 (a) The state or a local unit of government that acquired
14 ownership or control of a facility involuntarily through
15 bankruptcy, tax delinquency, abandonment, a transfer from a lender
16 pursuant to subsection (7), or other circumstances in which the
17 government involuntarily acquires title or control by virtue of its
18 governmental function or as provided in this part, a local unit of
19 government to which ownership or control of a facility is
20 transferred by the state or by another local unit of government
21 that is not liable under subsection (1), or the state or a local
22 unit of government that acquired ownership or control of a facility
23 by seizure, receivership, or forfeiture pursuant to the operation
24 of law or by court order.

25 (b) A state or local unit of government that holds or acquires
26 an easement interest in a facility, holds or acquires an interest
27 in a facility by dedication in a plat, or by dedication pursuant to

1 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an
2 interest in a facility for a transportation or utility corridor or
3 public right of way.

4 (c) A person who holds an easement interest in a facility or
5 holds a utility franchise to provide service, for the purpose of
6 conveying or providing goods or services, including, but not
7 limited to, utilities, sewers, roads, railways, and pipelines; or a
8 person that acquires access through an easement.

9 (d) A person who owns severed subsurface mineral rights or
10 severed subsurface formations or who leases subsurface mineral
11 rights or formations.

12 (e) The state or a local unit of government that leases
13 property to a person if the state or the local unit of government
14 is not liable under this part for environmental contamination at
15 the property.

16 (f) A person who owns or occupies residential real property if
17 hazardous substance use at the property is consistent with
18 residential use.

19 (g) A person who acquires a facility as a result of the death
20 of the prior owner or operator of the facility, whether by
21 inheritance, devise, or transfer from an inter vivos or
22 testamentary trust.

23 (h) A person who did not know and had no reason to know that
24 the property was a facility. To establish that the person did not
25 know and did not have a reason to know that the property was a
26 facility, the person shall have undertaken at the time of
27 acquisition all appropriate inquiry into the previous ownership and

1 uses of the property consistent with good commercial or customary
2 practice. A determination of liability under this section shall
3 take into account any specialized knowledge or experience on the
4 part of the person, the relationship of the purchase price to the
5 value of the property if uncontaminated by a hazardous substance,
6 commonly known or reasonable ascertainable information about the
7 property, the obviousness of the presence or likely presence of a
8 release or threat of release at the property, and the ability to
9 detect a release or threat of release by appropriate inspection.

10 (i) A utility performing normal construction, maintenance, and
11 repair activities in the normal course of its utility service
12 business. This subsection does not apply to property owned by the
13 utility.

14 (j) A lessee who uses **THE LEASED** property for **A** retail,
15 office, or commercial purpose **REGARDLESS OF THE LEVEL OF THE**
16 **LESSEE'S HAZARDOUS SUBSTANCE USE.**

17 (4) Notwithstanding subsection (1), the following persons are
18 not liable under this part:

19 (a) The owner or operator of a hazardous waste treatment,
20 storage, or disposal facility regulated pursuant to part 111 from
21 which there is a release or threat of release solely from the
22 treatment, storage, or disposal facility, or a waste management
23 unit at the facility and the release or threat of release is
24 subject to corrective action under part 111.

25 (b) A lender that engages in or conducts a lawful marshalling
26 or liquidation of personal property if the lender does not cause or
27 contribute to the environmental contamination. This includes

1 holding a sale of personal property on a portion of the facility.

2 (c) The owner or operator of property onto which contamination
3 has migrated unless that person is responsible for an activity
4 causing the release that is the source of the contamination.

5 (d) A person who owns or operates a facility in which the
6 release or threat of release was caused solely by 1 or more of the
7 following:

8 (i) An act of God.

9 (ii) An act of war.

10 (iii) An act or omission of a third party other than an employee
11 or agent of the person or a person in a contractual relationship
12 existing either directly or indirectly with a person who is liable
13 under this section.

14 (E) ANY PERSON FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN A
15 NO FURTHER ACTION REPORT THAT IS APPROVED BY THE DEPARTMENT OR IS
16 CONSIDERED APPROVED UNDER SECTION 20114D. NOTWITHSTANDING THIS
17 SUBDIVISION, A PERSON MAY BE LIABLE UNDER THIS PART FOR THE
18 FOLLOWING:

19 (i) A SUBSEQUENT RELEASE NOT ADDRESSED IN THE NO FURTHER ACTION
20 REPORT IF THE PERSON IS OTHERWISE LIABLE UNDER THIS PART FOR THAT
21 RELEASE.

22 (ii) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE
23 NO FURTHER ACTION REPORT AND FOR WHICH THE PERSON IS OTHERWISE
24 LIABLE UNDER THIS PART.

25 (iii) IF THE NO FURTHER ACTION REPORT RELIES ON LAND USE OR
26 RESOURCE USE RESTRICTIONS, AN OWNER OR OPERATOR WHO DESIRES TO
27 CHANGE THOSE RESTRICTIONS IS RESPONSIBLE FOR ANY RESPONSE

1 ACTIVITIES NECESSARY TO COMPLY WITH THIS PART FOR ANY LAND USE OR
2 RESOURCE USE OTHER THAN THE LAND USE OR RESOURCE USE THAT WAS THE
3 BASIS FOR THE NO FURTHER ACTION REPORT.

4 (iv) IF THE NO FURTHER ACTION REPORT RELIES ON MONITORING
5 NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL
6 ACTION, AN OWNER OR OPERATOR WHO IS OTHERWISE LIABLE FOR
7 ENVIRONMENTAL CONTAMINATION ADDRESSED IN A NO FURTHER ACTION REPORT
8 IS LIABLE UNDER THIS PART FOR ADDITIONAL RESPONSE ACTIVITIES
9 NECESSARY TO ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL
10 CONTAMINATION DEMONSTRATED BY THE MONITORING IN EXCESS OF THE
11 LEVELS RELIED ON IN THE NO FURTHER ACTION REPORT.

12 (v) IF THE REMEDIAL ACTIONS THAT WERE THE BASIS FOR THE NO
13 FURTHER ACTION REPORT FAIL TO MEET PERFORMANCE OBJECTIVES THAT ARE
14 IDENTIFIED IN THE NO FURTHER ACTION REPORT, AN OWNER OR OPERATOR
15 WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL CONTAMINATION ADDRESSED
16 IN THE NO FURTHER ACTION REPORT IS LIABLE UNDER THIS PART FOR
17 RESPONSE ACTIVITIES NECESSARY TO SATISFY THE PERFORMANCE OBJECTIVES
18 OR OTHERWISE COMPLY WITH THIS PART.

19 (5) Notwithstanding any other provision of this part, the
20 state or a local unit of government or a lender who has not
21 participated in the management of the facility is not liable under
22 this part for costs or damages as a result of response activity
23 taken in response to a release or threat of release. For a lender,
24 this subsection applies only to response activity undertaken prior
25 to foreclosure. This subsection does not preclude liability for
26 costs or damages as a result of gross negligence, including
27 reckless, willful, or wanton misconduct, or intentional misconduct

1 by the state or local unit of government.

2 (6) In establishing liability under this section, the
3 department bears the burden of proof. ~~If the department proves a~~
4 ~~prima facie case against a person, the person shall bear the burden~~
5 ~~of showing by a preponderance of the evidence that he or she is not~~
6 ~~liable under this section.~~

7 ~~—— (7) A lender that is not responsible for an activity causing a~~
8 ~~release at a facility and that establishes that it has met the~~
9 ~~requirements of subsection (1)(c) with respect to that facility may~~
10 ~~immediately transfer to the state the property on which there has~~
11 ~~been a release or a threat of a release if the lender complies with~~
12 ~~all of the following:~~

13 ~~—— (a) Within 9 months following foreclosure and for a period of~~
14 ~~at least 120 days, the lender either lists the facility with a~~
15 ~~broker, dealer, or agent who deals with the type of property in~~
16 ~~question, or advertises the facility as being for sale or~~
17 ~~disposition on at least a monthly basis in either a real estate~~
18 ~~publication, a trade or other publication suitable for the facility~~
19 ~~in question, or a newspaper of general circulation of over 10,000~~
20 ~~covering the area where the property is located.~~

21 ~~—— (b) The lender has taken reasonable care in maintaining and~~
22 ~~preserving the real estate and permanent fixtures.~~

23 ~~—— (c) The lender provides to the department all environmental~~
24 ~~information related to the facility that is available to the~~
25 ~~lender.~~

26 ~~—— (d) If the department has issued an order pursuant to section~~
27 ~~20119, the lender has complied with the order to the department's~~

1 satisfaction.

2 ~~—— (c) If conditions on the property pose a threat of fire or~~
3 ~~explosion or present an imminent hazard through direct contact with~~
4 ~~hazardous substances, the lender has undertaken appropriate~~
5 ~~response activities to abate the threat or hazard.~~

6 (7) ~~(8) The department shall establish minimum technical~~
7 ~~standards for baseline environmental assessments conducted under~~
8 ~~this section in guidelines pursuant to the administrative~~
9 ~~procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.~~

10 **BEGINNING ON THE EFFECTIVE DATE OF THE 2010 AMENDATORY ACT THAT**
11 **AMENDED THIS SECTION, THE DEPARTMENT SHALL NOT IMPLEMENT OR ENFORCE**
12 **R 299.5901 TO R 299.5919 OF THE MICHIGAN ADMINISTRATIVE CODE,**
13 **EXCEPT THE DEPARTMENT MAY IMPLEMENT AND ENFORCE THE FOLLOWING**
14 **RULES:**

15 (A) **SUBRULES (2), (6), (8), AND (9) OF RULE 903, R 299.5903 OF**
16 **THE MICHIGAN ADMINISTRATIVE CODE.**

17 (B) **SUBRULES (2) THROUGH (6) OF RULE 905, R 299.5905 OF THE**
18 **MICHIGAN ADMINISTRATIVE CODE.**

19 (C) **RULE 919, R 299.5919 OF THE MICHIGAN ADMINISTRATIVE CODE.**

20 (8) ~~(9)~~ **Notwithstanding subsection (1)(c), if the owner or**
21 **operator of the facility became the owner or operator of the**
22 **facility on or after June 5, 1995 and prior to March 6, 1996, and**
23 **the facility contains an underground storage tank system as defined**
24 **in part 213, that owner or operator is liable under this part only**
25 **if the owner or operator is responsible for an activity causing a**
26 **release or threat of release.**

27 (9) **AN OWNER OR OPERATOR WHO WAS IN COMPLIANCE WITH SUBSECTION**

1 (1) (C) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
2 THIS SUBSECTION, IS CONSIDERED TO BE IN COMPLIANCE WITH SUBSECTION
3 (1) (C) .

4 Sec. 20126a. (1) Except as provided in section 20126(2), a
5 person who is liable under section 20126 is jointly and severally
6 liable for all of the following:

7 (a) All costs of response activity lawfully incurred by the
8 state relating to the selection and implementation of response
9 activity under this part.

10 (b) Any other ~~necessary~~ costs of response activity **REASONABLY**
11 incurred **UNDER THE CIRCUMSTANCES** by any other person. ~~consistent~~
12 ~~with rules relating to the selection and implementation of response~~
13 ~~activity promulgated under this part.~~

14 (c) Damages for the full value of injury to, destruction of,
15 or loss of natural resources, including the reasonable costs of
16 assessing the injury, destruction, or loss resulting from the
17 release.

18 (2) The costs of response activity recoverable under
19 subsection (1) shall also include all ~~of the following:~~

20 ~~——(a) All costs of response activity reasonably incurred by the~~
21 ~~state prior to the promulgation of rules relating to the selection~~
22 ~~and implementation of response activity under this part, excepting~~
23 ~~those cases where cost recovery actions have been filed before July~~
24 ~~12, 1990. A person challenging the recovery of costs under this~~
25 ~~subdivision has the burden of establishing that the costs were not~~
26 ~~reasonably incurred under the circumstances that existed at the~~
27 ~~time the costs were incurred. Recoverable costs include costs~~

1 ~~incurred reasonably consistent with the rules relating to the~~
2 ~~selection and implementation of response activity in effect on July~~
3 ~~12, 1990.~~

4 ~~—— (b) Any other necessary costs of response activity reasonably~~
5 ~~incurred by any other person prior to the promulgation of rules~~
6 ~~relating to the selection and implementation of response activity~~
7 ~~under this part. A person seeking recovery of these costs has the~~
8 ~~burden of establishing that the costs were reasonably incurred~~
9 ~~under the circumstances that existed at the time the costs were~~
10 ~~incurred.~~

11 (3) The amounts recoverable in an action under this section
12 shall include interest. This interest shall accrue from the date
13 payment is demanded in writing, or the date of the expenditure or
14 damage, whichever is later. The rate of interest on the outstanding
15 unpaid balance of the amounts recoverable under this section shall
16 be the same rate as is specified in section ~~6013(5)~~ **6013(8)** of the
17 revised judicature act of 1961, ~~Act No. 236 of the Public Acts of~~
18 ~~1961, being section 600.6013 of the Michigan Compiled Laws 1961 PA~~
19 **236, MCL 600.6013.**

20 (4) In the case of injury to, destruction of, or loss of
21 natural resources under subsection (1)(c), liability shall be to
22 the state for natural resources belonging to, managed by,
23 controlled by, appertaining to, or held in trust by the state or a
24 local unit of government. Sums recovered by the state under this
25 part for natural resource damages shall be retained by the
26 department, for use only to restore, repair, replace, or acquire
27 the equivalent of the natural resources injured or acquire

1 substitute or alternative resources. There shall be no double
2 recovery under this part for natural resource damages, including
3 the costs of damage assessment or restoration, rehabilitation,
4 replacement, or acquisition, for the same release and natural
5 resource.

6 (5) A person shall not be required under this part to
7 undertake response activity for a permitted release. Recovery by
8 any person for response activity costs or damages resulting from a
9 permitted release shall be pursuant to other applicable law, in
10 lieu of this part. With respect to a permitted release, this
11 subsection does not affect or modify the obligations or liability
12 of any person under any other state law, including common law, for
13 damages, injury, or loss resulting from a release of a hazardous
14 substance or for response activity or the costs of response
15 activity.

16 (6) If the department determines that there may be an imminent
17 and substantial endangerment to the public health, safety, or
18 welfare, or to the environment because of an actual or threatened
19 release from a facility, the attorney general may bring an action
20 against any person who is liable under section 20126 or any other
21 appropriate person to secure the relief that may be necessary to
22 abate the danger or threat. The court has jurisdiction to grant
23 such relief as the public interest and the equities of the case may
24 require.

25 (7) The costs recoverable under this section may be recovered
26 in an action brought by the state or any other person.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No. 1345.

4 (b) Senate Bill No. 1346.

5 (c) Senate Bill No. 1348.

6 (d) House Bill No. 6360 (request no. H06270'10 *).

7 (e) House Bill No. 6363 (request no. H06271'10 *).