

**SUBSTITUTE FOR
SENATE BILL NO. 791**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending the part heading to part 215 and sections 21502, 21503,
21504, 21505, 21506a, 21508, 21509, 21510, 21515, 21516, 21518,
21519, 21521, 21523, 21524, 21525, 21526, 21527, 21528, 21531,
21546, and 21548 (MCL 324.21502, 324.21503, 324.21504, 324.21505,
324.21506a, 324.21508, 324.21509, 324.21510, 324.21515, 324.21516,
324.21518, 324.21519, 324.21521, 324.21523, 324.21524, 324.21525,
324.21526, 324.21527, 324.21528, 324.21531, 324.21546, and
324.21548), sections 21502, 21503, 21506a, 21510, and 21515 as
amended by 2012 PA 113, sections 21504, 21505, 21508, 21546, and
21548 as amended by 2004 PA 390, and section 21528 as amended by
2009 PA 98, and by adding sections 21506b, 21510a, 21510b, and
21510c; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 215

~~REFINED PETROLEUM FUND UNDERGROUND STORAGE TANK~~

CORRECTIVE ACTION FUNDING

Sec. 21502. As used in this part:

(a) "Administrator" means the ~~fund~~-administrator **OF THE AUTHORITY AS** provided for in section ~~21513-21525~~.

(B) "AFFILIATE" MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH 1 OR MORE INTERMEDIARIES, CONTROLS THE PERSON SPECIFIED.

(C) ~~(b)~~"Approved claim" means a claim that is approved pursuant to section 21515.

(D) ~~(c)~~"Authority" means the ~~Michigan~~-underground storage tank ~~financial assurance~~-authority created in section 21523.

(E) ~~(d)~~"Board of directors" **OR "BOARD"** means the board of directors of the authority.

(F) ~~(e)~~"Bond proceeds account" means the account ~~or~~ **WITHIN THE** fund to which proceeds of bonds or notes issued under this part have been credited.

(G) ~~(f)~~"Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the **FINANCE** authority pursuant to this part.

(H) ~~(g)~~"Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment ~~from the fund.~~ **BY THE AUTHORITY.** A claim shall include, at a minimum, a completed and signed claim form and the name, address, telephone number, and federal tax identification number of the owner or operator.

1 ~~_____ (h) "Class 1 site" means a site posing the highest degree of~~
2 ~~threat to the public and environment as determined by the~~
3 ~~department, based on the classification system developed by the~~
4 ~~department pursuant to section 21314a.~~

5 ~~_____ (i) "Class 2 site" means a site posing the second highest~~
6 ~~degree of threat to the public and environment as determined by the~~
7 ~~department, based on the classification system developed by the~~
8 ~~department pursuant to section 21314a.~~

9 ~~_____ (j) "Co pay amount" means the co pay amount provided for in~~
10 ~~section 21514.~~

11 (I) "CLAIM LIMIT" MEANS \$1,000,000.00 FOR ALL CLAIMS OF OWNERS
12 OR OPERATORS AND THEIR AFFILIATES DURING A CLAIM PERIOD FOR OWNERS
13 AND OPERATORS OF 1 TO 100 REFINED PETROLEUM UNDERGROUND STORAGE
14 TANKS OR \$2,000,000.00 FOR ALL CLAIMS OF OWNERS OR OPERATORS AND
15 THEIR AFFILIATES DURING A CLAIM PERIOD FOR OWNERS OR OPERATORS OF
16 MORE THAN 100 REFINED PETROLEUM UNDERGROUND STORAGE TANKS.

17 (J) "CLAIM PERIOD" MEANS A 1-YEAR PERIOD COMMENCING ON OCTOBER
18 1 OF EACH YEAR AND ENDING ON SEPTEMBER 30 THE FOLLOWING YEAR.

19 (K) "CONTROLS" MEANS THE POSSESSION OR THE CONTINGENT OR
20 NONCONTINGENT RIGHT TO ACQUIRE POSSESSION, DIRECT OR INDIRECT, OF
21 THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND
22 POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP OF VOTING
23 SECURITIES OR INTERESTS, BY CONTRACT, OTHER THAN A COMMERCIAL
24 CONTRACT FOR GOODS OR NONMANAGEMENT SERVICES, BY PLEDGE OF
25 SECURITIES, OR OTHERWISE, UNLESS THE POWER IS THE RESULT OF AN
26 OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD BY THE PERSON.

27 (I) ~~(k)~~ "Corrective action" means the investigation,

~~assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.~~ THAT TERM AS IT IS DEFINED IN SECTION 21302.

(M) "DEDUCTIBLE AMOUNT" MEANS THE AMOUNT OF CORRECTIVE ACTION COSTS OR INDEMNIFICATION COSTS THAT ARE REQUIRED TO BE PAID BY AN OWNER OR OPERATOR AS PROVIDED IN SECTION 21510A BEFORE THE OWNER OR OPERATOR IS ELIGIBLE TO SUBMIT A CLAIM UNDER THIS PART.

(N) ~~(H)~~ "Department" means the department of environmental quality.

(O) ~~(m)~~ "Eligible person" means an owner or operator who meets the eligibility requirements ~~in section 21556 or 21557 and received approval of his or her precertification application by the department.~~ UNDER THIS PART TO SUBMIT A CLAIM.

(P) "FINANCE AUTHORITY" MEANS THE MICHIGAN FINANCE AUTHORITY CREATED BY EXECUTIVE REORGANIZATION ORDER NO. 2010-2, MCL 12.194.

(Q) ~~(n)~~ "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from ~~an~~ **A REFINED PETROLEUM** underground storage tank system that the owner or operator of ~~an~~ **A REFINED PETROLEUM** underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(R) ~~(o)~~ "Fund" means the ~~Michigan underground storage tank financial assurance fund created in section 21506.~~ **UNDERGROUND**

1 STORAGE TANK CLEANUP FUND CREATED IN SECTION 21506B AND INCLUDES
2 THE BOND PROCEEDS ACCOUNT ESTABLISHED WITHIN THE FUND.

3 ~~—— (p) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-~~
4 ~~light, No. 4 heavy, No. 5 light, No. 5 heavy, and No. 6 technical~~
5 ~~grades of fuel oil; other residual fuel oils including navy special~~
6 ~~fuel oil and bunker C; and other fuels when used as substitutes for~~
7 ~~1 of these fuel oils.~~

8 (S) ~~(q)~~ "Indemnification" means indemnification of an owner or
9 operator for a legally enforceable judgment entered against the
10 owner or operator by a third party, or a legally enforceable
11 settlement entered between the owner or operator and a third party,
12 compensating that third party for bodily injury or property damage,
13 or both, caused by an accidental release as those terms are defined
14 in R 29.2163 of the Michigan administrative code.

15 (T) ~~(r)~~ "Location" means a ~~facility or~~ parcel of property
16 where **REFINED** petroleum underground storage tank systems are
17 registered pursuant to part 211.

18 (U) ~~(s)~~ "Operator" means ~~a person who was, at the time of~~
19 ~~discovery of a release, in control of or responsible for the~~
20 ~~operation of a petroleum underground storage tank system~~ **THAT TERM**
21 **AS IT IS DEFINED IN SECTION 21303** or a person to whom an approved
22 claim has been assigned or transferred.

23 (V) ~~(t)~~ "Owner" means ~~a person, other than a regulated~~
24 ~~financial institution, who, at the time of discovery of a release,~~
25 ~~held a legal, equitable, or possessory interest of any kind in an~~
26 ~~underground storage tank system or in the property on which an~~
27 ~~underground storage tank system is located, including, but not~~

1 ~~limited to, a trust, vendor, vendee, lessor, or lessee. Owner~~
2 ~~includes a person to whom an approved claim is assigned or~~
3 ~~transferred. Owner does not include a person or a regulated~~
4 ~~financial institution who, without participating in the management~~
5 ~~of an underground storage tank system and without being otherwise~~
6 ~~engaged in petroleum production, refining, or marketing relating to~~
7 ~~the underground storage tank system, is acting in a fiduciary~~
8 ~~capacity or who holds indicia of ownership primarily to protect the~~
9 ~~person's or the regulated financial institution's security interest~~
10 ~~in the underground storage tank system or the property on which it~~
11 ~~is located. This exclusion does not apply to a grantor,~~
12 ~~beneficiary, remainderman, or other person who could directly or~~
13 ~~indirectly benefit financially from the exclusion other than by the~~
14 ~~receipt of payment for fees and expenses related to the~~
15 ~~administration of a trust.~~ **THAT TERM AS IT IS DEFINED IN SECTION**
16 **21303.**

17 **(W)** ~~(u)~~ "Oxygenate" means an organic compound containing
18 oxygen and having properties as a fuel that are compatible with
19 petroleum, including, but not limited to, ethanol, methanol, or
20 methyl tertiary butyl ether (MTBE).

21 Sec. 21503. As used in this part:

22 ~~— (a) "Payment voucher" means a form prepared by the department~~
23 ~~that specifies payment authorization by the department to the~~
24 ~~department of treasury.~~

25 ~~— (b) "Petroleum" means crude oil, crude oil fractions, and~~
26 ~~refined petroleum fractions including gasoline, kerosene, heating~~
27 ~~oils, and diesel fuels.~~

~~1 (c) "Petroleum underground storage tank system" means an~~
~~2 underground storage tank system used for the storage of petroleum.~~

~~3 (d) "Precertification application" means the application~~
~~4 submitted by an owner or operator seeking the department's~~
~~5 eligibility determination for reimbursement for the costs of~~
~~6 corrective action from the temporary reimbursement program.~~

7 (A) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
8 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

9 (B) "QUALIFYING EXPENDITURES" MEANS AN EXPENDITURE FOR A
10 SPECIFIC ACTIVITY THAT DOES NOT EXCEED THE ALLOWABLE PAYMENT FOR
11 THAT ACTIVITY AS DETAILED ON THE SCHEDULE OF COSTS.

~~12 (C) (e) "Refined petroleum" means aviation gasoline, middle~~
~~13 distillates, jet fuel, kerosene, gasoline, residual oils, and any~~
~~14 oxygenates that have been blended with any of these.~~

~~15 (D) (f) "Refined petroleum fund" means the refined petroleum~~
~~16 fund established under section 21506a.~~

~~17 (g) "Refined petroleum product cleanup initial program" means~~
~~18 the program established in section 21553.~~

~~19 (h) "Refined petroleum product cleanup program" means the~~
~~20 refined petroleum product cleanup program established by law.~~

21 (E) "REFINED PETROLEUM UNDERGROUND STORAGE TANK" MEANS AN
22 UNDERGROUND STORAGE TANK SYSTEM USED FOR THE STORAGE OF REFINED
23 PETROLEUM.

~~24 (F) (i) "Regulated financial institution" means a state or~~
~~25 nationally chartered bank, savings and loan association or savings~~
~~26 bank, credit union, or other state or federally chartered lending~~
~~27 institution or a regulated affiliate or regulated subsidiary of any~~

1 of these entities.

2 (G) ~~(j)~~ "Regulatory fee" means the environmental protection
3 regulatory fee imposed under section 21508.

4 (H) ~~(k)~~ "Release" means ~~any spilling, leaking, emitting,~~
5 ~~discharging, escaping, or leaching from a petroleum underground~~
6 ~~storage tank system into groundwater, surface water, or subsurface~~
7 ~~soils.~~ **THAT TERM AS IT IS DEFINED IN SECTION 21303.**

8 (I) **"SCHEDULE OF COSTS" MEANS THE LIST OF ALLOWABLE**
9 **REIMBURSEMENT AMOUNTS THAT MAY BE PAID ON A CLAIM, AS ESTABLISHED**
10 **IN SECTION 21510B.**

11 (J) ~~(l)~~ "Site" means ~~a location where a release has occurred or~~
12 ~~a threat of a release exists from an underground storage tank~~
13 ~~system, excluding any location where corrective action was~~
14 ~~completed which satisfies the cleanup criteria for unrestricted~~
15 ~~residential use under part 213.~~ **THAT TERM AS IT IS DEFINED IN**
16 **SECTION 21303.**

17 ~~—— (m) "Temporary reimbursement program" means the program~~
18 ~~established in section 21554.~~

19 (K) ~~(n)~~ "Underground storage tank system" means ~~an existing~~
20 ~~tank or combination of tanks, including underground pipes connected~~
21 ~~to the tank or tanks, which is or was used to contain an~~
22 ~~accumulation of regulated substances, and is not currently being~~
23 ~~used for any other purpose, and the volume of which, including the~~
24 ~~volume of the underground pipes connected to the tank or tanks, is~~
25 ~~10% or more beneath the surface of the ground. An underground~~
26 ~~storage tank system includes an underground storage tank that is~~
27 ~~properly closed in place pursuant to part 211 and rules promulgated~~

1 ~~under that part. An underground storage tank system does not~~
2 ~~include any of the following.~~ **THAT TERM AS IT IS DEFINED IN SECTION**
3 **21303.**

4 ~~—— (i) A farm or residential tank of 1,100 gallons or less~~
5 ~~capacity used for storing motor fuel for noncommercial purposes.~~

6 ~~—— (ii) A tank used for storing heating oil for consumptive use on~~
7 ~~the premises where the tank is located.~~

8 ~~—— (iii) A septic tank.~~

9 ~~—— (iv) A pipeline facility, including gathering lines regulated~~
10 ~~under 49 USC 60101 to 60137.~~

11 ~~—— (v) A surface impoundment, pit, pond, or lagoon.~~

12 ~~—— (vi) A storm water or wastewater collection system.~~

13 ~~—— (vii) A flow through process tank.~~

14 ~~—— (viii) A liquid trap or associated gathering lines directly~~
15 ~~related to oil or gas production and gathering operations.~~

16 ~~—— (ix) A storage tank situated in an underground area such as a~~
17 ~~basement, cellar, mineworking, drift, shaft, or tunnel if the~~
18 ~~storage tank is situated upon or above the surface of the floor.~~

19 ~~—— (x) Any pipes connected to a tank described in subparagraphs~~
20 ~~(i) to (ix).~~

21 ~~—— (xi) An underground storage tank system holding hazardous~~
22 ~~wastes listed or identified under 42 USC 6921 to 6939f, or a~~
23 ~~mixture of such hazardous waste and other regulated substances.~~

24 ~~—— (xii) A wastewater treatment tank system that is part of a~~
25 ~~wastewater treatment facility regulated under 33 USC 1317(b) or 33~~
26 ~~USC 1342.~~

27 ~~—— (xiii) Equipment or machinery that contains regulated substances~~

~~for operational purposes such as hydraulic lift tanks and electrical equipment tanks.~~

~~—— (xiv) An underground storage tank system with a capacity of 110 gallons or less.~~

~~—— (xv) An underground storage tank system that contains a de minimis concentration of regulated substances.~~

~~—— (xvi) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.~~

~~—— (xvii) A wastewater treatment tank system.~~

~~—— (xviii) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, 42 USC 2011 to 2297h-13.~~

~~—— (xix) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR part 50.~~

~~—— (xx) Airport hydrant fuel distribution systems.~~

~~—— (xxi) Underground storage tank systems with field-constructed tanks.~~

~~—— (o) "Work invoice" means an original billing acceptable to the administrator and signed by the owner or operator that includes all of the following:~~

~~—— (i) The name, address, and federal tax identification number of each contractor who performed work.~~

~~—— (ii) The name and social security number of each employee who performed work.~~

~~—— (iii) A specific itemized list of the work performed by each~~

~~contractor and an itemized list of the cost of each of these items.~~

~~—— (iv) A statement that the owner or operator employed a documented sealed competitive bidding process for any contract award exceeding \$5,000.00.~~

~~—— (v) If the owner or operator did not accept the lowest responsive bid received, a specific reason why the lowest responsive bid was not accepted.~~

~~—— (vi) Upon request of the administrator, a list of all bids received.~~

~~—— (vii) Proof of payment of the co pay amount as required under section 21514.~~

Sec. 21504. The objectives of this part are to **FUND CORRECTIVE ACTIONS TO** address ~~certain problems associated with releases from~~ **REFINED** petroleum underground storage tank systems, ~~to promote compliance with parts 211 and 213, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.~~ **TO ASSIST OWNERS AND OPERATORS OF REFINED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS IN MEETING THEIR FINANCIAL RESPONSIBILITY REQUIREMENTS PURSUANT TO PART 211, AND TO ACHIEVE COMPLIANCE WITH PART 213.**

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. ~~It is hereby declared to be the~~ **THE** purpose of this part and of the authority created by this part **IS** to preserve and protect the water resources of the state and to prevent, abate, or control

1 the pollution of water resources and groundwater, to protect and
 2 preserve the public health, safety, and welfare, **AND** to assist in
 3 the financing of ~~repair and replacement of petroleum underground~~
 4 ~~storage tanks and to improve property damaged by any petroleum~~
 5 **CORRECTIVE ACTIONS DUE TO** releases from ~~those tanks, to preserve~~
 6 ~~jobs and employment opportunities or improve the economic welfare~~
 7 ~~of the people of the state, and to fund environmental and consumer~~
 8 ~~protection programs necessary to protect public health, safety, or~~
 9 ~~welfare or the environment due to the sale, use, or release of~~
 10 ~~refined petroleum products.~~ **REFINED PETROLEUM UNDERGROUND STORAGE**
 11 **TANK SYSTEMS.**

12 Sec. 21506a. (1) The refined petroleum fund is created within
 13 the state treasury.

14 (2) The state treasurer may receive money or other assets from
 15 any source for deposit into the refined petroleum fund. The state
 16 treasurer shall direct the investment of the refined petroleum
 17 fund. The state treasurer shall credit to the refined petroleum
 18 fund interest and earnings from refined petroleum fund investments.

19 (3) Money in the refined petroleum fund at the close of the
 20 fiscal year shall remain in the refined petroleum fund and shall
 21 not lapse to the general fund.

22 (4) Money from the refined petroleum fund shall be expended,
 23 upon appropriation, only for 1 or more of the following purposes:

24 ~~—— (a) For gasoline inspection programs under both of the~~
 25 ~~following:~~

26 ~~—— (i) The weights and measures act, 1964 PA 283, MCL 290.601 to~~
 27 ~~290.634.~~

~~1 (ii) The motor fuels quality act, 1984 PA 44, MCL 290.641 to
2 290.650d.~~

~~3 (b) For the refined petroleum product cleanup initial program
4 and for the department's administrative costs associated with the
5 temporary reimbursement program.~~

~~6 (c) For implementation of the temporary reimbursement program.~~

~~7 (d) For corrective actions necessary to address releases of
8 refined petroleum products under a refined petroleum product
9 cleanup program established by law.~~

~~10 (e) For the reasonable administrative costs of the department,
11 the department of agriculture, the department of attorney general,
12 and the department of treasury in administering the refined
13 petroleum fund and in implementing the programs receiving revenue
14 from the refined petroleum fund.~~

~~15 (5) The department shall establish an underground storage tank
16 system cleanup advisory board consisting of owners and operators of
17 underground storage tank systems and other persons with knowledge
18 and expertise in corrective actions associated with releases from
19 underground storage tank systems and the financing of those
20 corrective actions. Not later than March 1, 2013, the underground
21 storage tank system cleanup advisory board shall submit a report to
22 the department and the legislature that recommends a cleanup
23 program, funded with money from the fund, that would assist owners
24 and operators in financing corrective actions required under part
25 213.~~

~~26 (6) Not later than March 1, 2013, the auditor general shall
27 conduct a financial audit of expenditures from the refined~~

1 ~~petroleum fund during the time period beginning October 12, 2004~~
2 ~~through the effective date of the amendatory act that added this~~
3 ~~subsection.~~

4 (A) CORRECTIVE ACTIONS PERFORMED BY THE DEPARTMENT PURSUANT TO
5 SECTION 21320.

6 (B) THE REASONABLE COSTS OF THE DEPARTMENT IN ADMINISTERING
7 THE REFINED PETROLEUM FUND AND IMPLEMENTING PART 213.

8 (C) UNTIL DECEMBER 31, 2016, FOR GASOLINE INSPECTION PROGRAMS
9 UNDER BOTH OF THE FOLLOWING:

10 (i) THE WEIGHTS AND MEASURES ACT, 1964 PA 283, MCL 290.601 TO
11 290.635.

12 (ii) THE MOTOR FUELS QUALITY ACT, 1984 PA 44, MCL 290.641 TO
13 290.650D.

14 (D) OTHER PURPOSES AS DETERMINED BY THE LEGISLATURE.

15 SEC. 21506B. (1) THE UNDERGROUND STORAGE TANK CLEANUP FUND IS
16 CREATED WITHIN THE STATE TREASURY. THE STATE TREASURER SHALL
17 ESTABLISH A BOND PROCEEDS ACCOUNT WITHIN THE FUND AND MAY ESTABLISH
18 PROCEDURES FOR ACCOUNTING FOR DEPOSITS AND EXPENDITURES FROM THE
19 BOND PROCEEDS ACCOUNT.

20 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
21 ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL
22 DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT
23 TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

24 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
25 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

26 (4) THE AUTHORITY SHALL BE THE ADMINISTRATOR OF THE FUND FOR
27 AUDITING PURPOSES.

1 (5) THE AUTHORITY AND THE FINANCE AUTHORITY SHALL EXPEND MONEY
2 FROM THE FUND, UPON APPROPRIATION, ONLY FOR THE FOLLOWING PURPOSES:

3 (A) AS A FIRST PRIORITY, TO PAY PRINCIPAL AND INTEREST DUE ON
4 BONDS OR NOTES ISSUED BY THE FINANCE AUTHORITY PURSUANT TO THIS
5 PART, PLUS ANY AMOUNT NECESSARY TO MAINTAIN A FULLY FUNDED DEBT
6 RESERVE OR OTHER RESERVE INTENDED TO SECURE THE PRINCIPAL AND
7 INTEREST ON THE BONDS OR NOTES AS MAY BE REQUIRED BY RESOLUTION,
8 INDENTURE, OR OTHER AGREEMENT OF THE FINANCE AUTHORITY.

9 (B) FOR THE REASONABLE ADMINISTRATIVE COST OF IMPLEMENTING
10 THIS PART INCURRED BY THE DEPARTMENT, THE DEPARTMENT OF TREASURY,
11 THE DEPARTMENT OF ATTORNEY GENERAL, AND THE FINANCE AUTHORITY.
12 ADMINISTRATIVE COSTS INCLUDE THE ACTUAL AND NECESSARY EXPENSES
13 INCURRED BY THE FINANCE AUTHORITY AND ITS MEMBERS IN CARRYING OUT
14 THE DUTIES IMPOSED BY THIS PART. TOTAL ADMINISTRATIVE COSTS
15 EXPENDED UNDER THIS SUBDIVISION SHALL NOT EXCEED 7% OF THE FUND'S
16 PROJECTED REVENUES IN ANY YEAR. COSTS INCURRED BY THE FINANCE
17 AUTHORITY FOR THE ISSUANCE OF BONDS OR NOTES WHICH MAY ALSO BE
18 PAYABLE FROM THE PROCEEDS OF THE BONDS OR NOTES SHALL NOT BE
19 CONSIDERED ADMINISTRATIVE COSTS.

20 (C) TO PAY APPROVED CLAIMS AS PROVIDED FOR IN THIS PART.

21 Sec. 21508. (1) An environmental protection regulatory fee is
22 imposed on all refined petroleum products sold for resale in this
23 state or consumption in this state. The regulatory fee shall be
24 charged for capacity utilization of **REFINED PETROLEUM** underground
25 storage tanks measured on a per gallon basis. The regulatory fee
26 shall be charged against all refined petroleum products sold for
27 resale in this state or consumption in this state so as to not

1 exclude any products that may be stored in an ~~an~~ **A REFINED PETROLEUM**
2 underground tank at any point after the petroleum is refined. The
3 regulatory fee shall be 7/8 cent per gallon for each gallon of
4 refined petroleum sold for resale in this state or consumption in
5 this state, with the per gallon charge being a direct measure of
6 capacity utilization of an ~~an~~ **A REFINED** underground storage tank
7 system.

8 (2) The department of treasury shall precollect regulatory
9 fees from persons who refine petroleum in this state for resale in
10 this state or consumption in this state and persons who import
11 refined petroleum into this state for resale in this state or
12 consumption in this state. The department of treasury shall collect
13 regulatory fees that can be collected at the same time as the sales
14 tax under section 6a of the general sales tax act, 1933 PA 167, MCL
15 205.56a, at that time. The remainder of the regulatory fees shall
16 be collected in the manner determined by the state treasurer.

17 (3) A public utility with more than 500,000 customers in this
18 state is exempt from any fee or assessment imposed under this part
19 if that fee or assessment is imposed on petroleum used by that
20 public utility for the generation of steam or electricity.

21 (4) Beginning on the effective date of the ~~2004~~ **2014**
22 amendatory act that amended this section, all regulatory fees
23 collected pursuant to this part **DURING EACH STATE FISCAL YEAR** shall
24 be deposited **AS FOLLOWS:**

25 (A) **THE FIRST \$20,000,000.00 THAT IS COLLECTED SHALL BE**
26 **DEPOSITED INTO THE FUND.**

27 (B) **FOLLOWING THE DEPOSIT UNDER SUBDIVISION (A), ALL MONEY**

1 COLLECTED SHALL BE DEPOSITED into the refined petroleum fund.

2 ~~created in section 21506a.~~

3 ~~—— (5) Consistent with the March 31, 1995 determination by the~~
4 ~~state treasurer that revenue will not be sufficient to pay expected~~
5 ~~expenditures, and consistent with the April 3, 1995 notice of the~~
6 ~~fund administrator pursuant to subsection (6), funding is no longer~~
7 ~~available under this part for new claims, work invoices, and~~
8 ~~requests for indemnification received after 5 p.m. on June 29,~~
9 ~~1995. Claims, work invoices, and requests for indemnification~~
10 ~~received after 5 p.m. on June 29, 1995 are not eligible for funding~~
11 ~~under this part. Work invoices and requests for indemnification~~
12 ~~received prior to 5 p.m. on June 29, 1995 may be paid to the extent~~
13 ~~money is available in the fund as provided in this part.~~

14 ~~—— (6) If the state treasurer determines that fund revenues will~~
15 ~~not be sufficient to pay expected expenditures from the fund, the~~
16 ~~state treasurer shall notify the administrator, and 90 days after~~
17 ~~this notification has been given the administrator shall not accept~~
18 ~~any new work invoices or requests for indemnification. Upon~~
19 ~~receiving this notification from the state treasurer, the~~
20 ~~administrator shall notify by certified mail the owners and~~
21 ~~operators of petroleum underground storage tank systems registered~~
22 ~~under part 211 that funding under this part will no longer be~~
23 ~~available for new claims after the 90 day period has expired.~~
24 ~~However, work invoices and requests for indemnification that were~~
25 ~~submitted to the administrator prior to or during this 90 day~~
26 ~~period may be paid to the extent money is available in the fund as~~
27 ~~provided in this part.~~

1 (5) ~~(7)~~—The department of treasury may audit, enforce,
 2 collect, and assess the fee imposed by this part in the same manner
 3 and subject to the same requirements as revenues collected pursuant
 4 to 1941 PA 122, MCL 205.1 to 205.31.

5 Sec. 21509. (1) Notwithstanding any other provision in this
 6 part, regulatory fees shall be calculated and paid upon gross or
 7 metered gallons with respect to all "light" petroleum products.
 8 With respect only to "heavy" petroleum products (No. 4, No. 5, No.
 9 6 residual oils), regulatory fees shall be calculated and paid upon
 10 net or temperature-corrected gallons.

11 (2) Notwithstanding any other provision in this part, if a
 12 person receives refined petroleum products in this state for resale
 13 in this state or consumption in this state pursuant to a product
 14 exchange agreement, the department of treasury shall collect the
 15 regulatory fees from that person. As used in this subsection,
 16 "product exchange agreement" means an agreement between buyers and
 17 sellers of refined petroleum products in which refined petroleum
 18 products in bulk quantity are made available to a person solely in
 19 consideration of that person making available a like volume of
 20 refined petroleum products to the other party at some other
 21 location.

22 Sec. 21510. (1) ~~Except as provided in section 21521, an~~ **AN**
 23 owner or operator is eligible to receive money from the ~~fund or~~
 24 ~~bond proceeds account~~ **AUTHORITY** for corrective action or
 25 indemnification **DUE TO A RELEASE FROM A REFINED PETROLEUM**
 26 **UNDERGROUND STORAGE TANK SYSTEM** only if all of the following
 27 requirements are satisfied and the owner or operator otherwise

1 complies with this part:

2 (a) The release from which the corrective action or
3 indemnification arose was discovered and reported on or after July
4 ~~18, 1989.~~ **THE EFFECTIVE DATE OF THE 2014 AMENDATORY ACT THAT AMENDED**
5 **THIS SECTION.**

6 (b) The **REFINED** petroleum underground storage tank from which
7 the release occurred was, at the time of discovery of the release,
8 and is presently, in compliance with the registration and fee
9 requirements of part 211 and the rules promulgated under that part.

10 (c) The owner or operator reported the release within 24 hours
11 after its discovery as required by part 211 and the rules
12 promulgated under that part.

13 (d) The owner or operator is not the United States government.

14 ~~—— (e) The work invoice or request for indemnification is~~
15 ~~submitted to the administrator pursuant to this part and the rules~~
16 ~~promulgated under this part on or before 5 p.m., June 29, 1995.~~

17 **(E) ~~(f)~~** The claim is not for a release from ~~an~~ **A REFINED**
18 **PETROLEUM** underground storage tank closed prior to January 1, 1974,
19 in compliance with the fire prevention code, 1941 PA 207, MCL 29.1
20 to 29.33, and the rules promulgated under that act.

21 **(F) THE OWNER OR OPERATOR HAS MAINTAINED FINANCIAL**
22 **RESPONSIBILITY REQUIREMENTS FOR THE DEDUCTIBLE AMOUNT.**

23 **(G) THE OWNER OR OPERATOR HAS PAID THE DEDUCTIBLE AMOUNT.**

24 **(H) THE OWNER OR OPERATOR IS OTHERWISE ELIGIBLE TO RECEIVE**
25 **MONEY FROM THE AUTHORITY UNDER THIS PART.**

26 **(I) THE TOTAL AMOUNT OF EXPENDITURES, INCLUDING THE DEDUCTIBLE**
27 **AMOUNT, DOES NOT EXCEED THE CLAIM LIMIT.**

1 (2) The owner or operator may receive money from the ~~fund or~~
2 ~~bond proceeds account~~ **AUTHORITY** for corrective action or
3 indemnification due to a release that originates from an
4 aboveground piping and dispensing portion of a **REFINED** petroleum
5 underground storage tank system if all of the following
6 requirements are satisfied:

7 (a) The owner or operator is otherwise in compliance with this
8 part and the rules promulgated under this part.

9 (b) The release is sudden and immediate.

10 (c) The release is of a quantity exceeding 25 gallons and is
11 released into groundwater, surface water, or soils.

12 (d) The **OWNER OR OPERATOR REPORTED THE** release ~~is reported to~~
13 ~~the department of natural resources, underground storage tank~~
14 ~~division~~ **TO THE DEPARTMENT** within 24 hours ~~of~~ **AFTER ITS** discovery.
15 ~~of the release.~~

16 (3) Either the owner or the operator may receive money from
17 the ~~fund or bond proceeds account~~ **AUTHORITY** under this part for an
18 occurrence, but not both.

19 (4) An owner or operator ~~who~~ **THAT** is a public utility with
20 more than 500,000 customers in this state is ineligible to receive
21 money from the ~~fund or bond proceeds account~~ **AUTHORITY** for
22 corrective action or indemnification associated with a release from
23 a **REFINED** petroleum underground storage tank system used to supply
24 **REFINED** petroleum for the generation of steam electricity.

25 (5) If an owner or operator has received money from the ~~fund~~
26 ~~or bond proceeds account~~ **AUTHORITY** under this part for a release at
27 a location, the owner and operator are not eligible to receive

1 money from the ~~fund or bond proceeds account~~ **AUTHORITY** for a
2 subsequent release at the same location unless the owner or
3 operator has done either or both of the following:

4 (a) Discovered the subsequent release pursuant to corrective
5 action being taken on a confirmed release and included this
6 subsequent release as part of the corrective action for the
7 confirmed release.

8 (b) Upgraded, replaced, removed, or properly closed in place
9 all **REFINED PETROLEUM** underground storage tank systems at the
10 location of the release so as to meet the requirements of part 211
11 and the rules promulgated under that part.

12 (6) An owner or operator who discovers a subsequent release at
13 the same location as an initial release pursuant to subsection
14 (5)(a) may receive money from the ~~fund or bond proceeds account~~
15 **AUTHORITY** to perform corrective action on the subsequent release,
16 if the owner or operator otherwise complies with the requirements
17 of this part and the rules promulgated under this part. However,
18 the subsequent release shall be considered as part of the claim for
19 the initial release for purposes of determining the total amount of
20 expenditures for corrective action and indemnification under
21 ~~section 21512.~~ **SUBSECTION (1)(I).**

22 (7) An owner or operator who discovers a subsequent release at
23 the same location as an initial release following compliance with
24 subsection (5)(b) may receive money from the ~~fund or bond proceeds~~
25 ~~account~~ **AUTHORITY** to perform corrective action on the subsequent
26 release, if there have been not more than 2 releases at the
27 location, ~~if the owner or operator pays the subsequent release co-~~

1 ~~pay amount pursuant to section 21514,~~ and if the owner or operator
2 otherwise complies with the requirements of this part and the rules
3 promulgated under this part. The subsequent release shall be
4 considered a separate claim for purposes of determining the total
5 amount of expenditures for corrective action and indemnification
6 under ~~section 21512.~~ **SUBSECTION (1) (I) .**

7 **(8) AN OWNER OR OPERATOR MAY SUBMIT TO THE AUTHORITY A REQUEST**
8 **FOR A DETERMINATION THAT THE OWNER OR OPERATOR WOULD BE ELIGIBLE**
9 **FOR FUNDING UNDER THIS PART IN THE EVENT OF A RELEASE FROM A**
10 **REFINED PETROLEUM UNDERGROUND STORAGE TANK SYSTEM. UPON RECEIPT OF**
11 **A REQUEST UNDER THIS SUBSECTION, THE AUTHORITY SHALL MAKE A**
12 **DETERMINATION AND PROVIDE NOTICE OF THAT DETERMINATION, IN WRITING,**
13 **TO THE OWNER OR OPERATOR. THE NOTICE MAY CONTAIN CONDITIONS FOR**
14 **MAINTENANCE OF THAT ELIGIBILITY.**

15 **SEC. 21510A. (1) PRIOR TO SUBMITTING A CLAIM UNDER THIS PART,**
16 **AN OWNER OR OPERATOR IS RESPONSIBLE FOR A DEDUCTIBLE AMOUNT AS**
17 **FOLLOWS:**

18 **(A) SUBJECT TO SUBDIVISION (B), \$50,000.00 PER CLAIM.**

19 **(B) IF THE OWNER OR OPERATOR OR ITS AFFILIATE OWNS OR OPERATES**
20 **FEWER THAN 8 REFINED PETROLEUM UNDERGROUND STORAGE TANKS AND PAYS**
21 **THE AUTHORITY AN ANNUAL FEE OF \$500.00 PER REFINED PETROLEUM**
22 **UNDERGROUND STORAGE TANK, \$15,000.00 PER CLAIM. FOR PURPOSES OF**
23 **THIS SUBDIVISION, EACH COMPARTMENT OF A MULTIPLE COMPARTMENT**
24 **REFINED PETROLEUM UNDERGROUND STORAGE TANK IS CONSIDERED A REFINED**
25 **PETROLEUM UNDERGROUND STORAGE TANK FOR PURPOSES OF CALCULATING THE**
26 **ANNUAL FEE.**

27 **(2) THE DUE DATE FOR THE ANNUAL FEE PAID PURSUANT TO**

1 SUBSECTION (1) (B) SHALL BE SET BY THE AUTHORITY.

2 (3) THE DEDUCTIBLE AMOUNT APPLIES TO EACH CLAIM. HOWEVER, 2 OR
3 MORE CLAIMS ARISING OUT OF THE SAME, INTERRELATED, ASSOCIATED,
4 REPEATED, OR CONTINUOUS RELEASES OR A SERIES OF RELATED RELEASES
5 SHALL BE CONSIDERED A SINGLE CLAIM AND BE SUBJECT TO 1 CLAIM LIMIT
6 AND 1 DEDUCTIBLE AMOUNT. ANY CLAIM WHICH TAKES PLACE OVER 2 OR MORE
7 CLAIM PERIODS SHALL BE SUBJECT TO 1 CLAIM LIMIT AND 1 DEDUCTIBLE
8 AMOUNT.

9 (4) AN OWNER OR OPERATOR THAT SUBMITS A CLAIM UNDER SECTION
10 21515 SHALL INCLUDE WORK INVOICES OR OTHER EVIDENCE THAT THE
11 DEDUCTIBLE AMOUNT DESCRIBED IN SUBSECTION (1) HAS BEEN MET. THE
12 EXPENSES TOWARD MEETING THE DEDUCTIBLE AMOUNT SHALL BE DOCUMENTED
13 AND SHALL COMPLY WITH THE FOLLOWING:

14 (A) EXPENSES FOR ITEMS LISTED IN THE SCHEDULE OF COSTS SHALL
15 BE AT OR BELOW THE ALLOWABLE REIMBURSEMENT AMOUNT LISTED IN THE
16 SCHEDULE OF COSTS.

17 (B) EXPENSES FOR ITEMS THAT ARE NOT LISTED IN THE SCHEDULE OF
18 COSTS SHALL BE REASONABLE AND NECESSARY CONSIDERING CONDITIONS AT
19 THE SITE BASED UPON A COMPETITIVE BIDDING PROCESS ESTABLISHED BY
20 THE AUTHORITY.

21 SEC. 21510B. (1) THE AUTHORITY SHALL ESTABLISH A SCHEDULE OF
22 COSTS THAT ITEMIZES CORRECTIVE ACTIONS THAT ARE GENERALLY CONDUCTED
23 AT A SITE AND LISTS AN ALLOWABLE REIMBURSEMENT AMOUNT THAT MAY BE
24 PAID FOR EACH CORRECTIVE ACTION AS PART OF A CLAIM UNDER THIS PART.
25 IF THE AUTHORITY DETERMINES THAT COSTS FOR PARTICULAR CORRECTIVE
26 ACTIONS VARY IN DIFFERENT REGIONS OF THE STATE, THE AUTHORITY MAY
27 ESTABLISH ALLOWABLE REIMBURSEMENT AMOUNTS THAT REFLECT REGIONAL

1 DIFFERENCES.

2 (2) THE AUTHORITY SHALL ANNUALLY REVIEW AND UPDATE THE
3 SCHEDULE OF COSTS AS NECESSARY OR APPROPRIATE.

4 (3) THE DEPARTMENT SHALL POST THE SCHEDULE OF COSTS AND ANY
5 UPDATES TO THE SCHEDULE OF COSTS ON THE DEPARTMENT'S WEBSITE.

6 SEC. 21510C. A CLAIM SHALL NOT BE APPROVED BY THE AUTHORITY
7 FOR ANY OF THE FOLLOWING:

8 (A) A RELEASE THAT WAS EXPECTED OR INTENDED BY AN OWNER OR
9 OPERATOR, OR AN EMPLOYEE OF AN OWNER OR OPERATOR.

10 (B) PUNITIVE, EXEMPLARY, OR MULTIPLIED DAMAGES, FINES, TAXES,
11 PENALTIES, ASSESSMENTS, PUNITIVE OR STATUTORY ASSESSMENTS, OR ANY
12 CIVIL, ADMINISTRATIVE, OR CRIMINAL FINES, SANCTIONS, OR PENALTIES.

13 (C) A CLAIM MADE BY AN OWNER OR OPERATOR AGAINST ANY OTHER
14 PERSON THAT IS ALSO AN OWNER OR OPERATOR OF THE REFINED PETROLEUM
15 UNDERGROUND STORAGE TANK SYSTEM.

16 (D) A RELEASE CAUSED BY, BASED UPON, RESULTING FROM, OR
17 ATTRIBUTABLE TO THE OWNER'S OR OPERATOR'S INTENTIONAL, KNOWING,
18 WILLFUL, OR DELIBERATE NONCOMPLIANCE WITH ANY STATUTE, REGULATION,
19 ORDINANCE, ADMINISTRATIVE COMPLAINT, NOTICE OF VIOLATION, NOTICE
20 LETTER, EXECUTIVE ORDER, OR INSTRUCTION OF ANY GOVERNMENTAL AGENCY
21 OR BODY.

22 (E) A RELEASE ARISING FROM THE OWNERSHIP, MAINTENANCE, USE, OR
23 ENTRUSTMENT TO OTHERS OF ANY AIRCRAFT, AUTO, ROLLING STOCK, OR
24 WATERCRAFT, INCLUDING LOADING AND UNLOADING.

25 (F) COSTS, CHARGES, OR EXPENSES INCURRED BY THE OWNER OR
26 OPERATOR FOR GOODS SUPPLIED BY THE OWNER OR OPERATOR OR SERVICES
27 PERFORMED BY THE STAFF OR EMPLOYEES OF THE OWNER OR OPERATOR, OR

1 ITS PARENT, SUBSIDIARY, OR AFFILIATE, UNLESS THE COSTS, CHARGES, OR
2 EXPENSES ARE INCURRED WITH THE PRIOR WRITTEN APPROVAL OF THE
3 AUTHORITY.

4 (G) A RELEASE ARISING FROM ANY CONSEQUENCE, WHETHER DIRECT OR
5 INDIRECT, OF WAR, INVASION, ACT OF A FOREIGN ENEMY, ACT OF
6 TERRORISTS, HOSTILITIES, WHETHER WAR HAS BEEN DECLARED OR NOT,
7 CIVIL WAR, REBELLION, REVOLUTION, INSURRECTION OR MILITARY OR
8 USURPED POWER, STRIKE, RIOT, OR CIVIL COMMOTION.

9 (H) COSTS ARISING OUT OF THE RECONSTRUCTION, REPAIR,
10 REPLACEMENT, UPGRADING OF A REFINED PETROLEUM UNDERGROUND STORAGE
11 TANK SYSTEM, OR ANY OTHER IMPROVEMENTS AND ANY SITE ENHANCEMENTS OR
12 ROUTINE MAINTENANCE ON, WITHIN, OR UNDER A LOCATION.

13 (I) COSTS ARISING OUT OF THE REMOVING, REPLACING, OR RECYCLING
14 OF THE CONTENTS OF A REFINED PETROLEUM UNDERGROUND STORAGE TANK
15 SYSTEM.

16 (J) COSTS, CHARGES, OR EXPENSES INCURRED TO INVESTIGATE OR
17 VERIFY THAT A CONFIRMED RELEASE HAS TAKEN PLACE.

18 (K) COSTS RELATED TO THE INJURY OF AN EMPLOYEE OF THE OWNER OR
19 OPERATOR OR ITS PARENT, SUBSIDIARY, OR AFFILIATE ARISING OUT OF AND
20 IN THE COURSE OF EMPLOYMENT BY THE OWNER OR OPERATOR OR ITS PARENT,
21 SUBSIDIARY, OR AFFILIATE OR PERFORMING DUTIES RELATED TO THE
22 CONDUCT OF THE BUSINESS OF THE OWNER OR OPERATOR OR ITS PARENT,
23 SUBSIDIARY, OR AFFILIATE BY A SPOUSE, CHILD, PARENT, BROTHER, OR
24 SISTER OF THAT EMPLOYEE. THIS SUBDIVISION APPLIES WHETHER THE OWNER
25 OR OPERATOR MAY BE LIABLE AS AN EMPLOYER OR IN ANY OTHER CAPACITY
26 AND TO ANY OBLIGATION TO SHARE DAMAGES WITH OR REPAY SOMEONE ELSE
27 WHO MUST PAY DAMAGES BECAUSE OF THE INJURY.

(I) ANY OBLIGATION OF THE OWNER OR OPERATOR UNDER WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR DISABILITY BENEFITS LAW OR SIMILAR LAW.

(M) ANY LIABILITY OR CLAIM FOR LIABILITY OF OTHERS ASSUMED BY THE OWNER OR OPERATOR UNDER ANY CONTRACT OR AGREEMENT, UNLESS THE OWNER OR OPERATOR WOULD HAVE BEEN LIABLE IN THE ABSENCE OF THE CONTRACT OR AGREEMENT.

(N) A RELEASE ON, WITHIN, UNDER, OR EMANATING FROM A LOCATION IF THE RELEASE COMMENCED SUBSEQUENT TO THE TIME SUCH LOCATION WAS SOLD, GIVEN AWAY, OR ABANDONED.

Sec. 21515. (1) To receive money from the ~~fund or bond proceeds account~~ **AUTHORITY** for corrective action, the owner or operator shall follow the procedures outlined in this section and shall submit ~~reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared under part 213 and rules promulgated under that part to the department,~~ and shall provide other **A CLAIM TO THE ADMINISTRATOR CONTAINING** information required by the administrator relevant to determining compliance with this part.

(2) ~~To receive money from the fund for corrective action, an owner or operator shall submit a claim to the administrator. An owner or operator shall not submit a claim~~ **UNDER SUBSECTION (1)** until work invoices in excess of \$5,000.00 ~~of the costs of corrective action~~ **THE DEDUCTIBLE AMOUNT** have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection ~~(2),~~ (1), the administrator shall make all of the following determinations:

~~1 (a) Whether the department has objected to payment on the~~
~~2 claim because the work performed or proposed to be performed is not~~
~~3 consistent with the requirements of part 213 and rules promulgated~~
~~4 under that part.~~

~~5 (b) Whether the work performed is necessary and appropriate~~
~~6 considering conditions at the site of the release.~~

~~7 (c) Whether the cost of performing the work is reasonable.~~

~~8 (A) (d) Whether the owner or operator is eligible to receive~~
~~9 funding under this part.~~

~~10 (e) Whether the owner or operator has complied with section~~
~~11 21517.~~

~~12 (4) If the administrator fails to make the determinations~~
~~13 required under this section within 30 days after receipt of~~
~~14 certification from the department that the owner or operator has~~
~~15 met the requirements of section 21510(1)(b) and (c), the claim is~~
~~16 considered to be approved.~~

17 (B) WHETHER THE WORK PERFORMED OR PROPOSED TO BE PERFORMED IS
18 CONSISTENT WITH THE REQUIREMENTS OF PART 213, AND WHETHER THOSE
19 ACTIVITIES ARE CONSISTENT WITH ACHIEVING SITE CLOSURE.

20 (C) WHETHER THE OWNER OR OPERATOR HAS PAID THE DEDUCTIBLE
21 AMOUNT.

22 (D) WHETHER THE CORRECTIVE ACTION PERFORMED IS REASONABLE AND
23 NECESSARY CONSIDERING CONDITIONS AT THE SITE OF THE RELEASE.

24 (E) WHETHER THE COST OF PERFORMING THE CORRECTIVE ACTION WORK
25 IS AT OR BELOW THE ALLOWABLE REIMBURSEMENT AMOUNT IN THE SCHEDULE
26 OF COSTS OR, IF THE CORRECTIVE ACTION WORK IS NOT A LISTED ITEM,
27 WHETHER THE COST IS REASONABLE AND NECESSARY.

1 (4) **THE ADMINISTRATOR MAY CONSULT WITH THE DEPARTMENT AND THE**
2 **DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS TO MAKE THE**
3 **DETERMINATION REQUIRED IN SUBSECTION (3).**

4 (5) If the administrator determines under subsection (3) that
5 the work invoices included with the claim are **REASONABLE AND**
6 necessary ~~and appropriate~~ considering conditions at the site of the
7 release and reasonable in terms of cost and the owner or operator
8 is eligible for funding under this part, the administrator shall
9 approve the claim and notify the owner or operator who submitted
10 the claim of the approval. If the administrator determines that the
11 work described on the work invoices submitted was not **REASONABLE**
12 **AND** necessary ~~or appropriate~~ or the cost of the work is not
13 reasonable, or that the owner or operator is not eligible for
14 funding under this part, the administrator shall deny the claim or
15 any portion of the work invoices submitted and give notice of the
16 denial to the owner or operator who submitted the claim.

17 (6) The owner or operator may submit additional work invoices
18 to the administrator after approval of a claim under subsection
19 (5). Within 45 days after receipt of a work invoice, the
20 administrator shall make the following determinations:

21 (a) Whether the work invoice complies with subsection (3).

22 (b) Whether the owner or operator is currently in compliance
23 with the registration and fee requirements of part 211 and the
24 rules promulgated under that part for the **REFINED PETROLEUM**
25 underground storage tank system from which the release occurred.

26 (7) If the administrator determines that the work invoice does
27 not meet the requirements of subsection (6), ~~he or she~~ **THE**

1 **ADMINISTRATOR** shall deny the work invoice and give written notice
 2 of the denial to the owner or operator who submitted the work
 3 invoice.

4 (8) The administrator shall keep records of approved work
 5 invoices. If the owner or operator has not exceeded the allowable
 6 amount of expenditure provided in section ~~21512~~, **21510(1)(I)**, the
 7 administrator shall ~~forward payment vouchers to the state treasurer~~
 8 **PAY THE CLAIM** within 45 days of making the determinations under
 9 subsection (6).

10 (9) The administrator may approve a reimbursement for a work
 11 invoice that was submitted by an owner or operator for corrective
 12 action taken if the work invoice meets the requirements of this
 13 part for an approved claim and an approved work invoice.

14 (10) Except as provided in subsection (11) ~~or as otherwise~~
 15 ~~provided in this subsection, upon receipt of a payment voucher, the~~
 16 ~~state treasurer or~~ **AND SECTION 21519**, the authority shall make a
 17 payment ~~jointly~~ to the owner or operator within 30 days if
 18 sufficient money exists in the fund. ~~or a bond proceeds account.~~
 19 Once payment has been made under this section, the ~~fund~~ **AUTHORITY**
 20 is not liable for any claim on the basis of that payment.

21 (11) ~~Upon direction of the administrator, the state treasurer~~
 22 ~~or the~~ **THE** authority may withhold partial payment of money on
 23 payment vouchers if there is reasonable cause to ~~believe~~ **SUSPECT**
 24 that there are ~~suspected~~ violations of section 21548 or if
 25 necessary to assure acceptable completion of the proposed work.

26 (12) The ~~department~~ **AUTHORITY** shall prepare and make available
 27 to owners and operators standardized claim and work invoice forms.

1 Sec. 21516. (1) An owner or operator with a claim approved
2 pursuant to section 21515 for which corrective action is in
3 progress who sells or transfers the property that is the subject of
4 the approved claim to another person may assign or transfer the
5 approved claim to that other person. The person to whom the
6 assignment or transfer is made is eligible to receive money from
7 the ~~fund~~-**AUTHORITY** as an owner or operator for the release which is
8 the subject of the approved claim. Allowable, outstanding approved
9 or paid work invoices of the owner or operator making the
10 assignment or transfer may be counted toward the ~~eo-pay~~-**DEDUCTIBLE**
11 amount of the person to whom the assignment or transfer is made.

12 (2) An owner or operator assigning or transferring an approved
13 claim pursuant to this section shall notify the administrator of
14 the proposed assignment or transfer at least 10 days before the
15 effective date of the assignment or transfer.

16 Sec. 21518. (1) To receive money from the ~~fund~~-**AUTHORITY** for
17 indemnification, the owner or operator shall submit to the
18 administrator a request for indemnification containing the
19 information required by the administrator, including a copy of the
20 judgment obtained by a third party from a court of law against the
21 owner or operator or the settlement entered into between the owner
22 or operator and the third party, all documentation supporting the
23 reasonableness of and justification for the judgment or settlement,
24 and work invoices which conform to the requirements of ~~section~~
25 ~~21503(9)(a) to (e)~~. **THIS PART.** If the administrator determines that
26 the owner or operator is eligible for funding under this part, is
27 eligible for the amount requested, has paid the ~~eo-pay~~-**DEDUCTIBLE**

1 amount, and has not exceeded the allowable amount of expenditure
 2 provided in section ~~21512, 21510(1)(I)~~, and that the work invoices
 3 ~~are reasonable in terms of cost,~~ **PAYABLE UNDER THIS PART**, the
 4 administrator shall forward a copy of the request for
 5 indemnification along with all supporting documentation to the
 6 attorney general. The attorney general shall approve the request
 7 for indemnification if there is a legally enforceable judgment
 8 against, or settlement with, the owner or operator that was caused
 9 by an accidental release and that is reasonable and consistent with
 10 the purposes of this part. The attorney general may raise as a
 11 defense to the request any rights or defenses that were or are
 12 available to the owner or operator and, in the case of a judgment,
 13 that were not heard and ruled upon by the court. If a request for
 14 indemnification is approved by the attorney general, the
 15 ~~administrator~~ **AUTHORITY** shall ~~forward the approved request for~~ **PAY**
 16 **THE** indemnification ~~to the department of treasury.~~ **AMOUNT.**

17 (2) The administrator shall keep records of all approved
 18 requests for indemnification.

19 (3) The ~~state treasurer~~ **AUTHORITY** shall make a payment to an
 20 owner or operator for an approved indemnification request within 30
 21 days if sufficient money ~~exists in the fund.~~ **IS AVAILABLE TO MAKE**
 22 **THE PAYMENT.**

23 Sec. 21519. (1) The ~~state treasurer~~ **AUTHORITY** shall ~~pay~~
 24 ~~payment vouchers~~ **MAKE PAYMENTS ON CLAIMS** in the order in which they
 25 are received. ~~If~~ **HOWEVER, IF** there is insufficient money ~~in the~~
 26 ~~fund~~ **AVAILABLE** to make a payment, ~~then a payment shall not be made.~~
 27 ~~However, payment vouchers~~ **PAYMENTS ON ALL APPROVED CLAIMS, THE**

1 AUTHORITY SHALL GIVE NOTICE TO EACH OWNER THAT IS ELIGIBLE TO
2 SUBMIT A CLAIM UNDER THIS PART ADVISING THE OWNERS OF THE FINANCIAL
3 SITUATION AND THE AUTHORITY SHALL PRIORITIZE PAYMENTS BASED UPON
4 THE RISKS AT THE SITE TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
5 THE ENVIRONMENT. PAYMENTS ON CLAIMS that are not funded ~~may~~ **SHALL**
6 be paid if revenues ~~of the fund~~ **SUBSEQUENTLY** become available.

7 (2) The ~~fund~~ **AUTHORITY** and the state are not liable for work
8 invoices or requests for indemnification if ~~money in the fund is~~
9 **REVENUES OF THE AUTHORITY ARE** insufficient to meet these claims.

10 Sec. 21521. (1) If the administrator denies a claim or work
11 invoice, or a request for indemnification, the owner or operator
12 who submitted the claim, work invoice, or request for
13 indemnification may, within 14 days following the denial, request
14 review by the ~~department. Upon receipt of a request for review~~
15 ~~under this subsection, the department shall forward the request to~~
16 ~~the board for a preliminary review.~~ **BOARD. HOWEVER, IF THE**
17 **ADMINISTRATOR BELIEVES THE DISPUTE MAY BE ABLE TO BE RESOLVED**
18 **WITHOUT THE BOARD'S REVIEW, THE ADMINISTRATOR MAY CONTACT THE OWNER**
19 **OR OPERATOR REGARDING THE ISSUES IN DISPUTE AND MAY NEGOTIATE A**
20 **RESOLUTION OF THE DISPUTE PRIOR TO THE BOARDS'S REVIEW.** The board
21 shall conduct a review of the denial ~~and shall submit a~~
22 ~~recommendation to the department as to~~ **DETERMINE** whether the claim,
23 work invoice, or request for indemnification ~~substantially complies~~
24 ~~with~~ **IS PAYABLE UNDER** this part. ~~Following review by the board, the~~
25 ~~department shall approve the claim, work invoice, or request for~~
26 ~~indemnification if the department determines that the claim, work~~
27 ~~invoice, or request for indemnification substantially complies with~~

~~the requirements of this part. In making its determination, the department shall give substantial consideration to the recommendations of the board. However, the department shall not approve a claim, work invoice, or request for indemnification for a release that was discovered prior to July 18, 1989.~~

~~—— (2) If the department approves a claim based upon substantial compliance pursuant to subsection (1), the department may refuse to pay for costs incurred during the time the owner or operator was not in strict compliance with this part.~~

(2) ~~(3)~~ A person who is denied approval by the department **BOARD** after review under subsection (1) may appeal the decision directly to the circuit court. ~~for the county of Ingham.~~

Sec. 21523. The ~~Michigan~~ underground storage tank ~~financial assurance~~ authority is created as a body corporate within the department ~~of management and budget~~ and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department ~~of management and budget~~ or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

Sec. 21524. (1) The authority shall be governed by a board of directors consisting of the director of the department ~~of management and budget~~, ~~the director of the department of state police~~, and ~~3~~ 6 residents of the state appointed by the governor with the advice and consent of the senate ~~—~~ **AS FOLLOWS:**

1 (A) AN INDIVIDUAL REPRESENTING PETROLEUM REFINERS.

2 (B) AN INDIVIDUAL REPRESENTING INDEPENDENT PETROLEUM
3 MARKETERS.

4 (C) AN INDIVIDUAL FROM A STATEWIDE MOTOR FUEL RETAIL
5 ASSOCIATION.

6 (D) AN INDIVIDUAL FROM A STATEWIDE BUSINESS ASSOCIATION THAT
7 INCLUDES OWNERS OR OPERATORS OF REFINED PETROLEUM UNDERGROUND
8 STORAGE TANKS.

9 (E) AN INDIVIDUAL FROM A STATEWIDE ENVIRONMENTAL ORGANIZATION.

10 (F) A MEMBER OF THE GENERAL PUBLIC.

11 (2) The ~~3-6~~ appointed members **OF THE BOARD** shall serve terms
12 of 3 years. However, in making the initial appointments, the
13 governor shall designate ~~1-2~~ appointed ~~member~~ **MEMBERS** to serve for
14 3 years, ~~1-2~~ appointed ~~member~~ **MEMBERS** to serve for 2 years, and ~~1-2~~
15 appointed ~~member~~ **MEMBERS** to serve for 1 year.

16 (3) ~~(2)~~ Upon appointment to the board of directors under
17 subsection (1), and upon the taking and filing of the
18 constitutional oath of office, a member of the board of directors
19 shall enter office and exercise the duties of the office to which
20 he or she is appointed.

21 (4) ~~(3)~~ A vacancy on the board of directors shall be filled in
22 the same manner as the original appointment. A vacancy shall be
23 filled for the balance of the unexpired term. A member of the board
24 of directors shall hold office until a successor is appointed and
25 qualified.

26 (5) ~~(4)~~ Members of the board of directors and officers and
27 employees of the authority are subject to ~~Act No. 317 of the Public~~

~~Acts of 1968, being sections 15.321 to 15.330 of the Michigan Compiled Laws, and Act No. 318 of the Public Acts of 1968, being sections 15.301 to 15.310 of the Michigan Compiled Laws, 1968 PA 317, MCL 15.321 TO 15.330, AND 1968 PA 318, MCL 15.301 TO 15.310,~~
 as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the ~~accountants~~
ACCOUNTANT to fairly reflect the financial condition of the authority.

~~(6) (5) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976 PA~~

1 267, MCL 15.261 TO 15.275. Public notice of the time, date, and
 2 place of each meeting shall be given in the manner required by Act
 3 ~~No. 267 of the Public Acts of 1976. Three~~ 1976 PA 267, MCL 15.261
 4 TO 15.275. **FOUR** members of the board of directors constitute a
 5 quorum for the transaction of business. An action of the board of
 6 directors shall be by a majority of the votes cast. ~~A state officer~~
 7 ~~who is a member of the board of directors~~ **THE DIRECTOR OF THE**
 8 **DEPARTMENT** may designate a representative from his or her
 9 department to serve ~~instead of that state officer as~~ a voting
 10 member of the board of directors for 1 or more meetings.

11 (7) ~~(6)~~ The board of directors shall elect a chairperson from
 12 among its members and may elect any other officers the board of
 13 directors considers appropriate.

14 Sec. 21525. (1) The ~~governor~~ **BOARD** shall ~~designate the~~
 15 ~~executive director~~ **APPOINT AN ADMINISTRATOR** of the authority **AND**
 16 **MAY DELEGATE TO THE ADMINISTRATOR RESPONSIBILITIES FOR ACTING ON**
 17 **BEHALF OF THE AUTHORITY.** The authority may employ on a permanent or
 18 temporary basis legal and technical experts, and other officers,
 19 agents, or employees, to be paid from the funds of the authority.
 20 The authority shall determine the qualifications, duties, and
 21 compensation of those it employs, but an employee shall not be paid
 22 a higher salary than the director of the department. ~~of management~~
 23 ~~and budget.~~ The authority may delegate to 1 or more members,
 24 officers, agents, or employees any of the powers or duties of the
 25 authority as the authority considers proper.

26 ~~—— (2) The budgeting, procurement, and related functions of the~~
 27 ~~authority shall be performed under the direction and supervision of~~

~~the director of the department of management and budget.~~

(2) ~~(3)~~—The authority may contract with the department of management and budget for the purpose of maintaining and improving the rights and interests of the authority.

(3) ~~(4)~~—The authority shall annually file with the legislature a written report on its activities of the last year. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes ~~sold~~ **ISSUED BY THE FINANCE AUTHORITY** under this part.

(4) ~~(5)~~—The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

~~(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.~~

(C) ~~(d)~~—Enter into contracts and other instruments necessary,

1 incidental, or convenient to the performance of its duties and the
2 exercise of its powers.

3 (D) ~~(e)~~—With the prior consent of the director of the
4 department, ~~of management and budget~~, solicit and accept gifts,
5 grants, loans, and other aid from any person or the federal, state,
6 or local government or any agency of the federal, state, or local
7 government, or participate in any other way in a federal, state, or
8 local government program.

9 (E) ~~(f)~~—Procure insurance against loss in connection with the
10 property, assets, or activities of the authority.

11 (F) ~~(g)~~—Invest money of the authority, at the board of
12 directors' discretion, in instruments, obligations, securities, or
13 property determined proper by the board of directors, and name and
14 use depositories for its money.

15 (G) ~~(h)~~—Contract for goods and services and engage personnel
16 as necessary and engage the services of private consultants,
17 managers, legal counsel, and auditors for rendering professional
18 financial assistance and advice, payable out of any money of the
19 authority.

20 (H) ~~(i)~~—Indemnify and procure insurance indemnifying members
21 of the board of directors from personal loss or accountability from
22 liability asserted by a person on bonds or notes of the authority,
23 or from any personal liability or accountability by reason of the
24 issuance of the bonds or notes, or by reason of any other action
25 taken or the failure to act by the authority.

26 (I) ~~(j)~~—Do all other things necessary or convenient to achieve
27 the objectives and purposes of the authority, this part, rules

1 promulgated under this part, or other laws that relate to the
2 purposes and responsibilities of the authority.

3 Sec. 21527. (1) **THE AUTHORITY SHALL ASSESS THE POTENTIAL**
4 **DEMAND FOR PAYMENT OF CLAIMS UNDER THIS PART AND SHALL PROVIDE THE**
5 **RESULTS OF THE ASSESSMENT TO THE FINANCE AUTHORITY. UPON REVIEW OF**
6 **THE RESULTS OF THE ASSESSMENT, IF THE FINANCE AUTHORITY DETERMINES**
7 **THAT IT IS PRUDENT TO DO SO, THE FINANCE AUTHORITY MAY ISSUE BONDS**
8 **OR NOTES.**

9 (2) ~~(1)~~—The **FINANCE** authority may authorize and issue its
10 bonds or notes payable solely from the revenues or funds available
11 to the fund under section 21508. Bonds or notes of the **FINANCE**
12 authority are not a debt or liability of the state, ~~and~~ do not
13 create or constitute any indebtedness, liability, or obligation of
14 the state, ~~or be or~~ **AND DO NOT** constitute a pledge of the faith and
15 credit of the state. All **FINANCE** authority bonds and notes are
16 payable solely from revenues or funds pledged or available for
17 their payment as authorized in this part. Each bond and note shall
18 contain on its face a statement to the effect that the authority is
19 obligated to pay the principal of and the interest on the bond or
20 note only from revenues or from funds of the **FINANCE** authority
21 pledged for such payment and that the state is not obligated to pay
22 that principal or interest and that neither the faith and credit
23 nor the taxing power of the state is pledged to the payment of the
24 principal of or the interest on the bond or note.

25 (3) ~~(2)~~—All expenses incurred in implementing this part are
26 payable solely from revenues or funds provided or to be provided
27 under this part. This part does not authorize the **FINANCE** authority

1 to incur any indebtedness or liability on behalf of or payable by
2 the state.

3 Sec. 21528. (1) The **FINANCE** authority may issue from time to
4 time bonds or notes in principal amounts the **FINANCE** authority
5 considers necessary to provide funds for any purpose, including,
6 but not limited to, all of the following:

7 (a) The ~~purposes described in section 21506(4)(a) and~~
8 ~~(e).~~ **PAYMENT OF APPROVED CLAIMS UNDER THIS PART.**

9 (b) The payment, funding, or refunding of the principal of,
10 interest on, or redemption premiums on bonds or notes issued by the
11 **FINANCE** authority whether the bonds or notes or interest to be
12 funded or refunded have or have not become due.

13 (c) The establishment or increase of reserves to secure or to
14 pay **FINANCE** authority bonds or notes or interest on those bonds or
15 notes.

16 (d) The payment of interest on the bonds or notes for a period
17 determined by the **FINANCE** authority.

18 (e) The payment of all other costs or expenses of the **FINANCE**
19 authority incident to and necessary or convenient to implement its
20 purposes and powers.

21 (2) The bonds or notes of the **FINANCE** authority are not a
22 general obligation of the **FINANCE** authority but are payable solely
23 from the revenues or funds, or both, pledged to the payment of the
24 principal of and interest on the bonds or notes as provided in the
25 resolution authorizing the bond or note.

26 (3) The bonds or notes of the **FINANCE** authority:

27 (a) Shall be authorized by resolution of the **FINANCE**

1 authority.

2 (b) Shall bear the date or dates of issuance.

3 (c) May be issued as either tax-exempt bonds or notes or
4 taxable bonds or notes for federal income tax purposes.

5 (d) Shall be serial bonds, term bonds, or term and serial
6 bonds.

7 (e) Shall mature at such time or times not exceeding 20 years
8 from the date of issuance.

9 (f) May provide for sinking fund payments.

10 (g) May provide for redemption at the option of the **FINANCE**
11 authority for any reason or reasons.

12 (h) May provide for redemption at the option of the bondholder
13 for any reason or reasons.

14 (i) Shall bear interest at a fixed or variable rate or rates
15 of interest per annum or at no interest.

16 (j) Shall be registered bonds, coupon bonds, or both.

17 (k) May contain a conversion feature.

18 (l) May be transferable.

19 (m) Shall be in the form, denomination or denominations, and
20 with such other provisions and terms as is determined necessary or
21 beneficial by the **FINANCE** authority.

22 (4) If a member of the board of directors or any officer of
23 the **FINANCE** authority whose signature or facsimile of his or her
24 signature appears on the note, bond, or coupon ceases to be a
25 member or officer before the delivery of that bond or note, the
26 signature continues to be valid and sufficient for all purposes, as
27 if the member or officer had remained in office until the delivery.

1 (5) Bonds or notes of the **FINANCE** authority may be sold at a
2 public or private sale at the time or times, at the price or
3 prices, and at a discount as the **FINANCE** authority determines. ~~An~~**A**
4 **FINANCE** authority bond or note is not subject to the revised
5 municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The
6 bond or note of the **FINANCE** authority is not required to be filed
7 under ~~the uniform securities act, 1964 PA 265, MCL 451.501 to~~
8 ~~451.818, or the uniform securities act (2002), 2008 PA 551, MCL~~
9 451.2101 to 451.2703.

10 Sec. 21531. Within limitations that are contained in the
11 issuance or authorization resolution of the **FINANCE** authority, the
12 **FINANCE** authority may authorize a member of the board of directors,
13 the executive director, or any other officer of the **FINANCE**
14 authority to do 1 or more of the following:

15 (a) Sell and deliver and receive payment for bonds or notes.

16 (b) Refund bonds or notes by the delivery of new bonds or
17 notes whether or not the bonds or notes to be refunded are mature
18 or subject to redemption.

19 (c) Deliver bonds or notes, partly to refund bonds or notes
20 and partly for any other authorized purpose.

21 (d) Buy issued bonds or notes and resell those bonds or notes.

22 (e) Approve interest rates or methods for fixing interest
23 rates, prices, discounts, maturities, principal amounts,
24 denominations, dates of issuance, interest payment dates,
25 redemption rights at the option of the authority or the holder, the
26 place of delivery and payment, and other matters and procedures
27 necessary to complete the transactions authorized.

1 (f) Direct the investment of any and all funds of the **FINANCE**
2 authority.

3 (g) Approve the terms of an insurance contract, an agreement
4 for a line of credit, a letter of credit, a commitment to purchase
5 notes or bonds, an agreement to remarket bonds or notes, or any
6 other transaction to provide security to assure timely payment of a
7 bond or note or an agreement to manage payment, revenue, or
8 interest rate exposure.

9 (h) Execute any power, duty, function, or responsibility of
10 the **FINANCE** authority.

11 Sec. 21546. (1) This part does not create any liability on
12 behalf of the state. This part shall not be construed as making the
13 state the guarantor of the fund.

14 (2) This part does not relieve any person who may be eligible
15 ~~to receive money from the fund or the former emergency response~~
16 ~~fund~~ **TO SUBMIT A CLAIM TO THE AUTHORITY** from any liability that he
17 or she may incur as the owner or operator of ~~an~~ **A REFINED PETROLEUM**
18 underground storage tank system. The state is not assuming the
19 liability of an owner or operator eligible for funding under this
20 part; it is only providing assistance to such owners or operators
21 in meeting the financial responsibility requirements.

22 (3) If all bonds or notes of the **FINANCE** authority payable
23 from the fund have been fully paid or provided for and if any
24 provision of this part is found to be unconstitutional by a court
25 of competent jurisdiction and the allowable time for filing an
26 appeal has expired or the appellant has exhausted all of his or her
27 avenues of appeal, this whole part shall be considered

1 unconstitutional and invalid.

2 Sec. 21548. (1) A person who makes or submits or causes to be
3 made or submitted either directly or indirectly any statement,
4 report, affidavit, application, claim, bid, work invoice, or other
5 request for payment or indemnification under this part knowing that
6 the statement, report, application, claim, bid, work invoice, or
7 other request for payment or indemnification is false or misleading
8 is guilty of a felony punishable by imprisonment for not more than
9 5 years or a fine of not more than \$50,000.00, or both. In addition
10 to any penalty imposed under this subsection, a person convicted
11 under this subsection shall pay restitution to the ~~fund~~**AUTHORITY**
12 for the amount received in violation of this subsection.

13 (2) A person who makes or submits or causes to be made or
14 submitted either directly or indirectly any statement, report,
15 application, claim, bid, work invoice, or other request for payment
16 or indemnification under this part knowing that the statement,
17 report, affidavit, application, claim, bid, work invoice, or other
18 request for payment or indemnification is false, misleading, or
19 fraudulent, or who commits a fraudulent practice, is subject to a
20 civil fine of not more than \$50,000.00 or twice the amount
21 submitted, whichever is greater. In addition to any civil fine
22 imposed under this subsection, a person found responsible under
23 this subsection shall pay restitution to the ~~fund~~**AUTHORITY** for the
24 amount received in violation of this subsection. The legislature
25 intends that this subsection be given retroactive application.

26 (3) As used in subsection (2), "fraudulent" or "fraudulent
27 practice" includes, but is not limited to, the following:

1 (a) Submitting a work invoice for the excavation, hauling,
2 disposal, or provision of soil, sand, or backfill for an amount
3 greater than the legal capacity of the carrying vehicle or greater
4 than was actually carried, excavated, disposed, or provided.

5 (b) Submitting paperwork for services ~~done~~ or work provided
6 that was not in fact provided or that was not directly provided by
7 the individual indicated on the paperwork.

8 (c) Contaminating an otherwise clean resource or site with
9 contaminated soil or product from a contaminated resource or site.

10 (d) Returning any load of contaminated soil to its original
11 site for reasons other than remediation of the soil.

12 (e) Causing damage intentionally or as the result of gross
13 negligence to ~~an~~ **A REFINED PETROLEUM** underground storage tank
14 system, which damage results in a release at a site.

15 (f) Placing ~~an~~ **A REFINED PETROLEUM** underground storage tank
16 system at a contaminated site where no **REFINED PETROLEUM**
17 underground storage tank system previously existed for purposes of
18 disguising the source of contamination or to obtain funding under
19 this part.

20 (g) Submitting a work invoice for the excavation of soil from
21 a site that was removed for reasons other than removal of the
22 **REFINED PETROLEUM** underground storage tank system or remediation.

23 (h) Any intentional act or act of gross negligence that causes
24 or allows contamination to spread at a site.

25 (i) Registration of a nonexistent **REFINED PETROLEUM**
26 underground storage tank system with the department.

27 (j) Loaning to an owner or operator the ~~ee pay~~ **DEDUCTIBLE**

1 amount ~~required under section 21514~~ and then submitting or causing
2 to be submitted inflated claims or invoices designed to recoup the
3 ~~ee pay~~ **DEDUCTIBLE** amount.

4 (k) Confirming a release without simultaneously providing
5 notice to the owner or operator.

6 (l) Inflating bills or work invoices, or both, by adding
7 charges for work that was not performed.

8 (m) Submitting a false or misleading laboratory report.

9 (n) Submitting bills or work invoices, or both, for sampling,
10 testing, monitoring, or excavation that are not justified by the
11 site condition.

12 (o) Falsely characterizing the contents of ~~an~~ **A REFINED**
13 **PETROLEUM** underground storage tank system for purposes of obtaining
14 funding under this part.

15 (p) Submitting or causing to be submitted bills or work
16 invoices by or from a person who did not directly provide the
17 service.

18 (q) Characterizing legal services as consulting services for
19 purposes of obtaining funding under this part.

20 (r) Misrepresenting or concealing the identity, credentials,
21 affiliation, or qualifications of principals or persons seeking,
22 either directly or indirectly, funding or approval for
23 participation under this part.

24 (s) Falsifying a signature on a claim application or a work
25 invoice.

26 (t) Failing to accurately disclose the actual amount and
27 carrier of unencumbered insurance coverage available for new

1 environmental impairment or professional liability claims.

2 (u) Any other act or omission of a false, fraudulent, or
3 misleading nature undertaken in order to obtain funding under this
4 part.

5 (4) The attorney general or county prosecutor may conduct an
6 investigation of an alleged violation of this section and bring an
7 action for a violation of this section.

8 (5) If the attorney general or county prosecutor has
9 reasonable cause to believe that a person has information or is in
10 possession, custody, or control of any document or records, however
11 stored or embodied, or tangible object which is relevant to an
12 investigation of a violation or attempted violation of this part or
13 a crime or attempted crime against the fund, the attorney general
14 or county prosecutor may, before bringing any action, make an ex
15 parte request to a magistrate for issuance of a subpoena requiring
16 that person to appear and be examined under oath or to produce the
17 document, records, or object for inspection and copying, or both.
18 Service may be accomplished by any means described in the Michigan
19 court rules. Requests made by the attorney general may be brought
20 in Ingham county.

21 (6) If a person objects to or otherwise fails to comply with a
22 subpoena served under subsection (5), an action may be brought in
23 district court to enforce the demand. Actions filed by the attorney
24 general may be brought in Ingham county.

25 (7) The attorney general or county prosecutor may apply to the
26 district court for an order granting immunity to any person who
27 refuses to provide or objects to providing information, documents,

1 records, or objects sought pursuant to this section. If the judge
2 is satisfied that it is in the interest of justice that immunity be
3 granted, he or she shall enter an order granting immunity to the
4 person and requiring the person to appear and be examined under
5 oath or to produce the document, records, or object for inspection
6 and copying, or both.

7 (8) A person who fails to comply with a subpoena issued
8 pursuant to subsection (5) or a requirement to appear and be
9 examined pursuant to subsection (7) is subject to a civil fine of
10 not more than \$25,000.00 for each day of continued noncompliance.

11 (9) In addition to any civil fines or criminal penalties
12 imposed under this part or the criminal laws of this state, the
13 person found responsible shall repay any money obtained directly or
14 indirectly under this part. Money owed pursuant to this section
15 constitutes a claim and lien by the ~~fund~~**AUTHORITY** upon any real or
16 personal property owned either directly or indirectly by the
17 person. This lien shall attach regardless of whether the person is
18 insolvent and may not be extinguished or avoided by bankruptcy. The
19 lien imposed by this section has the force and effect of a first in
20 time and right judgment lien.

21 (10) Subsection (1) does not preclude prosecutions under other
22 laws of the state including, but not limited to, section 157a, 218,
23 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL
24 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

25 (11) All civil fines collected pursuant to this section shall
26 be apportioned in the following manner:

27 (a) Fifty percent shall be deposited in the general fund and

1 shall be used by the department to fund fraud investigations under
2 this part.

3 (b) Twenty-five percent shall be paid to the office of the
4 county prosecutor or attorney general, whichever office brought the
5 action.

6 (c) Twenty-five percent shall be paid to a local police
7 department or sheriff's office, or a city or county health
8 department, if investigation by that office or department led to
9 the bringing of the action. If more than 1 office or department is
10 eligible for payment under this subsection, division of payment
11 shall be on an equal basis. If there is not a local office or
12 department that is entitled to payment under this subdivision, the
13 money shall be forwarded to the state treasurer for deposit into
14 the refined petroleum fund.

15 Enacting section 1. Sections 21506, 21511, 21512, 21513,
16 21514, 21517, 21520, 21522, 21545, 21547, 21549, 21550, 21551,
17 21553, 21554, 21555, 21556, 21557, 21558, 21559, 21560, 21561, and
18 21563 of the natural resources and environmental protection act,
19 1994 PA 451, MCL 324.21506, 324.21511, 324.21512, 324.21513,
20 324.21514, 324.21517, 324.21520, 324.21522, 324.21545, 324.21547,
21 324.21549, 324.21550, 324.21551, 324.21553, 324.21554, 324.21555,
22 324.21556, 324.21557, 324.21558, 324.21559, 324.21560, 324.21561,
23 and 324.21563, are repealed.