Act No. 213
Public Acts of 1993
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Senators Ehlers, Dingell and McManus

ENROLLED SENATE BILL No. 645

AN ACT to amend sections 3, 4, 6, 8, 9, 13, and 14 of Act No. 478 of the Public Acts of 1988, entitled as amended "An act to regulate and provide for corrective action due to releases from leaking underground storage tank systems; to prescribe the powers and duties of certain state agencies and officials; to provide penalties and remedies; and to provide for the repeal of this act on a specific date," sections 4 and 8 as amended by Act No. 150 of the Public Acts of 1989, being sections 299.833, 299.834, 299.836, 299.838, 299.839, 299.843, and 299.844 of the Michigan Compiled Laws; to add sections 4a, 5a, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 11a, 13a, and 13b; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 3, 4, 6, 8, 9, 13, and 14 of Act No. 478 of the Public Acts of 1988, sections 4 and 8 as amended by Act No. 150 of the Public Acts of 1989, being sections 299.833, 299.834, 299.836, 299.838, 299.839, 299.843, and 299.844 of the Michigan Compiled Laws, are amended and sections 4a, 5a, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 11a, 13a, and 13b are added to read as follows:

Sec. 3. (1) "Consultant" means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21 of the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being section 299.821 of the Michigan Compiled Laws.

(2) "Cleanup standards" means the degree of cleanup required under R 299.5701 to R 299.5727 of the Michigan administrative code, which are hereby incorporated by reference.

(3) "Contamination" means the presence of a regulated substance in soil or groundwater in a concentration that exceeds the higher of the following:

(a) Type A cleanup levels.

(b) Type B cleanup levels.

(4) "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.

(5) "De minimis spill" means a spill of petroleum as that term is described in section 4(5)(b) that contaminates not more than 20 cubic yards of soil per underground storage tank or 50 cubic yards of soil per location, in which groundwater has not been affected by the spill, and which is abated pursuant to section 5a.

(6) "Department" means the department of natural resources, its employees, agents, or contractors.

(7) "Director" means the director of the department or his or her designee.

(8) "Free product" means a regulated substance in a liquid phase equal to or greater than 1/8 inch of measurable thickness, that is not dissolved in water and that has been released into the environment.

(9) "Local unit of government" means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws.

Sec. 4. (1) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

(2) "Owner" means a person who holds, or at the time of a release held, a legal, equitable, or possessory interest of any kind in an underground storage tank system, or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(3) "Person" means an individual, partnership, joint venture, trust, firm, joint stock company, corporation, including a government corporation, association, local unit of government, commission, the state, a political subdivision of the state, an interstate body, the federal government, a political subdivision of the federal government, or any other legal entity.

(4) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils. Release does not include a de minimis spill.

(5) "Regulated substance" means any of the following:

(a) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601 but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

(b) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances, and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(c) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(6) "Type A cleanup level" means compliance with R 299.5707 of the Michigan Administrative Code.

(7) "Type B cleanup level" means compliance with R 299.5709 to R 299.5715 of the Michigan Administrative Code.

(8) "Type C cleanup" means a degree of cleanup that assures that a regulated substance does not pose an unacceptable risk considering a site-specific assessment of risk as provided for in section 8.

(9) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(a) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(c) A septic tank.

(d) A pipeline facility, including gathering lines regulated under either of the following:

(*i*) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(*ii*) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(e) A surface impoundment, pit, pond, or lagoon.

(f) A storm water or wastewater collection system.

(g) A flow-through process tank.

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

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

(j) Any pipes connected to a tank that is described in subdivisions (a) to (i).

(k) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b or a mixture of such hazardous waste and other regulated substances.

(*l*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(m) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

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

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

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

(10) "Vadose zone" means the zone between the land surface and the water table, or zone of saturation, also known as unsaturated zone and zone of aeration.

Sec. 4a. (1) Actions taken by a consultant pursuant to this act do not limit or remove the liability of an owner or operator except as specifically provided for in this act.

(2) Notwithstanding any other provision in this act, if an owner or operator is a consultant or employs a consultant, this act does not require the owner or operator to retain an outside consultant to perform the responsibilities required under this act. Those responsibilities may be performed by an owner or operator who is a consultant or by a consultant employed by the owner or operator.

Sec. 5a. (1) If a de minimis spill occurs, the owner or operator or a consultant retained by the owner or operator may remove and properly dispose of the contaminated soils. Following removal and disposal of contaminated soils, a consultant retained by the owner or operator shall conduct sampling and testing of soils in the vicinity of the de minimis spill pursuant to the rules promulgated by the department of state police. If, upon removal of not more than 20 cubic yards of soil per underground storage tank or 50 cubic yards of soil per location, the sampling and testing of soils shows the presence of contamination, the spill shall be reported as a release under section 6 and corrective action shall be implemented as otherwise provided in this act. If the results of the soil tests show no evidence of contamination, the results shall be submitted to the department of state police, fire marshal division along with other information required by the department of state police, fire marshal division on a de minimis spill closure report provided by the department of state police, fire marshal division, not later than 45 days after discovery of the de minimis spill.

(2) A de minimis spill is not eligible to receive funding pursuant to the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being sections 299.801 to 299.828 of the Michigan Compiled Laws.

Sec. 6. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator shall report the release and whether free product has been discovered to the department of state police, fire marshal division, within 24 hours after its discovery. Upon receipt of a release report under this subsection, a member of the state police, fire marshal division, or the department may investigate the release. However, an investigation by the state police, fire marshal division, does not relieve the owner or operator of any responsibilities related to the release provided for in this act.

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

(a) Identify and mitigate fire, explosion, and vapor hazards.

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

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

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

(*ii*) Use abatement of free product migration as a minimum objective for the design of the free product removal system.

(*iii*) Handle any flammable products in a safe and competent manner to prevent fires or explosions.

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

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

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

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

(3) Upon learning of a confirmed release, the department of state police, fire marshal division, shall immediately notify the department.

(4) Within 20 days after a release has been reported under this section, the consultant retained by the owner or operator shall submit an initial abatement report to the department that describes the conditions on the property in which the release occurred, the status of free product, and any actions taken pursuant to this section. This report shall include the following information:

(a) The facility address.

(b) The name of the facility.

(c) The name, address, and telephone number of facility compliance contact person.

(d) The time and date of release discovery.

(e) The time and date the release was reported to the state fire marshal.

(f) A site map that includes all of the following:

(*i*) The location of each underground storage tank in the leaking underground storage tank system.

(*ii*) The location of any other underground storage tank system on the site.

(*iii*) The location of fill ports, dispensers, and other pertinent system components.

(*iv*) Soil and groundwater sample locations, if applicable.

(*v*) The locations of nearby buildings, roadways, paved areas, or other structures.

(g) A description of how the release was discovered.

(h) A list of the regulated substances the underground storage tank system contained when the release occurred.

(i) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subdivision (h).

(j) The location of nearby surface waters.

(k) The location of nearby underground sewers and utility lines.

(*l*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(m) Whether the underground storage tank system was emptied to prevent further release.

(n) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(o) Whether vapors or free product were found and what steps were taken to abate those conditions and the current levels of vapors or free product in nearby structures.

(p) The extent to which all or part of the underground storage tank system or soil or both were removed.

(q) Data from analytical testing of soil and groundwater samples.

(r) A description of the free product investigation and removal if free product was present including all of the following:

(*i*) A description of the actions taken to remove any free product.

(*ii*) The name of the person or persons responsible for implementing the free product removal measures.

(*iii*) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.

(*iv*) The type of free product recovery system used.

(*v*) Whether any discharge will take place on-site or off site during the recovery operation and where this discharge will be located.

(*vi*) The type of treatment applied to, and the effluent quality expected from, any discharge.

(*vii*) The steps that have been or are being taken to obtain necessary permits for any discharge.

(*viii*) The quantity and disposition of the recovered free product.

(s) Identification of any other contamination on the site not resulting from the release, and the source, if known.

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

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

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

(c) If free product is discovered at any time at a location not previously identified under subsection (2)(c), report the discovery within 24 hours to the department and initiate free product recovery in compliance with subsection (2)(c). Within 20 days after discovery of free product, submit a report to the department that includes the information required in subsection (4)(a) to (s).

Sec. 6a. Within 60 days after a release has been reported under section 6, the consultant retained by the owner or operator shall complete an initial assessment of the release. In conducting the initial assessment, the consultant shall do all of the following:

(a) Using quantitative field screening techniques, estimate the horizontal and vertical extent of on-site soil contamination and, if possible, estimate the extent of off-site contamination.

(b) Determine the depth to groundwater via any of the following methods:

(*i*) Utilizing an interface probe/water meter in a hole made by hydraulically driven equipment.

(*ii*) Utilizing an interface probe/water meter in a hole made by drilling equipment.

(*iii*) Measuring the stabilized groundwater depth in an excavation.

(c) Identify potential migration and exposure pathways and receptors.

(d) Estimate the amount of soil in the vadose zone that is contaminated.

(e) Upon completion of subdivisions (a) through (d), submit a report of the findings to the department.

(f) If the on-site initial assessment under this section indicates that off-site soil or groundwater may be affected, submit a plan that identifies the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release.

Sec. 6b. Within 75 days after a release has been reported under section 6, if the estimated volume of soil affected by a release identified in the initial assessment under section 6a is not more than 100 cubic yards per underground storage tank and not more than 500 cubic yards per location, the initial assessment indicates groundwater has not been affected by a release, and the owner or operator intends to implement a type A or type B cleanup, the consultant retained by the owner or operator shall submit to the department a report that describes the corrective action that will be undertaken including a proposed schedule for completion of corrective action. If the requirements of this section are met, the contaminated soil may be removed and disposed of in a landfill, if appropriate, as provided by law.

Sec. 6c. (1) If the total estimated volume of soil affected by a release as identified in the initial assessment under section 6a exceeds 100 cubic yards per underground storage tank system or 500 cubic yards per location and groundwater is not affected, the consultant retained by the owner or operator shall prepare, within 150 days after a release has been reported under section 6, a soil feasibility analysis that conforms to R 299.5701 to R 299.5715 and R 299.5721 to R 299.5727 of the Michigan administrative code and does all of the following:

(a) Identifies technically feasible and reasonably practical on-site and off-site corrective action alternatives to remediate contaminated soils, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances.

(b) Describes the costs associated with each corrective action alternative.

(c) Describes the effectiveness and feasibility of each corrective action alternative in meeting cleanup standards.

(d) Identifies the time necessary to implement and complete each corrective action alternative.

(e) Identifies the preferred corrective action alternative based upon subdivisions (a) through (d) and includes an implementation schedule for completion of the corrective action.

(2) For sites in which a soil feasibility analysis was prepared in accordance with subsection (1), within 210 days after a release has been reported under section 6 the consultant retained by the owner or operator shall prepare a soil remediation corrective action plan including a schedule to implement the soil feasibility analysis recommendation of subsection (1)(e).

(3) If the preferred corrective action alternative is a type A or type B cleanup, a consultant retained by the owner or operator shall implement the corrective action plan prepared under this section in accordance with the schedule included in the plan. If the preferred corrective action alternative is a type C cleanup, a consultant retained by the owner or operator shall prepare and submit a type C corrective action plan to the department pursuant to section 8.

Sec. 6d. (1) If the initial assessment under section 6a indicates that a release of a regulated substance may have contaminated groundwater, within 150 days after the release was reported under section 6 a consultant retained by the owner or operator shall complete a phase I hydrogeological study to verify groundwater contamination including the installation of 1 monitoring well downgradient of the source of the release, 1 monitoring well hydraulically up gradient of the source of the release, and 1 monitoring well hydraulically downgradient in the vicinity of the release unless the consultant determines that more monitoring wells are needed. If the source of the release is more than 100 feet from the border of the property in which the underground storage tank system is located, up to 3 additional wells may be installed hydraulically downgradient near the property line to establish whether contamination has migrated off of the property. The phase I hydrogeological study shall include all of the following:

(a) A determination of groundwater flow rate and direction.

(b) Laboratory analytical data sufficient to confirm if groundwater is contaminated based upon the regulated substance involved in the release.

(c) The vertical distribution of contaminants.

(2) If the phase I hydrogeological study under subsection (1) has not delineated the horizontal and vertical extent of the contamination, a consultant retained by the owner or operator shall prepare and submit, within 210 days after the release was reported under section 6, a work plan including an implementation schedule for conducting a phase II hydrogeological study to determine the vertical and horizontal extent of the contamination. Upon completion of the phase II work plan, a consultant retained by the owner or operator shall implement the phase II hydrogeological study in accordance with the completion schedule in the work plan. Within 90 days after delineating the horizontal and vertical extent of the contaminant plume, the consultant shall prepare a soil and groundwater feasibility analysis that does all of the following:

(a) Identifies on-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances.

(b) Describes the costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances.

(c) Describes the effectiveness and feasibility of each corrective action alternative in meeting cleanup standards.

(d) Identifies the time necessary to implement and complete each corrective action alternative.

(e) Identifies the preferred corrective action alternative based upon subdivisions (a) through (d) and includes an implementation schedule for completion of the corrective action.

(3) For sites in which a soil and groundwater feasibility analysis was prepared in accordance with subsection (2), within 90 days of completion of the soil and groundwater feasibility analysis a consultant retained by the owner or operator shall prepare a soil and groundwater remediation corrective action plan in accordance with the soil and groundwater feasibility analysis recommendation of subsection (2)(e). A corrective action plan prepared under this section shall include a schedule for implementation, designed to implement the preferred corrective action alternative identified in the soil and groundwater feasibility analysis. The corrective action plan shall propose corrective action measures that conform with R 299.5701 to R 299.5727 of the Michigan administrative code. If the preferred corrective action alternative is a type A or type B cleanup, a consultant retained by the owner or operator shall immediately implement the corrective action plan prepared under this section in accordance with the schedule included in the plan. If the preferred corrective action alternative is a type C cleanup, a consultant retained by the owner or operator shall prepare and submit a type C corrective action plan to the department pursuant to section 8.

(4) Upon completion, the consultant retained by the owner or operator shall immediately submit a copy of each of the following to the department:

(a) The soil feasibility analysis.

(b) The phase I hydrogeological study.

(c) The phase II hydrogeological work plan and phase II hydrogeological study.

(d) The soil and groundwater feasibility analysis.

(e) The corrective action plan.

Sec. 6e. (1) An owner or operator of a petroleum underground storage tank system may delay initiation of corrective action measures at 1 or more lower priority sites for a period of 12 months after the horizontal and vertical extent of the soil and groundwater contamination has been delineated if all of the following additional conditions are met:

(a) Corrective action measures are being implemented in accordance with this act at all high priority sites for which the owner or operator is responsible.

(b) The owner or operator or a consultant retained by the owner or operator has provided notice to the owners of all off-site property onto which contamination has migrated. This notice shall inform the owner of the property of the existence, type, and extent of the contamination, that the owner or operator has designated the site a low priority site pursuant to this section, the month and year corrective action to remediate the contamination is projected to begin, the name, address, and telephone number of the contact person, and that during this period, prior to conducting any activities that require excavation of soil or well installation, the off-site property owner should exercise appropriate precautions and shall contact the owner or operator. If it is anticipated that corrective action will not begin within 60 days of the date provided in the notice, the owner or operator or a consultant retained by the owner or operator shall provide an updated notice of when corrective action is projected to begin.

(c) No contamination has migrated off site, or if contamination has migrated off site, potable water for all users within a 1/2 mile radius of the furthest extent of migration of a regulated substance from the release are supplied by a type I public water supply, and any source for the type I public water supply, either a well or surface water intake, is not located within 1/2 mile of the furthest extent of migration of a regulated substance from the release.

(2) Corrective action may be deferred under this section for only one 12-month period unless groundwater sampling during this 12-month period shows evidence of natural attenuation. If a consultant retained by the owner or operator determines that groundwater sampling shows evidence of natural attenuation, corrective action may be extended for an additional 12 months.

(3) An owner or operator who delays initiation of corrective action measures under this section shall monitor the groundwater at the lower priority site, and off-site property if applicable, on a quarterly basis and if monitoring shows that concentrations of regulated substances in groundwater exceed 1 or more type B criteria and the conditions in subsection (1)(c) are not met, the owner or operator shall immediately retain a consultant to implement corrective action measures as otherwise required under this act.

(4) This section does not limit the ability of the director to take any actions as otherwise provided by law.

(5) As used in this section:

(a) "Exposure point" means any location at which it is likely that exposure to regulated substances may occur under the current use of the property including but not limited to, groundwater wells, locations where groundwater discharges to surface water, and a basement or other confined space.

(b) "High priority site" means a site which has free product or which meets any of the following conditions:

(*i*) An exposure point is present off site less than 100 feet from the furthest extent of migration of a regulated substance from the release.

(*ii*) Contaminated soil is present off site at a depth of 2 feet or less on property that is not commercial or industrial.

(*iii*) Hydraulic conductivity at the site as determined by a phase II hydrogeological study pursuant to section 6d is equal to or greater than 1×10^{-5} centimeters per second.

(*iv*) For sites that are eligible for funding under the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being sections 299.801 to 299.828 of the Michigan Compiled Laws, a delay in the initiation of corrective action will result in increased corrective action costs to the Michigan underground storage tank financial assurance fund created in Act No. 518 of the Public Acts of 1988. To assure that the Michigan underground storage tank financial assurance fund does not incur increased costs, the owner or operator may agree to pay for any increased costs associated with the delay.

(*v*) The director determines that delaying corrective action poses a threat to the public health, safety, or welfare or the environment.

(c) "Lower priority site" means a site that does not meet the conditions of a high priority site under subdivision (b).

Sec. 6f. (1) Following completion of corrective action measures under section 6b, 6c, or 6d in which a type A or type B cleanup was implemented, the owner or operator shall retain a consultant to demonstrate through sampling and testing of soils and groundwater that all soils and groundwater affected by the release have been remediated to the respective cleanup standards.

(2) If the sampling and testing conducted under subsection (1) demonstrates that cleanup standards have been met, the consultant shall submit a release closure report to the department. The release closure report shall include adequate soil and groundwater data to show the cleanup standards have been met at all points in the affected media.

(3) Within 60 days after receipt of a release closure report under subsection (2), the director shall, prior to its next publication, remove the site or portion of the site that has been remediated pursuant to this act from any list of the department that identifies sites of contamination and shall notify the owner or operator that this action has been taken. However, if a subsequent audit under section 6h determines that the contamination has not been remediated to the

cleanup standards, the department shall place the site back on any such list and require further corrective action as otherwise provided in this act.

Sec. 6g. (1) Notwithstanding any other provision of this act, except as provided in subsection (2), unless directed to do otherwise by the department:

(a) An owner or operator who, on the effective date of this section, has prepared a corrective action plan may implement that corrective action plan without retaining a consultant. However, the owner or operator shall retain a consultant to perform the activities described in section 6f.

(b) An owner or operator who has not, on the effective date of this section, prepared a corrective action plan shall retain a consultant to carry out the activities provided in this act. The consultant shall make use of all relevant information that has been obtained prior to being retained, and, unless material new information is discovered, the consultant shall not repeat activities that have been performed prior to the effective date of this section.

(2) Until 60 days after the effective date of this section, an owner or operator may perform or cause to be performed any activity that is required under this act to be performed by a consultant.

Sec. 6h. (1) The department shall design and implement a program to selectively audit or oversee all aspects of corrective actions undertaken pursuant to this act to assure compliance with this act.

(2) If the department conducts a complete audit of the release, and the audit confirms that corrective action has been conducted in compliance with this act and that the cleanup standards have been met, the department shall provide the owner or operator with a letter that describes the audit and its results.

(3) If an audit under subsection (2) does not confirm that corrective action has been conducted in compliance with this act or that cleanup standards have been met, the director may require an owner or operator to do any of the following:

(a) Provide additional information related to any requirement of this act.

(b) Retain a consultant to implement corrective actions, hydrogeological studies, or remediation alternatives studies on an accelerated implementation schedule.

(c) Retain a consultant to take additional corrective actions necessary to comply with this act or to protect public health, safety, welfare, or the environment.

Sec. 6i. The department may create and require the use of forms to assist in the reporting requirements provided in this act.

Sec. 8. (1) If the soil feasibility analysis or the soil and groundwater feasibility analysis prepared under section 6c or 6d identify the preferred corrective action alternative to be a type C cleanup, the owner or operator shall retain a consultant to submit a risk assessment and a type C corrective action plan for responding to contaminated soils, groundwater, and surface water to the department within 60 days of completion of the feasibility analysis. The type C corrective action plan shall provide for adequate protection of public health, safety, welfare, and the environment as determined by the director.

(2) The risk assessment required to be submitted under subsection (1) may be submitted in a "short form" format specified by the department. The department may limit the applicability of the short form risk assessment to corrective action plans that address a release of an unused and uncontaminated petroleum fuel or lubricant. The risk assessment short form specified by the department shall address all of the following:

(a) Potential exposure of human and natural resource targets.

(b) Environmental media affected by contamination.

(c) All of the following with respect to the physical setting of the site:

(*i*) Geology.

(*ii*) Hydrology.

(*iii*) Soils.

(*iv*) Hydrogeology.

(*v*) Other aspects of the physical setting of the site which may have a bearing on the appropriateness of the proposed corrective action.

(d) Potential pathways of regulated substance migration.

(e) All of the following with regard to the regulated substances in the material released at the site:

(*i*) Amount.

(*ii*) Concentration.

(*iii*) Form.

(f) The extent to which regulated substances have migrated or are expected to migrate from the area of the release.

(g) The uncertainties of the risk assessment. The discussion of the uncertainties of the risk assessment need not include uncertainties associated with the hazard identification or dose-response assessment for each regulated substance. The discussion of the uncertainties shall address the exposure estimates and overall risk characterization.

(h) Other factors appropriate to the site. Department requests for information pursuant to this subdivision shall be limited to factors not adequately addressed by information required by the provisions of other subdivisions of this subsection and shall be accompanied by an explanation of the need for such information.

(3) The risk assessment portion of a corrective action plan for sites that do not meet the criteria for a short form risk assessment as specified in subsection (2) shall address all of the factors identified in subsection (2)(a) through (h). The risk assessment shall be presented in a manner that facilitates efficient review by the department.

(4) In addition to the risk assessment specified in subsection (2) or (3), the type C corrective action plan shall include all of the following:

(a) A description of the proposed corrective action including a demonstration that the proposed corrective action is appropriate for the site, considering the reasonably foreseeable uses of the site and natural resources in question.

(b) Information about the cost of what is believed by the consultant to be the lowest cost, technically feasible corrective action alternative that would comply with type B cleanup levels.

(c) Identification of any limitations on the ability to monitor remedial performance, including the limitations of analytical methods.

(d) Other factors appropriate to the site. Department requests for information pursuant to this subdivision shall be limited to factors not adequately addressed by information required by the provisions of other subdivisions of this subsection and shall be accompanied by an explanation of the need for such information.

(5) Any corrective action plan submitted under this section to address surface water or sediments shall include cleanup criteria established by the department on the basis of sound scientific principles and considering the need to eliminate or mitigate the following use impairments, as appropriate to the site:

(a) Restrictions on fish or wildlife consumption.

(b) Degraded fish or wildlife populations.

(c) Fish tumors or other deformities.

(d) Bird or animal deformities or reproductive problems.

(e) Degradation of benthos.

(f) Restrictions on dredging activities.

(g) Eutrophication or undesirable algae.

(h) Restrictions on drinking water consumption or taste or odor problems.

(i) Beach closings.

(j) Degradation of aesthetics.

(k) Degradation of phytoplankton or zooplankton populations.

(*l*) Loss of fish or wildlife habitat.

(6) If the director determines that the risk assessment submitted pursuant to subsection (2) or (3) is complete, accurately reflects available information about the site, and satisfies the requirements of subsection (4), the director may approve of the type C corrective action plan if a consultant retained by the owner or operator demonstrates that all of the following conditions are met:

(a) The corrective action plan provides for monitoring of the site sufficient to assure the integrity and effectiveness of the remedy.

(b) If the corrective action relies on land use restrictions in order to prohibit exposures which could result in unacceptable risk, such restrictions shall be described in a restrictive covenant that is executed by the property owner and recorded with the register of deeds for the county in which the site is located. Such restrictions shall run with the land and be binding on the owner's successors and assigns. The restrictive covenant shall be subject to approval by the state and shall accomplish all of the following:

(*i*) Prohibit activities on the site that may interfere with a corrective action, operation and maintenance, long-term monitoring, or other measures necessary to assure the integrity of the corrective action.

(*ii*) Prohibit activities that may result in human exposures above those specified in R 299.5709 to R 299.5715 of the Michigan Administrative Code or that would result in the release of a regulated substance which was contained as part of the corrective action.

(*iii*) Require notice to the department of the owner's intent to convey any interest in the site. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for the continued operation and maintenance of the remedy and the prevention of releases and exposures as described in the provisions of subparagraph (*ii*).

(*iv*) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the corrective action plan, including the right to take samples, inspect the operation of corrective action measures, and inspect records.

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

(c) If the director determines that it is necessary to assure the continued adequacy of a corrective action that includes containment measures, the owner or operator shall, through a financial mechanism, other than the Michigan underground storage tank financial assurance fund created in the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being sections 299.801 to 299.828 of the Michigan Compiled Laws, that is acceptable to the director, provide funding to pay for monitoring, operation and maintenance, oversight, and other costs necessary to assure the effectiveness and integrity of the containment measures.

(7) The director shall approve or disapprove a corrective action plan submitted under this section within 120 days after it has been received. If the director disapproves the corrective action plan, he or she shall provide the owner or operator and the consultant retained by the owner or operator with an explanation why a type C corrective action is not appropriate or a list of deficiencies, and modifications that if incorporated would result in the plan's approval, along with a schedule for resubmittal. A consultant retained by the owner or operator shall submit an amended corrective action plan according to the schedule specified by the director.

(8) Upon approval of the type C corrective action plan or as directed by the director, a consultant retained by the owner or operator shall implement the plan, including modifications to the plan required by the director. The consultant retained by the owner or operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule approved by the director.

(9) The owner or operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, retain a consultant to begin cleanup of soil and groundwater before the corrective action plan under this section is approved, provided that they do all of the following:

(a) Notify the director of their intention to begin cleanup at least 48 hours before beginning the cleanup.

(b) Comply with any conditions imposed by the director, including halting cleanup or mitigating adverse consequences from cleanup activities.

(c) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the director for approval.

(d) Assure that the initial cleanup is not inconsistent with the anticipated corrective action.

(10) After the director approves a type C corrective action plan under this section, and the owner or operator or a consultant retained by the owner or operator has completed in full all corrective actions required in the plan, and is in compliance with this act, the director shall execute a document stating that the corrective actions have been completed. If an owner or operator or a consultant retained by the owner or operator delivers to the director a written statement certifying that all corrective actions have been completed and includes with this statement documentation sufficient to show full compliance with the approved type C corrective action plan and this act, the director shall respond within 60 days of receipt of that statement by either executing a document stating that based upon the representations made by the owner or operator or a consultant retained by the owner or operator that the corrective actions have been completed or by executing a document indicating what corrective actions remain to be completed. Failure to respond shall be considered as if it were a response that corrective action remains to be completed, and the owner or operator may request a hearing before the commission of natural resources in the same manner as provided in section 10.

(11) The director may issue corrective action orders pursuant to section 10 to the owner or operator as necessary to carry out the purposes of this act.

Sec. 9. (1) For each confirmed release in which a type C corrective action plan under section 8 is proposed to be implemented, the owner or operator or a consultant retained by the owner or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the proposed type C corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department.

(2) The director shall ensure that site release information and a corrective action plan prepared under section 8 are made available to the public for inspection upon request.

Sec. 11a. (1) Except as provided in subsection (3), if a report required to be submitted under section 6(4), 6(5)(c), 6a(e), or 6b is not submitted during the time required by this act, the director shall impose a penalty according to the following schedule:

(a) $100.00 per day for the first 7 days that the report is late.

(b) $500.00 per day for days 8 through 14 that the report is late.

(c) $1,000.00 per day for each day beyond day 14 that the report is late.

(2) For purposes of this section, in computing a period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The director may, upon request, grant an extension to a reporting deadline provided in this act for good cause.

(4) The owner or operator may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 7 of the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being section 299.807 of the Michigan Compiled Laws.

(6) An appeal of a penalty imposed under this section may be taken pursuant to section 631 of the revised judicature act, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws.

Sec. 13. (1) The attorney general may, on behalf of the director, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) A civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this act, or a rule promulgated pursuant to section 15 of this act. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the act or rule.

(e) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this act. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(f) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(g) Recovery of penalties imposed under section 11a.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county of Ingham, in the county where the release occurred, or in the county where the defendant resides.

(3) The state may, when appropriate, return to the United States environmental protection agency any federal funds recovered under this act. The state may also retain any federal funds recovered under this act in a separate account for use in implementing this act with such use subject to approval of the United States environmental protection agency.

Sec. 13a. (1) Beginning 180 days after the effective date of this section, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this act, knowing that the statement, report, confirmation, certification, proposal, or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this act, knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or commits a fraudulent practice is subject to a civil fine of $50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

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

(a) Representing that services were done or work was provided that was not done or provided.

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

(c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil.

(d) Intentional causing of damage or damage caused as the result of gross negligence to an underground storage tank system that results in a release at a site.

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.

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

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.

(h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.

(i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this act.

(j) Misrepresenting or falsifying the source of data regarding site conditions.

(k) Misrepresenting or falsifying the date upon which a release occurred.

(*l*) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.

(m) Failing to report subsequent suspected or confirmed releases from sites with a previously reported release.

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.

(o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance with this act.

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

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this act, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath, or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan Court Rules. Requests made by the attorney general may be brought in Ingham county.

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

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath, or to produce the document, records, or object for inspection and copying, or both.

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

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

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

(a) Fifty percent shall be deposited in the general fund and shall be used by the department of state police to fund fraud investigations under this act.

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

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or

department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 7 of the Michigan underground storage tank financial assurance act, Act No. 518 of the Public Acts of 1988, being section 299.807 of the Michigan Compiled Laws.

Sec. 13b. (1) A person who provides information that materially contributes to the imposition of a civil fine or a criminal conviction under section 13a against any person shall be paid a reward pursuant to rules adopted by the department of state police under subsection (6). The reward shall be the greater of 10% of the amount of the civil fine collected or $1,000.00.

(2) A person is not eligible for a reward under this section for a violation previously known to the investigating agency unless the information materially contributes to the civil judgment or criminal conviction.

(3) If there is more than 1 person who provides information pursuant to subsection (1) for a single violation, the first person to notify the investigating agency is eligible for the reward. If more than 1 notification is received on the same day, the reward shall be divided equally among those persons providing the information.

(4) Public officers and employees of the United States, the State of Michigan, the states of Wisconsin, Illinois, Indiana, and Ohio, or counties and cities in Michigan, Wisconsin, Illinois, Indiana, and Ohio are not eligible for the reward under this section, unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(5) An employee of a business who provides information that the business violated this act is not eligible for a reward if the employee intentionally caused the violation.

(6) The department of state police shall promulgate rules that establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these rules. In each case brought under section 13a, whichever office prosecuted the action shall determine whether the information materially contributed to the imposition of a civil fine or a criminal conviction.

(7) The department of state police shall periodically publicize the availability of the rewards to the public.

(8) A claim for a reward under this section may be submitted only for information provided on or after the effective date of this section.

Sec. 14. (1) Upon request of the director for the purpose of developing or assisting in the development of a rule, conducting an investigation, taking corrective action, or enforcing this act, the owner or operator shall furnish the director with all information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department shall have the right to enter at all reasonable times in or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

(b) Obtaining samples of any substance from an underground storage tank system.

(c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system, its associated equipment, or contents.

(d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party.

(e) Conducting monitoring or testing, or taking samples of soils, air, surface water, or groundwater.

(f) Taking corrective action.

(g) Inspecting and copying any records related to an underground storage tank system.

(3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness.

(4) The attorney general, on behalf of the director, may do either of the following:

(a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to carry out the provisions of this act.

(b) Commence a civil action pursuant to section 13 for an order authorizing the department to enter any private or public property as necessary to carry out this act.

Section 2. Section 7 of Act No. 478 of the Public Acts of 1978, being section 299.837 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 644.

(b) House Bill No. 4783.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved _____

Governor.