

Act No. 22
Public Acts of 1995
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Senators Bennett, Gast, Shugars, Emmons, Stille, Rogers, Steil, Cisky and McManus

ENROLLED SENATE BILL No. 386

AN ACT to amend sections 21302, 21303, 21306, 21307, 21315, 21323, and 21329 of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," being sections 324.21302, 324.21303, 324.21306, 324.21307, 324.21315, 324.21323, and 324.21329 of the Michigan Compiled Laws; to add sections 21301a, 21304a, 21307a, 21308a, 21309a, 21310a, 21311a, 21312a, 21313a, 21314a, 21316a, and 21319a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 21302, 21303, 21306, 21307, 21315, 21323, and 21329 of Act No. 451 of the Public Acts of 1994, being sections 324.21302, 324.21303, 324.21306, 324.21307, 324.21315, 324.21323, and 324.21329 of the Michigan Compiled Laws, are amended and sections 21301a, 21304a, 21307a, 21308a, 21309a, 21310a, 21311a, 21312a, 21313a, 21314a, 21316a, and 21319a are added to read as follows:

Sec. 21301a. This part is intended to provide remedies for sites posing a threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in the amendatory act that added this section only apply to violations of this part that occur after the effective date of the amendatory act that added this section.

Sec. 21302. As used in this part:

(a) "Biota" means the plant and animal life in an area affected by a corrective action plan.

(b) "Consultant" means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542.

(c) "Contamination" means the presence of a regulated substance in soil or groundwater.

(d) "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.

(e) "De minimis spill" means a spill of petroleum as that term is described in section 21303(d)(ii) 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 21306.

(f) "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.

(g) "Groundwater" means water below the land surface in the zone of saturation.

(h) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker c; and other fuels when used as substitutes for 1 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(i) "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. 21303. As used in this part:

(a) "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.

(b) "Owner" means a person who holds, or at the time of a release who 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.

(c) "RBCA" means the American society for testing and materials document entitled emergency standard guide for risk-based corrective action applied at petroleum release sites, designation E8 38-94, which is hereby incorporated by reference.

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

(i) 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 6939e.

(ii) 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 composed 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.

(iii) 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.

(e) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(f) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system.

(g) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release.

(h) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(i) "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:

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

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

(iii) A septic tank.

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

(A) 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.

(B) 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.

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

(vi) A storm water or wastewater collection system.

(vii) A flow-through process tank.

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

(ix) 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.

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

(xi) 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 6939e, or a mixture of such hazardous waste and other regulated substances.

(xii) 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.

(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 that has 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.

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

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

(2) Subject to subsections (3) and (4), the department shall establish cleanup criteria for corrective action activities undertaken under this part using the process outlined in RBCA. The department shall utilize only reasonable and relevant exposure assumptions and pathways in determining the cleanup criteria.

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

(4) If a cleanup criterion for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, Act No. 399 of the Public Acts of 1976, being section 325.1005 of the Michigan Compiled Laws, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the cleanup criterion shall comply with either (a) or (b) unless a consultant retained by the owner or operator determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) If corrective action is required at a site where there are releases that are regulated under this part and releases that are not regulated under this part, the department shall determine the applicable laws and regulations to define the cleanup requirements.

Sec. 21306. (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 provide to the department a closure report pursuant to section 21312a. If it is determined that the release exceeds the amounts described in section 21302(e), then corrective action shall be implemented as otherwise provided in this part.

(2) A de minimis spill is not eligible to receive funding pursuant to part 215.

Sec. 21307. (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 within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator from any responsibilities related to the release provided for in this part.

(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 the 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 in a manner 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, or 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) 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).

Sec. 21307a. (1) Following initiation of initial response actions under section 21307, a consultant retained by the owner or operator shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, a consultant retained by the owner or operator shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, a consultant retained by the owner or operator shall provide 48-hour notification to the department prior to initiating any of the following activities:

- (a) Soil excavation.
- (b) Well drilling, including monitoring well installation.
- (c) Sampling of soil or groundwater.
- (d) Construction of treatment systems.

Sec. 21308a. Within 90 days after a release has been discovered, a consultant retained by the owner or operator shall complete an initial assessment report and submit the report or an executive summary of the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

- (a) Results of initial response actions taken under section 21307(2).
- (b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:
 - (i) The facility address.
 - (ii) The name of the facility.
 - (iii) The name, address, and telephone number of facility compliance contact person.
 - (iv) The time and date of release discovery.
 - (v) The time and date the release was reported to the department.
 - (vi) A site map that includes all of the following:
 - (A) The location of each underground storage tank in the leaking underground storage tank system.

- (B) The location of any other underground storage tank system on the site.
- (C) The location of fill ports, dispensers, and other pertinent system components.
- (D) Soil and groundwater sample locations, if applicable.
- (E) The locations of nearby buildings, roadways, paved areas, or other structures.
- (vii) A description of how the release was discovered.
- (viii) A list of regulated substances the underground storage tank system contained when the release occurred.
- (ix) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (viii).
- (x) The location of nearby surface waters and wetlands.
- (xi) The location of nearby underground sewers and utility lines.
- (xii) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).
- (xiii) Whether the underground storage tank system was emptied to prevent further release.
- (xiv) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.
- (xv) Whether vapors or free product was found and what steps were taken to abate those conditions and the current levels of vapors or free product in nearby structures.
- (xvi) The extent to which all or part of the underground storage tank system or soil, or both, was removed.
- (xvii) Data from analytical testing of soil and groundwater samples.
- (xviii) A description of the free product investigation and removal if free product was present, including all of the following:
 - (A) A description of the actions taken to remove any free product.
 - (B) The name of the person or persons responsible for implementing the free product removal measures.
 - (C) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.
 - (D) The type of free product recovery system used.
 - (E) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located.
 - (F) The type of treatment applied to, and the effluent quality expected from, any discharge.
 - (G) The steps that have been or are being taken to obtain necessary permits for any discharge.
 - (H) The quantity and disposition of the recovered free product.
- (xix) Identification of any other contamination on the site not resulting from the release and the source, if known.
- (xx) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination.
- (xxi) The depth to groundwater.
- (xxii) An identification of potential migration and exposure pathways and receptors.
- (xxiii) An estimate of the amount of soil in the vadose zone that is contaminated.
- (xxiv) If the on-site assessment indicates that off-site soil or groundwater may be affected, report 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.
- (xxv) Groundwater flow rate and direction.
- (xxvi) Laboratory analytical data collected.
- (xxvii) The vertical distribution of contaminants.
- (c) Site classification under section 21314a.
- (d) Tier I or tier II evaluation according to the RBCA process.
- (e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination as necessary for preparation of the corrective action plan.

Sec. 21309a. (1) If initial response actions under section 21307 have not resulted in completion of corrective action, a consultant retained by an owner or operator shall prepare a corrective action plan to address contamination at the site. For corrective action plans submitted as part of a final assessment report pursuant to section 21311a after October 1, 1995, the corrective action plan shall use the process described in RBCA.

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

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

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

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

(ii) Operation and maintenance schedule.

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

(iv) Design and construction plans.

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

(vi) Safety plan.

(vii) Emergency plan, including emergency contact telephone numbers.

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

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

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

(i) Location of monitoring points.

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

(iii) Monitoring schedule.

(iv) Monitoring methodology, including sample collection procedures.

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

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

(vii) Quality control/quality assurance plan.

(viii) Data presentation and evaluation plan.

(ix) Contingency plan to address ineffective monitoring.

(x) Operation and maintenance plan for monitoring.

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

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

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

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

(f) A financial assurance mechanism, as provided for in R 29.2161 to R 29.2169 of the Michigan administrative code, in an amount approved by the department, to pay for monitoring, operation and maintenance, oversight, and other costs if required by the department as necessary to assure the effectiveness and integrity of the corrective action.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation unless the lapse or violation is corrected to the satisfaction of the department.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property for any purpose, 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 impacted by the release and the proposed 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. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

Sec. 21310a. (1) If the corrective action activities at a site, based on a tier I evaluation, will result in anything other than an unrestricted use of the site, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the property owner or with the express written permission of the property owner. The form and content of the notice shall be subject to approval by the department. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action selected by a consultant retained by the owner or operator. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for financial assurance, monitoring, or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on a tier II or tier III evaluation, institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the property owner or with the express written permission of the property owner. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until the department determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant are subject to approval by the department and shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the property owner without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including but not limited to the right to take samples, inspect the operation of the corrective action measures, and inspect records.

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

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If a consultant retained by the owner or operator determines that exposure to regulated substances may be reliably restricted by a means other than a restrictive covenant and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the consultant may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the cleanup criteria identified in the corrective action plan. An ordinance that serves as an exposure control under this subsection shall include both of the following:

(a) A requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties.

(4) Notwithstanding subsections (1), (2), and (3), if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested by a consultant retained by an owner or operator and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.

(5) A person who implements corrective action activities shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of submittal of the corrective action plan, unless otherwise approved by the department.

Sec. 21311a. (1) Within 365 days after a release has been discovered, a consultant retained by an owner or operator shall complete a final assessment report that includes a corrective action plan developed under section 21309a and submit the report or an executive summary of the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

(a) The extent of contamination.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions:

(i) 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.

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

(iii) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria.

(iv) The time necessary to implement and complete each corrective action alternative.

(v) The preferred corrective action alternative based upon subparagraphs (i) through (iv) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) If the preferred corrective action alternative under subsection (1)(c)(v) is based on the use of institutional controls regarding off-site migration of regulated substances, the corrective action plan shall not be implemented until it is reviewed and determined by the department to be in compliance with this part.

Sec. 21312a. (1) Within 30 days following completion of the corrective action, a consultant retained by the owner or operator shall complete a closure report and submit the report or an executive summary of the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

(a) A summary of corrective action activities.

(b) Closure verification sampling results.

(c) A closure certification prepared by the consultant retained by the owner or operator.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the consultant who submitted the closure report with a confirmation of the department's receipt of the report.

(3) The department retains the right to review any report required under this part in which an executive summary was submitted in lieu of the report. Upon request of any person who lives in close proximity to the site where the corrective action is occurring, the department shall require that a report be submitted rather than an executive summary and shall make that report available to that person.

Sec. 21313a. (1) Except for the confirmation provided in section 21312a(2), if a report is not completed or a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department shall impose a penalty according to the following schedule:

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

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

(c) \$1,000.00 per day for each day beyond day 14 that the executive summary or 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, 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 department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(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 21507.

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

Sec. 21314a. The department shall establish and implement a classification system for sites considering impacts on public health, safety, and welfare, and the environment. Notwithstanding any other provision in this part, at sites posing an imminent risk to the public health, safety, or welfare, or the environment, corrective action shall be implemented immediately. If the department determines that no imminent risk to the public health, safety, or welfare, or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department. This provision shall not be used by the department to limit the ability of an owner, operator or a consultant to submit a claim to the Michigan underground storage tank financial assurance fund, or delay payment on a valid claim to an owner, operator or consultant.

Sec. 21315. (1) The department shall design and implement a program to selectively audit or oversee all aspects of corrective actions undertaken under this part to assure compliance with this part. The department may audit a site at any time prior to receipt of a closure report pursuant to section 21312a and within 6 months after receipt of the closure report.

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

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

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

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system at any facility that is not in compliance with this part and rules promulgated under this part, and part 211 and rules promulgated under part 211. A person who knowingly delivers a regulated substance to an underground storage tank system is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(2) The department, upon discovery of a violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211 at a facility having an underground storage tank system, shall provide notification prohibiting delivery of regulated substances to such a facility by affixing a placard providing notice of the violation in plain view to the underground storage tank system.

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

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

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator to take action as may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator requiring that person to perform corrective actions relating to a facility, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to whom the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than \$25,000.00 for each day during which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) For exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person to whom an administrative order was issued under this section and who complied with the terms of the order who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement for the reasonable costs of the action plus interest and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition which shall be reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not an owner or operator or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken under the relevant order.

Sec. 21323. (1) The attorney general may, on behalf of the department, 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 part or a rule promulgated under this part. 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 part 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 part. 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.
- (2) A civil action brought under subsection (1) may be brought in the circuit court for the county of Ingham, for the county where the release occurred, or for 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 part. The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part, with such use subject to approval of the United States environmental protection agency.

Sec. 21330. This part does not prohibit the department of state police from taking action in any situation in which it is otherwise authorized by law to act.

Section 2. Sections 21316a and 21319a of Act No. 451 of the Public Acts of 1994, as added by this amendatory act, shall take effect upon the expiration of 30 days after the enactment of this amendatory act.

Section 3. Sections 21301, 21305, 21308, 21309, 21310, 21311, 21312, 21313, 21314, 21317, 21318, 21319, 21321, 21322, 21325, and 21331 of Act No. 451 of the Public Acts of 1994, being sections 324.21301, 324.21305, 324.21308, 324.21309, 324.21310, 324.21311, 324.21312, 324.21313, 324.21314, 324.21317, 324.21318, 324.21319, 324.21321, 324.21322, 324.21325, and 324.21331 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.