



# HOUSE BILL No. 5381

November 7, 1995, Introduced by Reps. Sikkema, Alley and Middaugh and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 21301a, 21303, 21304a, and 21309a of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," sections 21301a, 21304a, and 21309a as added and section 21303 as amended by Act No. 22 of the Public Acts of 1995, being sections 324.21301a, 324.21303, 324.21304a, and 324.21309a of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21301a, 21303, 21304a, and 21309a of  
2 Act No. 451 of the Public Acts of 1994, sections 21301a, 21304a,  
3 and 21309a as added and section 21303 as amended by Act No. 22 of  
4 the Public Acts of 1995, being sections 324.21301a, 324.21303,  
5 324.21304a, and 324.21309a of the Michigan Compiled Laws, are  
6 amended to read as follows:

1       Sec. 21301a. (1) This part is intended to provide remedies  
2 for sites posing a threat to the public health, safety, or  
3 welfare, or to the environment, regardless of whether the release  
4 or threat of release of a regulated substance occurred before or  
5 after January 19, 1989, the effective date of the former leaking  
6 underground storage tank act, Act No. 478 of the Public Acts of  
7 1988, and for this purpose, this part shall be given retroactive  
8 application. However, criminal penalties provided in the amenda-  
9 tory act that added this section only apply to violations of this  
10 part that occur after ~~the effective date of the amendatory act~~  
11 ~~that added this section~~ APRIL 13, 1995.

12       (2) THE CHANGES IN LIABILITY THAT ARE PROVIDED FOR IN THE  
13 AMENDATORY ACT THAT ADDED THIS SUBSECTION SHALL BE GIVEN RETROAC-  
14 TIVE APPLICATION.

15       Sec. 21303. As used in this part:

16       (a) "Operator" means a person who is presently, or was at  
17 the time of a release, in control of, or responsible for, the  
18 operation of an underground storage tank system AND WHO IS LIABLE  
19 UNDER PART 201.

20       (b) "Owner" means a person who holds, or at the time of a  
21 release who held, a legal, equitable, or possessory interest of  
22 any kind in an underground storage tank system or in the property  
23 on which an underground storage tank system is located including,  
24 but not limited to, a trust, vendor, vendee, lessor, or lessee  
25 AND WHO IS LIABLE UNDER PART 201. ~~However, owner does not~~  
26 ~~include a person or a regulated financial institution who,~~  
27 ~~without participating in the management of an underground storage~~

~~1 tank system and who is not otherwise engaged in petroleum  
2 production, refining, or marketing relating to the underground  
3 storage tank system, is acting in a fiduciary capacity or who  
4 holds indicia of ownership primarily to protect the person's or  
5 the regulated financial institution's security interest in the  
6 underground storage tank system or the property on which it is  
7 located. This exclusion does not apply to a grantor, beneficia-  
8 ry, remainderman, or other person who could directly or indi-  
9 rectly benefit financially from the exclusion other than by the  
10 receipt of payment for fees and expenses related to the adminis-  
11 tration of a trust.~~

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

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

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

23 (ii) Petroleum, including crude oil or any fraction of crude  
24 oil that is liquid at standard conditions of temperature and  
25 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch  
26 absolute). Petroleum includes but is not limited to mixtures of  
27 petroleum with de minimis quantities of other regulated

1 substances and petroleum-based substances composed of a complex  
2 blend of hydrocarbons derived from crude oil through processes of  
3 separation, conversion, upgrading, or finishing such as motor  
4 fuels, jet fuels, distillate fuel oils, residual fuel oils,  
5 lubricants, and petroleum solvents.

6 (iii) A substance listed in section 112 of part A of title I  
7 of the clean air act, chapter 360, 84 Stat. 1685,  
8 42 U.S.C. 7412.

9 (e) "Release" means any spilling, leaking, emitting, dis-  
10 charging, escaping, or leaching from an underground storage tank  
11 system into groundwater, surface water, or subsurface soils.

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

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

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

20 (i) "Underground storage tank system" means a tank or combi-  
21 nation of tanks, including underground pipes connected to the  
22 tank or tanks, which is, was, or may have been used to contain an  
23 accumulation of regulated substances, and the volume of which,  
24 including the volume of the underground pipes connected to the  
25 tank or tanks, is 10% or more beneath the surface of the ground.  
26 An underground storage tank system does not include any of the  
27 following:

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

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

5 (iii) A septic tank.

6 (iv) A pipeline facility, including gathering lines regu-  
7 lated under either of the following:

8 (A) The natural gas pipeline safety act of 1968, Public Law  
9 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to  
10 1687.

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

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

15 (vi) A storm water or wastewater collection system.

16 (vii) A flow-through process tank.

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

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

22 (x) Any pipes connected to a tank that is described in sub-  
23 divisions (i) to (ix).

24 (xi) An underground storage tank system holding hazardous  
25 wastes listed or identified under subtitle C of the solid waste  
26 disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to

1 6939e, or a mixture of such hazardous waste and other regulated  
2 substances.

3 (xii) A wastewater treatment tank system that is part of a  
4 wastewater treatment facility regulated under section 307(b) of  
5 title III or section 402 of title IV of the federal water pollu-  
6 tion control act, 33 U.S.C. 1317 and 1342.

7 (xiii) Equipment or machinery that contains regulated sub-  
8 stances for operational purposes such as hydraulic lift tanks and  
9 electrical equipment tanks.

10 (xiv) An underground storage tank system that has a capacity  
11 of 110 gallons or less.

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

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

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

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

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

1 exposure assumptions and pathways in determining the cleanup  
2 criteria.

3 (3) If a regulated substance poses a carcinogenic risk to  
4 humans, the cleanup criteria derived for cancer risk shall be the  
5 95% upper bound on the calculated risk of 1 additional cancer  
6 above the background cancer rate per 100,000 individuals using  
7 the exposure assumptions and pathways established by the depart-  
8 ment and the process in RBCA. If a regulated substance poses a  
9 risk of both cancer and an adverse health effect other than  
10 cancer, cleanup criteria shall be derived for cancer and each  
11 adverse health effect.

12 (4) If a cleanup criterion for groundwater differs from  
13 either (a) the state drinking water standard established pursuant  
14 to section 5 of the safe drinking water act, Act No. 399 of the  
15 Public Acts of 1976, being section 325.1005 of the Michigan  
16 Compiled Laws, or (b) criteria for adverse aesthetic characteris-  
17 tics derived pursuant to R 299.5709 of the Michigan administra-  
18 tive code, the cleanup criterion shall ~~comply with either~~ BE  
19 THE MORE STRINGENT OF (a) or (b) unless a consultant retained by  
20 the owner or operator determines that compliance with (a) or (b)  
21 is not necessary because the use of the groundwater is reliably  
22 restricted pursuant to section 21310a.

23 ~~(5) If corrective action is required at a site where there~~  
24 ~~are releases that are regulated under this part and releases that~~  
25 ~~are not regulated under this part, the department shall determine~~  
26 ~~the applicable laws and regulations to define the cleanup~~  
27 ~~requirements.~~ NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART,

1 IF A RELEASE OR THREAT OF RELEASE AT A FACILITY IS NOT SOLELY THE  
2 RESULT OF A RELEASE OR THREAT OF RELEASE FROM AN UNDERGROUND  
3 STORAGE TANK SYSTEM, THE OWNER OR OPERATOR OF THE UNDERGROUND  
4 STORAGE TANK SYSTEM MAY CHOOSE TO PERFORM RESPONSE ACTIVITIES  
5 PURSUANT TO PART 201 IN LIEU OF CORRECTIVE ACTIONS PURSUANT TO  
6 THIS PART.

7       Sec. 21309a. (1) If initial response actions under  
8 section 21307 have not resulted in completion of corrective  
9 action, a consultant retained by an owner or operator shall pre-  
10 pare a corrective action plan to address contamination at the  
11 site. ~~For~~ EXCEPT AS PROVIDED IN SECTION 21304A, FOR corrective  
12 action plans submitted as part of a final assessment report pur-  
13 suant to section 21311a after October 1, 1995, the corrective  
14 action plan shall use the process described in RBCA.

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

17       (a) A description of the corrective action to be imple-  
18 mented, including an explanation of how that action will meet the  
19 requirements of the RBCA process. The corrective action plan  
20 shall also include an analysis of the selection of indicator  
21 parameters to be used in evaluating the implementation of the  
22 corrective action plan, if indicator parameters are to be used.  
23 The corrective action plan shall include a description of ambient  
24 air quality monitoring activities to be undertaken during the  
25 corrective action if such activities are appropriate.

26       (b) An operation and maintenance plan if any element of the  
27 corrective action requires operation and maintenance. The



1 operation and maintenance plan shall include all of the  
2 following:

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

5 (ii) Operation and maintenance schedule.

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

8 (iv) Design and construction plans.

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

11 (vi) Safety plan.

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

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

16 (ix) Other information required by the department to deter-  
17 mine the adequacy of the operation and maintenance plan.

18 Department requests for information pursuant to this subparagraph  
19 shall be limited to factors not adequately addressed by informa-  
20 tion required by subparagraphs (i) through (viii) and shall be  
21 accompanied by an explanation of the need for the additional  
22 information.

23 (c) A monitoring plan if monitoring of environmental media  
24 or site activities or both is required to confirm the effective-  
25 ness and integrity of the remedy. The monitoring plan shall  
26 include all of the following:

- 1       (i) Location of monitoring points.
- 2       (ii) Environmental media to be monitored, including, but not  
3 limited to, soil, air, water, or biota.
- 4       (iii) Monitoring schedule.
- 5       (iv) Monitoring methodology, including sample collection  
6 procedures.
- 7       (v) Substances to be monitored, including an explanation of  
8 the selection of any indicator parameters to be used.
- 9       (vi) Laboratory methodology, including the name of the labo-  
10 ratory responsible for analysis of monitoring samples, method  
11 detection limits, and practical quantitation levels. Raw data  
12 used to determine method detection limits shall be made available  
13 to the department on request.
- 14       (vii) Quality control/quality assurance plan.
- 15       (viii) Data presentation and evaluation plan.
- 16       (ix) Contingency plan to address ineffective monitoring.
- 17       (x) Operation and maintenance plan for monitoring.
- 18       (xi) How the monitoring data will be used to demonstrate  
19 effectiveness of corrective action activities.
- 20       (xii) Other elements required by the department to determine  
21 the adequacy of the monitoring plan. Department requests for  
22 information pursuant to this subparagraph shall be limited to  
23 factors not adequately addressed by information required under  
24 subparagraphs (i) through (xi) and shall be accompanied by an  
25 explanation of the need for the additional information.

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

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

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

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

17 (3) If a corrective action plan prepared under this section  
18 does not result in an unrestricted use of the property for any  
19 purpose, the owner or operator or a consultant retained by the  
20 owner or operator shall provide notice to the public by means  
21 designed to reach those members of the public directly impacted  
22 by the release and the proposed corrective action. The notice  
23 shall include the name, address, and telephone number of a con-  
24 tact person. A copy of the notice and proof of providing the  
25 notice shall be submitted to the department. The department  
26 shall ensure that site release information and corrective action

1 plans that do not result in an unrestricted use of property are  
2 made available to the public for inspection upon request.

3       Section 2. This amendatory act shall not take effect unless  
4 Senate Bill No. \_\_\_\_\_ or House Bill No. 5380 (request  
5 no. 06387'95) of the 88th Legislature is enacted into law.