



SENATE BILL No. 386

March 14, 1995, Introduced by Senators BENNETT and GAST and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend sections 21302, 21303, 21306, 21307, 21315, 21323, and 21329 of Act No. 451 of the Public Acts of 1994, entitled

"Natural resources and environmental protection act,"

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:

1 Section 1. Sections 21302, 21303, 21306, 21307, 21315,
2 21323, and 21329 of Act No. 451 of the Public Acts of 1994, being
3 sections 324.21302, 324.21303, 324.21306, 324.21307, 324.21315,
4 324.21323, and 324.21329 of the Michigan Compiled Laws, are
5 amended and sections 21301a, 21304a, 21307a, 21308a, 21309a,

1 21310a, 21311a, 21312a, 21313a, 21314a, 21316a, and 21319a are
2 added to read as follows:

3 SEC. 21301A. THIS PART IS INTENDED TO PROVIDE REMEDIES FOR
4 SITES POSING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE,
5 OR TO THE ENVIRONMENT, REGARDLESS OF WHETHER THE RELEASE OR
6 THREAT OF RELEASE OF A REGULATED SUBSTANCE OCCURRED BEFORE OR
7 AFTER JANUARY 19, 1989, THE EFFECTIVE DATE OF THE FORMER LEAKING
8 UNDERGROUND STORAGE TANK ACT, ACT NO. 478 OF THE PUBLIC ACTS OF
9 1988, AND FOR THIS PURPOSE, THIS ACT SHALL BE GIVEN RETROACTIVE
10 APPLICATION. HOWEVER, CRIMINAL PENALTIES PROVIDED IN THE AMENDA-
11 TORY ACT THAT ADDED THIS SECTION SHALL ONLY APPLY TO VIOLATIONS
12 OF THIS PART THAT OCCUR AFTER THE EFFECTIVE DATE OF THE AMENDA-
13 TORY ACT THAT ADDED THIS SECTION.

14 Sec. 21302. ~~(1) "Cleanup standards" means the degree of~~
15 ~~cleanup required under R 299.5701 to R 299.5727 of the Michigan~~
16 ~~administrative code, which are hereby incorporated by reference.~~
17 AS USED IN THIS ACT:

18 (A) "BIOTA" MEANS THE PLANT AND ANIMAL LIFE IN AN AREA
19 AFFECTED BY A CORRECTIVE ACTION PLAN UNDER THIS PART.

20 (B) ~~(2)~~ "Consultant" means a person on the list of quali-
21 fied underground storage tank consultants prepared pursuant to
22 section 21542.

23 (C) ~~(3)~~ "Contamination" means the presence of a regulated
24 substance in soil or groundwater. ~~in a concentration that~~
25 ~~exceeds the higher of the following:~~

26 ~~(a) Type A cleanup levels.~~

1 ~~(b) Type B cleanup levels.~~

2 (D) ~~(4)~~ "Corrective action" means the investigation,
3 assessment, cleanup, removal, containment, isolation, treatment,
4 or monitoring of regulated substances released into the environ-
5 ment, or the taking of such other actions as may be necessary to
6 prevent, minimize, or mitigate injury to the public health,
7 safety, or welfare, the environment, or natural resources.

8 (E) ~~(5)~~ "De minimis spill" means a spill of petroleum as
9 that term is described in section ~~21303(3)(b)~~ 21303(D)(ii) that
10 contaminates not more than 20 cubic yards of soil per underground
11 storage tank or 50 cubic yards of soil per location, in which
12 groundwater has not been affected by the spill, and which is
13 abated pursuant to section 21306.

14 ~~(6) "Department" means the department of natural resources,~~
15 ~~underground storage tank division.~~

16 (F) ~~(7)~~ "Free product" means a regulated substance in a
17 liquid phase equal to or greater than 1/8 inch of measurable
18 thickness, that is not dissolved in water, and that has been
19 released into the environment.

20 (G) "GROUNDWATER" MEANS WATER BELOW THE LAND SURFACE IN THE
21 ZONE OF SATURATION.

22 (H) "HEATING OIL" MEANS PETROLEUM THAT IS NO. 1, NO. 2,
23 NO. 4-LIGHT, NO. 4-HEAVY, NO. 5-LIGHT, NO. 5-HEAVY, AND NO. 6
24 TECHNICAL GRADES OF FUEL OIL; OTHER RESIDUAL FUEL OILS INCLUDING
25 NAVY SPECIAL FUEL OIL AND BUNKER C; AND OTHER FUELS WHEN USED AS
26 SUBSTITUTES FOR 1 OF THESE FUEL OILS. HEATING OIL IS TYPICALLY
27 USED IN THE OPERATION OF HEATING EQUIPMENT, BOILERS, OR FURNACES.

1 (I) ~~(8)~~ "Local unit of government" means a municipality,
2 county, fire department, or local health department as defined in
3 section 1105 of the public health code, Act No. 368 of the Public
4 Acts of 1978, being section 333.1105 of the Michigan Compiled
5 Laws.

6 Sec. 21303. ~~(1)~~ AS USED IN THIS ACT:

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

10 (B) ~~(2)~~ "Owner" means a person who holds, or at the time
11 of a release who held, a legal, equitable, or possessory interest
12 of any kind in an underground storage tank system or in the prop-
13 erty on which an underground storage tank system is located
14 including, but not limited to, a trust, vendor, vendee, lessor,
15 or lessee. However, owner does not include a person or a regu-
16 lated financial institution who, without participating in the
17 management of an underground storage tank system and who is not
18 otherwise engaged in petroleum production, refining, or marketing
19 relating to the underground storage tank system, is acting in a
20 fiduciary capacity or who holds indicia of ownership primarily to
21 protect the person's or the regulated financial institution's
22 security interest in the underground storage tank system or the
23 property on which it is located. This exclusion does not apply
24 to a grantor, beneficiary, remainderman, or other person who
25 could directly or indirectly benefit financially from the exclu-
26 sion other than by the receipt of payment for fees and expenses
27 related to the administration of a trust.

1 (C) "RBCA" MEANS THE AMERICAN SOCIETY FOR TESTING AND
2 MATERIALS DOCUMENT ENTITLED GUIDE FOR RISK-BASED CORRECTIVE
3 ACTION APPLIED AT PETROLEUM RELEASE SITES, FINAL DRAFT, DATED
4 DECEMBER 27, 1994, WHICH IS HEREBY INCORPORATED BY REFERENCE.

5 (D) ~~(3)~~ "Regulated substance" means any of the following:

6 (i) ~~(a)~~ A substance defined in section 101(14) of title I
7 of the comprehensive environmental response, compensation, and
8 liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not
9 including a substance regulated as a hazardous waste under subti-
10 tle C of the solid waste disposal act, title II of Public Law
11 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

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

22 (iii) ~~(c)~~ A substance listed in section 112 of part A of
23 title I of the clean air act, chapter 360, 84 Stat. 1685,
24 42 U.S.C. 7412.

25 (E) ~~(4)~~ "Release" means any spilling, leaking, emitting,
26 discharging, escaping, or leaching from an underground storage

1 tank system into groundwater, surface water, or subsurface
2 soils. ~~Release does not include a de minimis spill.~~

3 ~~(5) "Type A cleanup level" means compliance with R 299.5707
4 of the Michigan administrative code.~~

5 ~~(6) "Type B cleanup level" means compliance with R 299.5709
6 to R 299.5715 of the Michigan administrative code.~~

7 ~~(7) "Type C cleanup" means a degree of cleanup that assures
8 that a regulated substance does not pose an unacceptable risk
9 considering a site specific assessment of risk as provided for in
10 section 21317.~~

11 (F) "SITE" MEANS A LOCATION WHERE A RELEASE HAS OCCURRED OR
12 THREAT OF RELEASE EXISTS FROM AN UNDERGROUND STORAGE TANK
13 SYSTEM.

14 (G) "THREAT OF RELEASE" OR "THREATENED RELEASE" MEANS ANY
15 CIRCUMSTANCE THAT MAY REASONABLY BE ANTICIPATED TO CAUSE A
16 RELEASE.

17 (H) "TIER I", "TIER II", AND "TIER III" MEAN THOSE TERMS AS
18 THEY ARE DEFINED IN RBCA.

19 (I) ~~(8)~~ "Underground storage tank system" means a tank or
20 combination of tanks, including underground pipes connected to
21 the tank or tanks, which is, was, or may have been used to con-
22 tain an accumulation of regulated substances, and the volume of
23 which, including the volume of the underground pipes connected to
24 the tank or tanks, is 10% or more beneath the surface of the
25 ground. An underground storage tank system does not include any
26 of the following:

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

4 (ii) ~~(b)~~ A tank used for storing heating oil for consump-
5 tive use on the premises where the tank is located.

6 (iii) ~~(c)~~ A septic tank.

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

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

12 (B) ~~(ii)~~ Sections 201 to 215 and 217 of the hazardous
13 liquid pipeline safety act of 1979, title II of Public Law
14 96-129, 49 U.S.C. Appx 2001 to 2015.

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

16 (vi) ~~(f)~~ A storm water or wastewater collection system.

17 (vii) ~~(g)~~ A flow-through process tank.

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

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

25 (x) ~~(j)~~ Any pipes connected to a tank that is described in
26 subdivisions ~~(a) to (i)~~ (i) TO (ix).

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

6 (xii) ~~(l)~~ A wastewater treatment tank system that is part
7 of a wastewater treatment facility regulated under section 307(b)
8 of title III or section 402 of title IV of the federal water pol-
9 lution control act, 33 U.S.C. 1317 and 1342.

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

13 (xiv) ~~(n)~~ An underground storage tank system with a capac-
14 ity of 110 gallons or less.

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

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

20 (J) ~~(9)~~ "Vadose zone" means the zone between the land sur-
21 face and the water table, or zone of saturation, also known as
22 unsaturated zone and zone of aeration.

23 SEC. 21304A. (1) CORRECTIVE ACTION ACTIVITIES UNDERTAKEN
24 PURSUANT TO THIS PART SHALL BE CONDUCTED IN ACCORDANCE WITH THE
25 PROCEDURES OUTLINED IN RBCA IN A MANNER THAT IS PROTECTIVE OF
26 PUBLIC HEALTH, SAFETY, AND WELFARE, AND THE ENVIRONMENT.

1 (2) SUBJECT TO SUBSECTIONS (3) AND (4), THE DEPARTMENT SHALL
2 ESTABLISH CLEANUP CRITERIA FOR CORRECTIVE ACTION ACTIVITIES
3 UNDERTAKEN UNDER THIS PART USING PROCEDURES OUTLINED IN RBCA.
4 THE DEPARTMENT SHALL ESTABLISH ALL EXPOSURE ASSUMPTIONS AND PATH-
5 WAYS TO BE USED IN DETERMINING THE CLEANUP CRITERIA.

6 (3) IF A REGULATED SUBSTANCE POSES A CARCINOGENIC RISK TO
7 HUMANS, THE CLEANUP CRITERIA DERIVED FOR CANCER RISK SHALL BE THE
8 95% UPPER BOUND ON THE CALCULATED RISK OF 1 ADDITIONAL CANCER
9 ABOVE THE BACKGROUND CANCER RATE PER 100,000 INDIVIDUALS USING
10 THE EXPOSURE ASSUMPTIONS AND PATHWAYS ESTABLISHED BY THE DEPART-
11 MENT AND THE ALGORITHMS IN RBCA. IF A REGULATED SUBSTANCE POSES
12 A RISK OF BOTH CANCER AND AN ADVERSE HEALTH EFFECT OTHER THAN
13 CANCER, CLEANUP CRITERIA SHALL BE DERIVED FOR CANCER AND EACH
14 ADVERSE HEALTH EFFECT.

15 (4) IF A CLEANUP CRITERION FOR GROUNDWATER DIFFERS FROM
16 EITHER (A) THE STATE DRINKING WATER STANDARD ESTABLISHED PURSUANT
17 TO SECTION 5 OF THE SAFE DRINKING WATER ACT, ACT NO. 399 OF THE
18 PUBLIC ACTS OF 1976, BEING SECTION 325.1005 OF THE MICHIGAN
19 COMPILED LAWS, OR (B) CRITERIA FOR ADVERSE AESTHETIC CHARACTERIS-
20 TICS DERIVED PURSUANT TO R 299.5709 OF THE MICHIGAN ADMINISTRA-
21 TIVE CODE, THE CLEANUP CRITERION MAY BE THE MORE STRINGENT OF (A)
22 OR (B) UNLESS A CONSULTANT RETAINED BY THE OWNER OR OPERATOR
23 DETERMINES THAT COMPLIANCE WITH THIS REQUIREMENT IS NOT NECESSARY
24 BECAUSE THE USE OF THE GROUNDWATER IS RELIABLY RESTRICTED PURSU-
25 ANT TO SECTION 21307A.

26 (5) IF CORRECTIVE ACTION IS REQUIRED AT A SITE WHERE THERE
27 ARE RELEASES BOTH REGULATED UNDER THIS PART AND NOT REGULATED

1 UNDER THIS PART, THE DEPARTMENT SHALL DETERMINE THE APPLICABLE
2 LAWS AND REGULATIONS TO DEFINE THE CLEANUP REQUIREMENTS.

3 Sec. 21306. (1) If a de minimis spill occurs, the owner or
4 operator or a consultant retained by the owner or operator may
5 remove and properly dispose of the contaminated soils. Following
6 removal and disposal of contaminated soils, a consultant retained
7 by the owner or operator shall ~~conduct sampling and testing of~~
8 ~~soils in the vicinity of the de minimis spill pursuant to the~~
9 ~~rules promulgated by the department. If, upon removal of not~~
10 ~~more than 20 cubic yards of soil per underground storage tank or~~
11 ~~50 cubic yards of soil per location, the sampling and testing of~~
12 ~~soils shows the presence of contamination, the spill shall be~~
13 ~~reported as a release under section 21307 and corrective action~~
14 ~~shall be implemented as otherwise provided in this part. If the~~
15 ~~results of the soil tests show no evidence of contamination, the~~
16 ~~results shall be submitted to the department along with other~~
17 ~~information required by the department on a de minimis spill clo-~~
18 ~~sure report provided by the department not later than 45 days~~
19 ~~after discovery of the de minimis spill. PROVIDE TO THE DEPART-~~
20 ~~MENT A CLOSURE REPORT PURSUANT TO SECTION 21312A. IF IT IS~~
21 ~~DETERMINED THAT THE RELEASE EXCEEDS THE AMOUNTS DESCRIBED IN SEC-~~
22 ~~TION 21302(E), THEN CORRECTIVE ACTION SHALL BE IMPLEMENTED AS~~
23 ~~OTHERWISE PROVIDED IN THIS PART.~~

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

26 Sec. 21307. (1) Upon confirmation of a release from an
27 underground storage tank system, the owner or operator shall

1 report the release and whether free product has been discovered
2 to the department within 24 hours after ~~its~~ discovery. ~~Upon~~
3 ~~receipt of a release report under this subsection, the~~ THE
4 department may investigate the release. However, an investiga-
5 tion by the department does not relieve the owner or operator
6 ~~of~~ FROM any responsibilities related to the release provided
7 for in this part.

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

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

14 (b) Take action to prevent further release of the regulated
15 substance into the environment including removing the regulated
16 substance from the underground storage tank system that is caus-
17 ing ~~a~~ THE release.

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

20 (i) Conduct free product removal in a manner that minimizes
21 the spread of contamination into previously uncontaminated zones
22 by using recovery and disposal techniques appropriate to the con-
23 ditions at the site and in a manner that properly treats, dis-
24 charges, or disposes of recovery by-products as required by law.

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

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

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

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

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

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

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

22 ~~(a) The facility address.~~

23 ~~(b) The name of the facility.~~

24 ~~(c) The name, address, and telephone number of facility com-~~
25 ~~pliance contact person.~~

26 ~~(d) The time and date of release discovery.~~

1 ~~(e) The time and date the release was reported to the~~
2 ~~department.~~

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

4 ~~(i) The location of each underground storage tank in the~~
5 ~~leaking underground storage tank system.~~

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

8 ~~(iii) The location of fill ports, dispensers, and other per-~~
9 ~~tinent system components.~~

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

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

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

14 ~~(h) A list of the regulated substances the underground stor-~~
15 ~~age tank system contained when the release occurred.~~

16 ~~(i) A list of the regulated substances the underground stor-~~
17 ~~age tank system contained in the past other than those listed in~~
18 ~~subdivision (h).~~

19 ~~(j) The location of nearby surface waters.~~

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

22 ~~(l) The component of the underground storage tank system~~
23 ~~from which the release occurred (e.g., piping, underground stor-~~
24 ~~age tank, overfill).~~

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

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

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

7 ~~(p) The extent to which all or part of the underground stor-~~
8 ~~age tank system or soil, or both, were removed.~~

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

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

14 ~~(i) A description of the actions taken to remove any free~~
15 ~~product.~~

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

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

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

22 ~~(v) Whether any discharge will take place on site or off~~
23 ~~site during the recovery operation and where this discharge will~~
24 ~~be located.~~

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

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

3 ~~(viii) The quantity and disposition of the recovered free~~
4 ~~product.~~

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

7 (3) ~~(4)~~ Immediately following initiation of initial
8 response actions under this section, the consultant retained by
9 the owner or operator shall do all of the following:

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

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

18 (c) If free product is discovered at any time at a location
19 not previously identified under subsection (2)(c), report the
20 discovery within 24 hours to the department and initiate free
21 product recovery in compliance with subsection (2)(c). ~~Within~~
22 ~~20 days after discovery of free product, submit a report to the~~
23 ~~department that includes the information required in subsection~~
24 ~~(4)(a) to (s).~~

25 SEC. 21307A. (1) FOLLOWING INITIATION OF INITIAL RESPONSE
26 ACTIONS UNDER SECTION 21307, A CONSULTANT RETAINED BY THE OWNER
27 OR OPERATOR SHALL COMPLETE THE ACTIONS AND SUBMIT RELATED REPORTS

1 DETAILED IN THIS PART TO ADDRESS THE CONTAMINATION AT THE SITE.
2 AT ANY TIME THAT SUFFICIENT CORRECTIVE ACTION TO ADDRESS CONTAMI-
3 NATION HAS BEEN UNDERTAKEN, A CONSULTANT SHALL COMPLETE AND
4 SUBMIT A SITE CLOSURE REPORT AND OMIT THE REMAINING INTERIM
5 STEPS.

6 (2) IN ADDITION TO THE REPORTING REQUIREMENTS SPECIFIED IN
7 THIS PART, A CONSULTANT SHALL PROVIDE 48-HOUR NOTIFICATION TO THE
8 DEPARTMENT PRIOR TO INITIATING ANY OF THE FOLLOWING ACTIVITIES:

9 (A) SOIL EXCAVATION.

10 (B) WELL DRILLING, INCLUDING MONITORING WELL INSTALLATION.

11 (C) SAMPLING OF SOIL OR GROUNDWATER.

12 (D) CONSTRUCTION OF TREATMENT SYSTEMS.

13 SEC. 21308A. WITHIN 90 DAYS AFTER A RELEASE HAS BEEN DIS-
14 COVERED, A CONSULTANT RETAINED BY THE OWNER OR OPERATOR SHALL
15 COMPLETE AN INITIAL ASSESSMENT REPORT AND SUBMIT THE REPORT OR AN
16 EXECUTIVE SUMMARY OF THE REPORT TO THE DEPARTMENT ON A FORM CRE-
17 ATED PER SECTION 21316. THE REPORT SHALL INCLUDE, BUT IS NOT
18 LIMITED TO, THE FOLLOWING INFORMATION:

19 (A) RESULTS OF INITIAL RESPONSE ACTIONS TAKEN UNDER
20 SECTION 21307(2).

21 (B) SITE INFORMATION AND SITE CHARACTERIZATION RESULTS. THE
22 FOLLOWING ITEMS SHALL BE INCLUDED AS APPROPRIATE GIVEN THE SITE
23 CONDITIONS:

24 (i) THE FACILITY ADDRESS.

25 (ii) THE NAME OF THE FACILITY.

26 (iii) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF FACILITY
27 COMPLIANCE CONTACT PERSON.

- 1 (iv) THE TIME AND DATE OF RELEASE DISCOVERY.
- 2 (v) THE TIME AND DATE THE RELEASE WAS REPORTED TO THE
3 DEPARTMENT.
- 4 (vi) A SITE MAP THAT INCLUDES ALL OF THE FOLLOWING:
- 5 (A) THE LOCATION OF EACH UNDERGROUND STORAGE TANK IN THE
6 LEAKING UNDERGROUND STORAGE TANK SYSTEM.
- 7 (B) THE LOCATION OF ANY OTHER UNDERGROUND STORAGE TANK
8 SYSTEM ON THE SITE.
- 9 (C) THE LOCATION OF FILL PORTS, DISPENSERS, AND OTHER PERTI-
10 NENT SYSTEM COMPONENTS.
- 11 (D) SOIL AND GROUNDWATER SAMPLE LOCATIONS, IF APPLICABLE.
- 12 (E) THE LOCATIONS OF NEARBY BUILDINGS, ROADWAYS, PAVED
13 AREAS, OR OTHER STRUCTURES.
- 14 (vii) A DESCRIPTION OF HOW THE RELEASE WAS DISCOVERED.
- 15 (viii) A LIST OF REGULATED SUBSTANCES THE UNDERGROUND STOR-
16 AGE TANK SYSTEM CONTAINED WHEN THE RELEASE OCCURRED.
- 17 (ix) A LIST OF THE REGULATED SUBSTANCES THE UNDERGROUND
18 STORAGE TANK SYSTEM CONTAINED IN THE PAST OTHER THAN THOSE LISTED
19 IN SUBPARAGRAPH (viii).
- 20 (x) THE LOCATION OF NEARBY SURFACE WATERS.
- 21 (xi) THE LOCATION OF NEARBY UNDERGROUND SEWERS AND UTILITY
22 LINES.
- 23 (xii) THE COMPONENT OF THE UNDERGROUND STORAGE TANK SYSTEM
24 FROM WHICH THE RELEASE OCCURRED (E.G., PIPING, UNDERGROUND STOR-
25 AGE TANK, OVERFILL).
- 26 (xiii) WHETHER THE UNDERGROUND STORAGE TANK SYSTEM WAS
27 EMPTIED TO PREVENT FURTHER RELEASE.

1 (xiv) A DESCRIPTION OF WHAT OTHER STEPS WERE TAKEN TO
2 PREVENT FURTHER MIGRATION OF THE REGULATED SUBSTANCE INTO THE
3 SOIL OR GROUNDWATER.

4 (xv) WHETHER VAPORS OR FREE PRODUCT WAS FOUND AND WHAT STEPS
5 WERE TAKEN TO ABATE THOSE CONDITIONS AND THE CURRENT LEVELS OF
6 VAPORS OR FREE PRODUCT IN NEARBY STRUCTURES.

7 (xvi) THE EXTENT TO WHICH ALL OR PART OF THE UNDERGROUND
8 STORAGE TANK SYSTEM OR SOIL, OR BOTH, WAS REMOVED.

9 (xvii) DATA FROM ANALYTICAL TESTING OF SOIL AND GROUNDWATER
10 SAMPLES.

11 (xviii) A DESCRIPTION OF THE FREE PRODUCT INVESTIGATION AND
12 REMOVAL IF FREE PRODUCT WAS PRESENT, INCLUDING ALL OF THE
13 FOLLOWING:

14 (A) A DESCRIPTION OF THE ACTIONS TAKEN TO REMOVE ANY FREE
15 PRODUCT.

16 (B) THE NAME OF THE PERSON OR PERSONS RESPONSIBLE FOR IMPLE-
17 MENTING THE FREE PRODUCT REMOVAL MEASURES.

18 (C) THE ESTIMATED QUANTITY, TYPE, AND THICKNESS OF FREE
19 PRODUCT OBSERVED OR MEASURED IN WELLS, BOREHOLES, AND
20 EXCAVATIONS.

21 (D) THE TYPE OF FREE PRODUCT RECOVERY SYSTEM USED.

22 (E) WHETHER ANY DISCHARGE WILL TAKE PLACE ON SITE OR OFF
23 SITE DURING THE RECOVERY OPERATION AND WHERE THIS DISCHARGE WILL
24 BE LOCATED.

25 (F) THE TYPE OF TREATMENT APPLIED TO, AND THE EFFLUENT QUAL-
26 ITY EXPECTED FROM, ANY DISCHARGE.

1 (G) THE STEPS THAT HAVE BEEN OR ARE BEING TAKEN TO OBTAIN
2 NECESSARY PERMITS FOR ANY DISCHARGE.

3 (H) THE QUANTITY AND DISPOSITION OF THE RECOVERED FREE
4 PRODUCT.

5 (ix) IDENTIFICATION OF ANY OTHER CONTAMINATION ON THE SITE
6 NOT RESULTING FROM THE RELEASE AND THE SOURCE, IF KNOWN.

7 (xx) AN ESTIMATE OF THE HORIZONTAL AND VERTICAL EXTENT OF
8 ON-SITE AND OFF-SITE SOIL CONTAMINATION.

9 (xxi) THE DEPTH TO GROUNDWATER.

10 (xxii) AN IDENTIFICATION OF POTENTIAL MIGRATION AND EXPOSURE
11 PATHWAYS AND RECEPTORS.

12 (xxiii) AN ESTIMATE OF THE AMOUNT OF SOIL IN THE VADOSE ZONE
13 THAT IS CONTAMINATED.

14 (xxiv) IF THE ON-SITE ASSESSMENT INDICATES THAT OFF-SITE
15 SOIL OR GROUNDWATER MAY BE AFFECTED, REPORT THE STEPS THAT HAVE
16 BEEN TAKEN OR WILL BE TAKEN INCLUDING AN IMPLEMENTATION SCHEDULE
17 TO EXPEDITIOUSLY SECURE ACCESS TO OFF-SITE PROPERTIES TO COMPLETE
18 THE DELINEATION OF THE EXTENT OF THE RELEASE.

19 (xxv) GROUNDWATER FLOW RATE AND DIRECTION.

20 (xxvi) LABORATORY ANALYTICAL DATA COLLECTED.

21 (xxvii) THE VERTICAL DISTRIBUTION OF CONTAMINANTS.

22 (C) SITE CLASSIFICATION UNDER SECTION 21314A.

23 (D) TIER I OR TIER II EVALUATION ACCORDING TO THE RBCA
24 PROCESS.

25 (E) A WORK PLAN INCLUDING AN IMPLEMENTATION SCHEDULE FOR
26 CONDUCTING A FINAL ASSESSMENT REPORT UNDER SECTION 21311A TO

1 DETERMINE THE VERTICAL AND HORIZONTAL EXTENT OF THE CONTAMINATION
2 AS NECESSARY FOR PREPARATION OF THE CORRECTIVE ACTION PLAN.

3 SEC. 21309A. (1) IF INITIAL RESPONSE ACTIONS UNDER
4 SECTION 21307 HAVE NOT RESULTED IN COMPLETION OF CORRECTIVE
5 ACTION, A CONSULTANT RETAINED BY AN OWNER OR OPERATOR SHALL PRE-
6 PARE A CORRECTIVE ACTION PLAN TO ADDRESS CONTAMINATION AT THE
7 SITE. FOR CORRECTIVE ACTION PLANS SUBMITTED AS PART OF A FINAL
8 ASSESSMENT REPORT PURSUANT TO SECTION 21311A AFTER OCTOBER 1,
9 1995, THE CORRECTIVE ACTION PLAN SHALL USE THE PROCESS DESCRIBED
10 IN RBCA.

11 (2) A CORRECTIVE ACTION PLAN SHALL INCLUDE ALL OF THE
12 FOLLOWING:

13 (A) A DESCRIPTION OF THE CORRECTIVE ACTION TO BE IMPLE-
14 MENTED, INCLUDING AN EXPLANATION OF HOW THAT ACTION WILL MEET THE
15 REQUIREMENTS OF THE RBCA PROCESS. THE CORRECTIVE ACTION PLAN
16 SHALL ALSO INCLUDE AN ANALYSIS OF THE SELECTION OF INDICATOR
17 PARAMETERS TO BE USED IN EVALUATING THE IMPLEMENTATION OF THE
18 CORRECTIVE ACTION PLAN, IF INDICATOR CHEMICALS ARE TO BE USED.
19 THE CORRECTIVE ACTION PLAN SHALL INCLUDE A DESCRIPTION OF AMBIENT
20 AIR QUALITY MONITORING ACTIVITIES TO BE UNDERTAKEN DURING THE
21 CORRECTIVE ACTION IF SUCH ACTIVITIES ARE APPROPRIATE.

22 (B) AN OPERATION AND MAINTENANCE PLAN IF ANY ELEMENT OF THE
23 CORRECTIVE ACTION REQUIRES THE OPERATION AND MAINTENANCE. THE
24 OPERATION AND MAINTENANCE PLAN SHALL INCLUDE ALL OF THE
25 FOLLOWING:

26 (i) NAME, TELEPHONE NUMBER, AND ADDRESS OF THE PERSON WHO IS
27 RESPONSIBLE FOR OPERATION AND MAINTENANCE.

1 (ii) OPERATION AND MAINTENANCE SCHEDULE.

2 (iii) WRITTEN AND PICTORIAL PLAN OF OPERATION AND
3 MAINTENANCE.

4 (iv) DESIGN AND CONSTRUCTION PLANS.

5 (v) EQUIPMENT DIAGRAMS, SPECIFICATIONS, AND MANUFACTURERS'
6 GUIDELINES.

7 (vi) SAFETY PLAN.

8 (vii) EMERGENCY PLAN, INCLUDING EMERGENCY CONTACT TELEPHONE
9 NUMBERS.

10 (viii) A LIST OF SPARE PARTS AVAILABLE FOR EMERGENCY
11 REPAIRS.

12 (ix) OTHER INFORMATION REQUIRED BY THE DEPARTMENT TO DETER-
13 MINE THE ADEQUACY OF THE OPERATION AND MAINTENANCE PLAN.

14 DEPARTMENT REQUESTS FOR INFORMATION PURSUANT TO THIS SUBPARAGRAPH
15 SHALL BE LIMITED TO FACTORS NOT ADEQUATELY ADDRESSED BY INFORMA-
16 TION REQUIRED BY THE PROVISIONS OF SUBPARAGRAPHS (i) THROUGH
17 (viii) AND SHALL BE ACCOMPANIED BY AN EXPLANATION OF THE NEED FOR
18 SUCH ADDITIONAL INFORMATION.

19 (C) A MONITORING PLAN IF MONITORING OF ENVIRONMENTAL MEDIA
20 OR SITE ACTIVITIES OR BOTH IS REQUIRED TO CONFIRM THE EFFECTIVE-
21 NESS AND INTEGRITY OF THE REMEDY. THE MONITORING PLAN SHALL
22 INCLUDE ALL OF THE FOLLOWING:

23 (i) LOCATION OF MONITORING POINTS.

24 (ii) ENVIRONMENTAL MEDIA TO BE MONITORED, INCLUDING, BUT NOT
25 LIMITED TO, SOIL, AIR, WATER, OR BIOTA.

26 (iii) MONITORING SCHEDULE.

1 (iv) MONITORING METHODOLOGY, INCLUDING SAMPLE COLLECTION
2 PROCEDURES.

3 (v) SUBSTANCES TO BE MONITORED, INCLUDING AN EXPLANATION OF
4 THE SELECTION OF ANY INDICATOR CHEMICALS TO BE USED.

5 (vi) LABORATORY METHODOLOGY, INCLUDING THE NAME OF THE LABO-
6 RATORY RESPONSIBLE FOR ANALYSIS OF MONITORING SAMPLES, METHOD
7 DETECTION LIMITS, AND PRACTICAL QUANTITATION LEVELS. RAW DATA
8 USED TO DETERMINE METHOD DETECTION LIMITS SHALL BE MADE AVAILABLE
9 TO THE DEPARTMENT ON REQUEST.

10 (vii) QUALITY CONTROL/QUALITY ASSURANCE PLAN.

11 (viii) DATA PRESENTATION AND EVALUATION PLAN.

12 (ix) CONTINGENCY PLAN TO ADDRESS INEFFECTIVE MONITORING.

13 (x) OPERATION AND MAINTENANCE PLAN FOR MONITORING.

14 (xi) HOW THE MONITORING DATA WILL BE USED TO DEMONSTRATE
15 EFFECTIVENESS OF CORRECTIVE ACTION ACTIVITIES.

16 (xii) OTHER ELEMENTS REQUIRED BY THE DEPARTMENT TO DETERMINE
17 THE ADEQUACY OF THE MONITORING PLAN. DEPARTMENT REQUESTS FOR
18 INFORMATION PURSUANT TO THIS SUBPARAGRAPH SHALL BE LIMITED TO
19 FACTORS NOT ADEQUATELY ADDRESSED BY INFORMATION REQUIRED UNDER
20 SUBPARAGRAPHS (i) THROUGH (xi) AND SHALL BE ACCOMPANIED BY AN
21 EXPLANATION OF THE NEED FOR SUCH ADDITIONAL INFORMATION.

22 (D) AN EXPLANATION OF ANY LAND USE OR RESOURCE USE RESTRIC-
23 TIONS, IF SUCH RESTRICTIONS ARE REQUIRED PURSUANT TO
24 SECTION 21310A.

25 (E) A SCHEDULE FOR IMPLEMENTATION OF THE CORRECTIVE ACTION.

26 (F) A FINANCIAL ASSURANCE MECHANISM, AS PROVIDED FOR IN
27 R 29.2161 TO R 29.2169 OF THE MICHIGAN ADMINISTRATIVE CODE, IN AN

1 AMOUNT APPROVED BY THE DEPARTMENT, TO PAY FOR MONITORING,
2 OPERATION AND MAINTENANCE, OVERSIGHT, AND OTHER COSTS DETERMINED
3 BY THE DEPARTMENT TO BE NECESSARY TO ASSURE THE EFFECTIVENESS AND
4 INTEGRITY OF THE CORRECTIVE ACTION.

5 (G) IF PROVISIONS FOR OPERATION AND MAINTENANCE, MONITORING,
6 OR FINANCIAL ASSURANCE ARE INCLUDED IN THE CORRECTIVE ACTION
7 PLAN, AND THOSE PROVISIONS ARE NOT COMPLIED WITH, THE CORRECTIVE
8 ACTION PLAN IS VOID FROM THE TIME OF LAPSE OR VIOLATION UNLESS
9 THE LAPSE OR VIOLATION IS CORRECTED TO THE SATISFACTION OF THE
10 DEPARTMENT.

11 SEC. 21310A. (1) IF THE CORRECTIVE ACTION ACTIVITIES AT A
12 SITE, BASED ON A TIER I EVALUATION, ASSUME INSTITUTIONAL CONTROLS
13 AS DEFINED IN RBCA, THE INSTITUTIONAL CONTROLS SHALL BE IMPLE-
14 MENTED AS PROVIDED IN THIS SUBSECTION. A NOTICE OF CORRECTIVE
15 ACTION SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE
16 COUNTY IN WHICH THE SITE IS LOCATED PRIOR TO SUBMITTAL OF A CLO-
17 SURE REPORT UNDER SECTION 21312A. A NOTICE SHALL BE FILED UNDER
18 THIS SUBSECTION ONLY BY THE PROPERTY OWNER OR WITH THE EXPRESS
19 WRITTEN PERMISSION OF THE PROPERTY OWNER. THE FORM AND CONTENT
20 OF THE NOTICE SHALL BE SUBJECT TO APPROVAL BY THE DEPARTMENT.
21 ANY RESTRICTIONS CONTAINED IN THE NOTICE ARE BINDING ON THE
22 OWNER'S SUCCESSORS, ASSIGNS, AND LESSEES, AND SHALL RUN WITH THE
23 LAND. A NOTICE OF CORRECTIVE ACTION RECORDED UNDER THIS SUBSEC-
24 TION SHALL STATE THE LAND USE THAT WAS THE BASIS OF THE CORREC-
25 TIVE ACTION SELECTED BY A CONSULTANT RETAINED BY THE OWNER OR
26 OPERATOR. A CHANGE FROM THE LAND USE MAY NECESSITATE FURTHER
27 EVALUATION OF POTENTIAL RISKS TO THE PUBLIC HEALTH, SAFETY, AND

1 WELFARE AND TO THE ENVIRONMENT. NOTICE OF THE CORRECTIVE ACTION
2 SHALL INCLUDE A SURVEY AND PROPERTY DESCRIPTION WHICH DEFINE THE
3 AREAS ADDRESSED BY THE CORRECTIVE ACTION PLAN AND THE SCOPE OF
4 ANY LAND USE OR RESOURCE USE LIMITATIONS. ADDITIONAL REQUIRE-
5 MENTS FOR FINANCIAL ASSURANCE, MONITORING, OR OPERATION AND MAIN-
6 TENANCE SHALL NOT APPLY IF CONTAMINATION LEVELS DO NOT EXCEED THE
7 LEVELS ESTABLISHED IN THE TIER I EVALUATION.

8 (2) IF CORRECTIVE ACTION ACTIVITIES AT A SITE RELY ON A TIER
9 II OR TIER III EVALUATION, INSTITUTIONAL CONTROL SHALL BE IMPLE-
10 MENTED AS PROVIDED IN THIS SUBSECTION. THE RESTRICTIVE COVENANT
11 SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE COUNTY IN
12 WHICH THE PROPERTY IS LOCATED WITHIN 30 DAYS FROM SUBMITTAL OF
13 THE FINAL ASSESSMENT REPORT PURSUANT TO SECTION 21311A, UNLESS
14 OTHERWISE AGREED TO BY THE DEPARTMENT. THE RESTRICTIVE COVENANT
15 SHALL BE FILED ONLY BY THE PROPERTY OWNER OR WITH THE EXPRESS
16 WRITTEN PERMISSION OF THE PROPERTY OWNER. THE RESTRICTIONS SHALL
17 RUN WITH THE LAND AND BE BINDING ON THE OWNER'S SUCCESSORS,
18 ASSIGNS, AND LESSEES. THE RESTRICTIONS SHALL APPLY UNTIL THE
19 DEPARTMENT DETERMINES THAT REGULATED SUBSTANCES NO LONGER PRESENT
20 AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
21 TO THE ENVIRONMENT. THE RESTRICTIVE COVENANT SHALL INCLUDE A
22 SURVEY AND PROPERTY DESCRIPTION WHICH DEFINE THE AREAS ADDRESSED
23 BY THE CORRECTIVE ACTION PLAN AND THE SCOPE OF ANY LAND USE OR
24 RESOURCE USE LIMITATIONS. THE FORM AND CONTENT OF THE RESTRIC-
25 TIVE COVENANT ARE SUBJECT TO APPROVAL BY THE DEPARTMENT AND SHALL
26 INCLUDE PROVISIONS TO ACCOMPLISH ALL OF THE FOLLOWING:

1 (A) RESTRICT ACTIVITIES AT THE SITE THAT MAY INTERFERE WITH
2 CORRECTIVE ACTION, OPERATION AND MAINTENANCE, MONITORING, OR
3 OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEG-
4 RITY OF THE CORRECTIVE ACTION.

5 (B) RESTRICT ACTIVITIES THAT MAY RESULT IN EXPOSURES ABOVE
6 LEVELS ESTABLISHED IN THE CORRECTIVE ACTION PLAN.

7 (C) PREVENT A CONVEYANCE OF TITLE, AN EASEMENT, OR OTHER
8 INTEREST IN THE PROPERTY FROM BEING CONSUMMATED BY THE PROPERTY
9 OWNER WITHOUT ADEQUATE AND COMPLETE PROVISION FOR COMPLIANCE WITH
10 THE CORRECTIVE ACTION PLAN AND PREVENTION OF EXPOSURES DESCRIBED
11 IN SUBDIVISION (B).

12 (D) GRANT TO THE DEPARTMENT AND ITS DESIGNATED REPRESENTA-
13 TIVES THE RIGHT TO ENTER THE PROPERTY AT REASONABLE TIMES FOR THE
14 PURPOSE OF DETERMINING AND MONITORING COMPLIANCE WITH THE CORREC-
15 TIVE ACTION PLAN, INCLUDING THE RIGHT TO TAKE SAMPLES, INSPECT
16 THE OPERATION OF THE CORRECTIVE ACTION MEASURES, AND INSPECT
17 RECORDS.

18 (E) ALLOW THE STATE TO ENFORCE RESTRICTIONS SET FORTH IN THE
19 COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE JURISDICTION.

20 (F) DESCRIBE GENERALLY THE USES OF THE PROPERTY THAT ARE
21 CONSISTENT WITH THE CORRECTIVE ACTION PLAN.

22 (3) IF A CONSULTANT RETAINED BY THE OWNER OR OPERATOR DETER-
23 MINES THAT EXPOSURE TO REGULATED SUBSTANCES MAY BE RELIABLY
24 RESTRICTED BY A MEANS OTHER THAN A RESTRICTIVE COVENANT AND THAT
25 IMPOSITION OF LAND USE OR RESOURCE USE RESTRICTIONS THROUGH
26 RESTRICTIVE COVENANTS IS IMPRACTICAL, THE CONSULTANT MAY SELECT A
27 CORRECTIVE ACTION PLAN THAT RELIES ON ALTERNATIVE MECHANISMS.

1 MECHANISMS THAT MAY BE CONSIDERED UNDER THIS SUBSECTION INCLUDE,
2 BUT ARE NOT LIMITED TO, AN ORDINANCE THAT PROHIBITS THE USE OF
3 GROUNDWATER IN A MANNER AND TO A DEGREE THAT PROTECTS AGAINST
4 UNACCEPTABLE EXPOSURES AS DEFINED BY THE CLEANUP CRITERIA IDENTI-
5 FIED IN THE CORRECTIVE ACTION PLAN. AN ORDINANCE THAT SERVES AS
6 AN EXPOSURE CONTROL UNDER THIS SUBSECTION SHALL INCLUDE BOTH OF
7 THE FOLLOWING:

8 (A) A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY
9 THE DEPARTMENT 30 DAYS BEFORE ADOPTING A MODIFICATION TO THE
10 ORDINANCE OR TO THE LAPSING OR REVOCATION OF THE ORDINANCE.

11 (B) A REQUIREMENT THAT THE ORDINANCE BE FILED WITH THE REG-
12 ISTER OF DEEDS AS AN ORDINANCE AFFECTING MULTIPLE PROPERTIES.

13 (4) IF A MECHANISM OTHER THAN AN ORDINANCE OR RESTRICTIVE
14 COVENANT IS NECESSARY, THEN THE MECHANISM SHALL BE APPROVED BY
15 THE DEPARTMENT PRIOR TO IMPLEMENTATION.

16 (5) A PERSON WHO IMPLEMENTS CORRECTIVE ACTION ACTIVITIES
17 SHALL PROVIDE NOTICE OF THE LAND USE RESTRICTIONS THAT ARE PART
18 OF THE CORRECTIVE ACTION PLAN TO THE LOCAL UNIT OF GOVERNMENT IN
19 WHICH THE SITE IS LOCATED WITHIN 30 DAYS OF SUBMITTAL OF THE COR-
20 RECTIVE ACTION PLAN, UNLESS OTHERWISE APPROVED BY THE DEPARTMENT.

21 SEC. 21311A. WITHIN 365 DAYS AFTER A RELEASE HAS BEEN DIS-
22 COVERED, A CONSULTANT RETAINED BY AN OWNER OR OPERATOR SHALL COM-
23 PLETE A FINAL ASSESSMENT REPORT THAT INCLUDES A CORRECTIVE ACTION
24 PLAN DEVELOPED UNDER SECTION 21309A AND SUBMIT THE REPORT OR AN
25 EXECUTIVE SUMMARY OF THE REPORT TO THE DEPARTMENT ON A FORM CRE-
26 ATED PURSUANT TO SECTION 21316. THE REPORT SHALL INCLUDE, BUT IS
27 NOT LIMITED TO, THE FOLLOWING INFORMATION:

1 (A) THE EXTENT OF CONTAMINATION.

2 (B) TIER II AND TIER III EVALUATION, AS APPROPRIATE, UNDER
3 THE RBCA PROCESS.

4 (C) A FEASIBILITY ANALYSIS. THE FOLLOWING SHALL BE INCLUD-
5 ED, AS APPROPRIATE, GIVEN THE SITE CONDITIONS:

6 (i) ON-SITE AND OFF-SITE CORRECTIVE ACTION ALTERNATIVES TO
7 REMEDIATE CONTAMINATED SOIL AND GROUNDWATER FOR EACH CLEANUP
8 TYPE, INCLUDING ALTERNATIVES THAT PERMANENTLY AND SIGNIFICANTLY
9 REDUCE THE VOLUME, TOXICITY, AND MOBILITY OF THE REGULATED
10 SUBSTANCES.

11 (ii) THE COSTS ASSOCIATED WITH EACH CORRECTIVE ACTION ALTER-
12 NATIVE INCLUDING ALTERNATIVES THAT PERMANENTLY AND SIGNIFICANTLY
13 REDUCE THE VOLUME, TOXICITY, AND MOBILITY OF THE REGULATED
14 SUBSTANCES.

15 (iii) THE EFFECTIVENESS AND FEASIBILITY OF EACH CORRECTIVE
16 ACTION ALTERNATIVE IN MEETING CLEANUP CRITERIA.

17 (iv) THE TIME NECESSARY TO IMPLEMENT AND COMPLETE EACH COR-
18 RECTIVE ACTION ALTERNATIVE.

19 (v) THE PREFERRED CORRECTIVE ACTION ALTERNATIVE BASED UPON
20 SUBPARAGRAPHS (i) THROUGH (iv) AND AN IMPLEMENTATION SCHEDULE FOR
21 COMPLETION OF THE CORRECTIVE ACTION.

22 (D) A CORRECTIVE ACTION PLAN.

23 (E) A SCHEDULE FOR CORRECTIVE ACTION PLAN IMPLEMENTATION.

24 SEC. 21312A. (1) WITHIN 30 DAYS FOLLOWING COMPLETION OF THE
25 CORRECTIVE ACTION, A CONSULTANT RETAINED BY THE OWNER OR OPERATOR
26 SHALL COMPLETE A CLOSURE REPORT AND SUBMIT THE REPORT OR AN
27 EXECUTIVE SUMMARY OF THE REPORT TO THE DEPARTMENT ON A FORM

1 CREATED PURSUANT TO SECTION 21316. THE REPORT SHALL INCLUDE, BUT
2 IS NOT LIMITED TO, THE FOLLOWING INFORMATION:

3 (A) A SUMMARY OF CORRECTIVE ACTION ACTIVITIES.

4 (B) CLOSURE VERIFICATION SAMPLING RESULTS.

5 (C) A CLOSURE CERTIFICATION PREPARED BY THE CONSULTANT
6 RETAINED BY THE OWNER OR OPERATOR.

7 (2) WITHIN 60 DAYS AFTER RECEIPT OF A CLOSURE REPORT UNDER
8 SUBSECTION (1), THE DEPARTMENT SHALL PROVIDE THE CONSULTANT WHO
9 SUBMITTED THE CLOSURE REPORT WITH A CONFIRMATION OF THE
10 DEPARTMENT'S RECEIPT OF THE REPORT.

11 (3) THE DEPARTMENT RETAINS THE RIGHT TO REVIEW ANY REPORT
12 REQUIRED UNDER THIS SECTION IN WHICH AN EXECUTIVE SUMMARY WAS
13 SUBMITTED IN LIEU OF THE REPORT.

14 SEC. 21313A. (1) EXCEPT FOR THE CONFIRMATION PROVIDED IN
15 SECTION 21312A(2), IF A REPORT IS NOT COMPLETED OR A REQUIRED
16 SUBMITTAL UNDER SECTION 21308A, 21311A, OR 21312A IS NOT PROVIDED
17 DURING THE TIME REQUIRED, THE DEPARTMENT SHALL IMPOSE A PENALTY
18 ACCORDING TO THE FOLLOWING SCHEDULE:

19 (A) \$100.00 PER DAY FOR THE FIRST 7 DAYS THAT THE EXECUTIVE
20 SUMMARY OR REPORT IS LATE.

21 (B) \$500.00 PER DAY FOR DAYS 8 THROUGH 14 THAT THE EXECUTIVE
22 SUMMARY OR REPORT IS LATE.

23 (C) \$1,000.00 PER DAY FOR EACH DAY BEYOND DAY 14 THAT THE
24 EXECUTIVE SUMMARY OR REPORT IS LATE.

25 (2) FOR PURPOSES OF THIS SECTION, IN COMPUTING A PERIOD OF
26 TIME, THE DAY OF THE ACT, EVENT, OR DEFAULT AFTER WHICH THE
27 DESIGNATED PERIOD OF TIME BEGINS TO RUN IS NOT INCLUDED. THE

1 LAST DAY OF THE PERIOD IS INCLUDED, UNLESS IT IS A SATURDAY,
2 SUNDAY, LEGAL HOLIDAY, OR HOLIDAY, IN WHICH EVENT THE PERIOD RUNS
3 UNTIL THE END OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY,
4 LEGAL HOLIDAY, OR HOLIDAY.

5 (3) THE DEPARTMENT MAY, UPON REQUEST, GRANT AN EXTENSION TO
6 A REPORTING DEADLINE PROVIDED IN THIS PART FOR GOOD CAUSE UPON
7 WRITTEN REQUEST PRIOR TO THE DEADLINE.

8 (4) THE OWNER OR OPERATOR MAY BY CONTRACT TRANSFER THE
9 RESPONSIBILITY FOR PAYING FINES UNDER THIS SECTION TO A CONSUL-
10 TANT RETAINED BY THE OWNER OR OPERATOR.

11 (5) THE DEPARTMENT SHALL FORWARD ALL MONEY COLLECTED PURSU-
12 ANT TO THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE
13 EMERGENCY RESPONSE FUND CREATED IN SECTION 21507.

14 (6) AN APPEAL OF A PENALTY IMPOSED UNDER THIS SECTION MAY BE
15 TAKEN PURSUANT TO SECTION 631 OF THE REVISED JUDICATURE ACT OF
16 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING
17 SECTION 600.631 OF THE MICHIGAN COMPILED LAWS.

18 SEC. 21314A. THE DEPARTMENT MAY ESTABLISH AND IMPLEMENT A
19 CLASSIFICATION SYSTEM FOR SITES CONSIDERING IMPACTS ON PUBLIC
20 HEALTH, SAFETY, AND WELFARE, AND THE ENVIRONMENT.
21 NOTWITHSTANDING ANY OTHER PROVISION IN THIS PART, AT SITES POSING
22 AN IMMINENT RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
23 ENVIRONMENT, CORRECTIVE ACTION SHALL BE IMPLEMENTED IMMEDIATELY.
24 IF THE DEPARTMENT DETERMINES THAT NO IMMINENT RISK TO THE PUBLIC
25 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT EXISTS AT A SITE,
26 THE DEPARTMENT MAY ALLOW CORRECTIVE ACTION AT THESE SITES TO BE
27 CONDUCTED ON A SCHEDULE APPROVED BY THE DEPARTMENT.

1 Sec. 21315. (1) The department shall design and implement a
2 program to selectively audit or oversee all aspects of corrective
3 actions undertaken ~~pursuant to~~ UNDER this part to assure com-
4 pliance with this part. THE DEPARTMENT MAY AUDIT A SITE AT ANY
5 TIME UP TO AND INCLUDING WITHIN 6 MONTHS AFTER RECEIPT OF A CLO-
6 SURE REPORT PURSUANT TO SECTION 21312A.

7 (2) If the department conducts ~~a complete~~ AN audit ~~of the~~
8 ~~release~~ UNDER THIS SECTION and the audit confirms that correc-
9 tive action has been conducted in compliance with this part and
10 that the cleanup ~~standards~~ CRITERIA have been met, the depart-
11 ment shall provide the owner or operator with a letter that
12 describes the audit and its results.

13 (3) If an audit ~~under subsection (2)~~ CONDUCTED UNDER THIS
14 SECTION does not confirm that corrective action has been con-
15 ducted in compliance with this part or that cleanup ~~standards~~
16 CRITERIA have been met, the department may require an owner or
17 operator to do ~~any~~ EITHER OR BOTH of the following:

18 (a) Provide additional information related to any require-
19 ment of this part.

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

23 (B) ~~(c)~~ Retain a consultant to take additional corrective
24 actions necessary to comply with this part or to protect public
25 health, safety, or welfare, or the environment.

26 SEC. 21316A. (1) A PERSON SHALL NOT KNOWINGLY DELIVER A
27 REGULATED SUBSTANCE TO AN UNDERGROUND STORAGE TANK SYSTEM AT ANY

1 FACILITY THAT IS NOT IN COMPLIANCE WITH ALL PROVISIONS OF THIS
2 PART AND RULES PROMULGATED UNDER THIS PART, AND PART 211 AND
3 RULES PROMULGATED UNDER PART 211.

4 (2) THE DEPARTMENT, UPON DISCOVERY OF A VIOLATION OF THIS
5 PART, RULES PROMULGATED UNDER THIS PART, PART 211, OR RULES
6 PROMULGATED UNDER PART 211 AT A FACILITY HAVING AN UNDERGROUND
7 STORAGE TANK SYSTEM, SHALL PROVIDE NOTIFICATION PROHIBITING
8 DELIVERY OF REGULATED SUBSTANCES TO SUCH A FACILITY BY AFFIXING A
9 PLACARD PROVIDING NOTICE OF THE VIOLATION IN PLAIN VIEW TO THE
10 UNDERGROUND STORAGE TANK SYSTEM.

11 (3) A PERSON SHALL NOT REMOVE, DEFACE, ALTER, OR OTHERWISE
12 TAMPER WITH A NOTIFICATION AFFIXED TO AN UNDERGROUND STORAGE TANK
13 SYSTEM PURSUANT TO SUBSECTION (2).

14 (4) A PERSON WHO KNOWINGLY REMOVES, DEFACES, ALTERS, OR OTH-
15 ERWISE TAMPERS WITH A PLACARD AFFIXED TO AN UNDERGROUND STORAGE
16 TANK SYSTEM PURSUANT TO SUBSECTION (2) SUCH THAT THE NOTIFICATION
17 IS NOT DISCERNIBLE IS GUILTY OF A MISDEMEANOR. A PERSON WHO
18 KNOWINGLY DELIVERS A REGULATED SUBSTANCE TO AN UNDERGROUND STOR-
19 AGE TANK SYSTEM THAT HAS BEEN PLACARDED PURSUANT TO SUBSECTION
20 (2) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT
21 MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

22 (5) THE ATTORNEY GENERAL OR, UPON REQUEST BY THE DEPARTMENT,
23 COUNTY PROSECUTING ATTORNEY MAY COMMENCE CRIMINAL ACTIONS FOR
24 VIOLATION OF SUBSECTIONS (3) AND (4) IN THE CIRCUIT COURT OF THE
25 COUNTY WHERE THE VIOLATION OCCURRED.

26 SEC. 21319A. (1) IN ACCORDANCE WITH THIS SECTION, IF THE
27 DEPARTMENT DETERMINES THAT THERE MAY BE AN IMMINENT AND

1 SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR
2 WELFARE, OR THE ENVIRONMENT, BECAUSE OF A RELEASE OR THREATENED
3 RELEASE, THE DEPARTMENT MAY REQUIRE AN OWNER OR OPERATOR TO TAKE
4 SUCH ACTION AS MAY BE NECESSARY TO ABATE THE DANGER OR THREAT.

5 (2) THE DEPARTMENT MAY ISSUE AN ADMINISTRATIVE ORDER TO AN
6 OWNER OR OPERATOR REQUIRING THAT PERSON TO PERFORM CORRECTIVE
7 ACTIONS RELATING TO A FACILITY, OR TO TAKE ANY OTHER ACTION
8 REQUIRED BY THIS PART. AN ORDER ISSUED UNDER THIS SECTION SHALL
9 STATE WITH REASONABLE SPECIFICITY THE BASIS FOR ISSUANCE OF THE
10 ORDER AND SPECIFY A REASONABLE TIME FOR COMPLIANCE.

11 (3) WITHIN 30 DAYS AFTER ISSUANCE OF AN ADMINISTRATIVE ORDER
12 UNDER THIS SECTION, A PERSON TO WHOM THE ORDER WAS ISSUED SHALL
13 INDICATE IN WRITING WHETHER THE PERSON INTENDS TO COMPLY WITH THE
14 ORDER.

15 (4) A PERSON WHO, WITHOUT SUFFICIENT CAUSE, VIOLATES OR
16 FAILS TO PROPERLY COMPLY WITH AN ADMINISTRATIVE ORDER ISSUED
17 UNDER THIS SECTION IS LIABLE FOR EITHER OR BOTH OF THE
18 FOLLOWING:

19 (A) A CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY
20 DURING WHICH THE VIOLATION OCCURS OR THE FAILURE TO COMPLY
21 CONTINUES. A FINE IMPOSED UNDER THIS SUBSECTION SHALL BE BASED
22 UPON THE SERIOUSNESS OF THE VIOLATION AND ANY GOOD FAITH EFFORTS
23 BY THE VIOLATOR TO COMPLY WITH THE ADMINISTRATIVE ORDER.

24 (B) FOR EXEMPLARY DAMAGES IN AN AMOUNT AT LEAST EQUAL TO THE
25 AMOUNT OF ANY COSTS OF RESPONSE ACTIVITY INCURRED BY THE STATE AS
26 A RESULT OF A FAILURE TO COMPLY WITH AN ADMINISTRATIVE ORDER BUT
27 NOT MORE THAN 3 TIMES THE AMOUNT OF THESE COSTS.

1 (5) A PERSON TO WHOM AN ADMINISTRATIVE ORDER WAS ISSUED
2 UNDER THIS SECTION AND WHO COMPLIED WITH THE TERMS OF THE ORDER
3 WHO BELIEVES THAT THE ORDER WAS ARBITRARY AND CAPRICIOUS OR
4 UNLAWFUL MAY PETITION THE DEPARTMENT, WITHIN 60 DAYS AFTER COM-
5 PLETION OF THE REQUIRED ACTION, FOR REIMBURSEMENT FOR THE REASON-
6 ABLE COSTS OF THE ACTION PLUS INTEREST AND OTHER NECESSARY COSTS
7 INCURRED IN SEEKING REIMBURSEMENT UNDER THIS SUBSECTION. IF THE
8 DEPARTMENT REFUSES TO GRANT ALL OR PART OF THE PETITION, THE
9 PETITIONER MAY, WITHIN 30 DAYS OF RECEIPT OF THE REFUSAL, FILE AN
10 ACTION AGAINST THE DEPARTMENT IN THE COURT OF CLAIMS SEEKING THIS
11 RELIEF. A FAILURE BY THE DEPARTMENT EITHER TO GRANT OR DENY ALL
12 OR ANY PART OF A PETITION WITHIN 120 DAYS OF RECEIPT CONSTITUTES
13 A DENIAL OF THAT PART OF THE PETITION WHICH SHALL BE REVIEWABLE
14 AS FINAL AGENCY ACTION IN THE COURT OF CLAIMS. TO OBTAIN REIM-
15 BURSEMENT, THE PETITIONER SHALL ESTABLISH BY A PREPONDERANCE OF
16 THE EVIDENCE THAT THE PETITIONER IS NOT AN OWNER OR OPERATOR OR
17 THAT THE ACTION ORDERED WAS ARBITRARY AND CAPRICIOUS OR UNLAWFUL,
18 AND IN EITHER INSTANCE THAT COSTS FOR WHICH THE PETITIONER SEEKS
19 REIMBURSEMENT ARE REASONABLE IN LIGHT OF THE ACTION REQUIRED BY
20 AND UNDERTAKEN UNDER THE RELEVANT ORDER.

21 Sec. 21323. (1) The attorney general may, on behalf of the
22 department, commence a civil action seeking any of the
23 following:

24 (a) A temporary or permanent injunction.

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

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

4 (d) A civil fine of not more than \$10,000.00 for each under-
5 ground storage tank system for each day of noncompliance with a
6 requirement of this part or a rule promulgated under this part.
7 A fine imposed under this subdivision shall be based upon the
8 seriousness of the violation and any good faith efforts by the
9 violator to comply with the part or rule.

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

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

18 ~~(g) Recovery of penalties imposed under section 21321.~~

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

23 (3) The state may, when appropriate, return to the United
24 States environmental protection agency any federal funds recov-
25 ered under this part. The state may also retain any federal
26 funds recovered under this part in a separate account for use in

1 implementing this part, with such use subject to approval of the
2 United States environmental protection agency.

3 Sec. 21330. This part does not prohibit the department of
4 state police ~~, state fire marshal division,~~ from taking action
5 in any situation in which it is otherwise authorized by law to
6 act.

7 Section 2. Sections 21301, 21305, 21308, 21309, 21310,
8 21311, 21312, 21313, 21314, 21317, 21318, 21319, 21321, 21322,
9 21325, and 21331 of Act No. 451 of the Public Acts of 1994, being
10 sections 324.21301, 324.21305, 324.21308, 324.21309, 324.21310,
11 324.21311, 324.21312, 324.21313, 324.21314, 324.21317, 324.21318,
12 324.21319, 324.21321, 324.21322, 324.21325, and 324.21331 of the
13 Michigan Compiled Laws, are repealed.