

Act No. 390
Public Acts of 2004
Approved by the Governor
October 12, 2004
Filed with the Secretary of State
October 12, 2004
EFFECTIVE DATE: October 12, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Rep. Shulman

ENROLLED HOUSE BILL No. 6074

AN ACT to amend 1994 PA 451, 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 provide certain appropriations; 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," by amending sections 21502, 21504, 21505, 21506, 21508, 21546, 21548, and 21550 (MCL 324.21502, 324.21504, 324.21505, 324.21506, 324.21508, 324.21546, 324.21548, and 324.21550), sections 21506 and 21508 as amended by 1995 PA 269, sections 21546 and 21548 as amended by 1996 PA 181, and section 21550 as amended by 1995 PA 252, by amending the part heading of part 215, and by adding sections 21506a and 21552; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 215

REFINED PETROLEUM FUND

Sec. 21502. As used in this part:

- (a) "Administrator" means the fund administrator provided for in section 21513.
- (b) "Approved claim" means a claim that is approved pursuant to section 21515.
- (c) "Authority" means the Michigan underground storage tank financial assurance authority created in section 21523.
- (d) "Board" means the Michigan underground storage tank financial assurance policy board created in section 21541.
- (e) "Board of directors" means the board of directors of the authority.
- (f) "Bond proceeds account" means the account or fund to which proceeds of bonds or notes issued under this part have been credited.
- (g) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the authority pursuant to this part.
- (h) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment from the fund. A claim shall include, at a minimum, a completed and signed claim form

and the name, address, telephone number, and federal tax identification number of the consultant retained by the owner or operator to carry out responsibilities pursuant to part 213.

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

(j) "Co-pay amount" means the co-pay amount provided for in section 21514.

(k) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(l) "Department" means the department of environmental quality.

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

(n) "Fund" means the Michigan underground storage tank financial assurance fund created in section 21506.

(o) "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.

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

(q) "Location" means a facility or parcel of property where petroleum underground storage tank systems are registered pursuant to part 211.

(r) "Operator" means a person who was, at the time of discovery of a release, in control of or responsible for the operation of a petroleum underground storage tank system or a person to whom an approved claim has been assigned or transferred.

(s) "Owner" means a person, other than a regulated financial institution, who, at the time of discovery of a release, held a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. Owner includes a person to whom an approved claim is assigned or transferred. Owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and without being 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.

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

Sec. 21504. The objectives of this part are to address certain problems associated with releases from petroleum underground storage tank systems, to promote compliance with parts 211 and 213, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. It is hereby declared to be the purpose of this part and of the authority created by this part to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks, to preserve jobs and employment opportunities or improve the economic welfare of the people of the state, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

Sec. 21506. (1) The Michigan underground storage tank financial assurance fund is created in the state treasury.

(2) The state treasurer shall direct the investment of the fund. Interest and earnings from fund investments shall be credited to the fund.

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

(4) Except as provided in subsections (5) and (6), money in the fund shall be expended only as follows and in the following order of priority:

(a) To defease principal and interest due and owing on bonds issued by the authority pursuant to this part that are outstanding on the effective date of the 2004 amendatory act that amended this section.

(b) For the reasonable administrative cost of implementing this part by the department, the department of treasury, the department of attorney general, and the authority as annually appropriated by the legislature. Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) For payment of rewards under section 21549.

(d) For the interest subsidy program established in section 21522. The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year. However, 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program. If this money is not expended during the first year, this money shall be carried over for expenditure in the succeeding years of the fund's operation. Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended.

(e) For corrective action and indemnification including all of the following:

(i) Payments for work invoices submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(ii) Payments for requests for indemnification submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(iii) Payments for work invoices or requests for indemnification that were submitted prior to 5 p.m. on June 29, 1995 and denied by the department pursuant to this part but which denials were subsequently reversed on appeal.

(5) All revenue collected during the state fiscal years ending September 30, 2003 and September 30, 2004 from the environmental protection regulatory fee imposed under section 21508 shall be allocated and expended by the state treasurer for the purchase of United States treasury obligations in an amount sufficient, together with interest on the obligations, to implement subsection (4)(a).

(6) Upon determination by the state treasurer of the amount of money needed to satisfy all obligations listed in subsection (4), the state treasurer shall transfer all remaining money in the fund to the refined petroleum fund created in section 21506a.

(7) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4)(b). The board shall provide a copy of these recommendations to each affected department.

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

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

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

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

(a) For gasoline inspection programs under both of the following:

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

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

(b) For corrective actions necessary to address releases of refined petroleum products under a refined petroleum product cleanup program established by law following the issuance of recommendations from the refined petroleum cleanup advisory council created in section 21552.

(c) For the reasonable administrative costs of the department, the department of agriculture, the department of attorney general, and the department of treasury in administering the refined petroleum fund and in implementing the programs receiving revenue from the refined petroleum fund.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system.

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

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

(4) Beginning on the effective date of the 2004 amendatory act that amended this section, all regulatory fees collected pursuant to this part shall be deposited into the refined petroleum fund created in section 21506a.

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

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

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

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

(2) This part does not relieve any person who may be eligible to receive money from the fund or the former emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

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

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

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

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

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

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

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

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

(e) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(f) Placing an underground storage tank system at a contaminated site where no underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

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

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

(i) Registration of a nonexistent underground storage tank system with the department.

(j) Loaning to an owner or operator the co-pay amount required under section 21514 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the co-pay amount.

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

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

(m) Submitting a false or misleading laboratory report.

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

(o) Falsely characterizing the contents of an underground storage tank system for purposes of obtaining funding under this part.

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

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

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

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

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 21550. (1) Section 21508 is repealed effective December 31, 2010.

(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508.

Sec. 21552. (1) The refined petroleum cleanup advisory council is created.

(2) The council shall consist of all of the following:

(a) Two members appointed by the senate majority leader, 1 of whom shall be a representative of the petroleum industry.

(b) Two members appointed by the speaker of the house of representatives, 1 of whom shall be a representative of the petroleum industry.

(c) Three members appointed by the governor, 1 of whom shall be a representative of the petroleum industry.

(3) The members first appointed to the council shall be appointed not later than 60 days after the effective date of the amendatory act that added this section.

(4) Members of the council shall serve until a successor is appointed.

(5) If a vacancy occurs on the council, the unexpired term shall be filled in the same manner as the original appointment was made.

(6) The first meeting of the council shall be called by the director. At the first meeting, the council shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(7) Five of the members of the council constitute a quorum for the transaction of business at a meeting of the council. An affirmative vote of a majority of the members of the council is required for official action of the council.

(8) Members of the council shall serve without compensation. However, members of the council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the council.

(9) As soon as practical, but not later than 60 days after all members of the council have been appointed under subsection (2), the council shall make a recommendation to the governor and the legislature on how the money transferred under section 21506(6), less any amounts appropriated for the fiscal year ending September 30, 2004, should be expended.

(10) By April 1, 2005, the council shall submit to the governor and the legislature a report that does all of the following:

(a) Evaluates and makes recommendations for a refined petroleum cleanup program that provides for corrective actions necessary to address releases of refined petroleum products. The recommended refined petroleum cleanup

program shall be designed to benefit owners and operators and to provide for corrective actions at locations for which an owner or operator who is liable for corrective actions has not been identified or is insolvent.

(b) Makes recommendations on an appropriate limitation on administrative costs under section 21506a(4)(c).

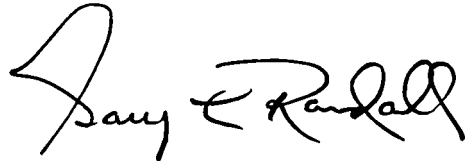
(c) Makes recommendations to update obsolete provisions of this part.

(11) Effective 180 days after the council submits its report under subsection (10), the council is dissolved.

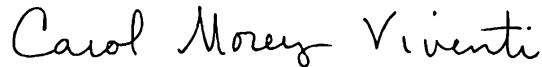
(12) This section is repealed August 1, 2006.

Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor