

# HOUSE BILL No. 5272

August 19, 2009, Introduced by Reps. Tlaib, Liss, Robert Jones, Bledsoe, Lisa Brown, Smith, Johnson, Durhal, Haugh, Kennedy, Nathan and Jackson and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding part 204.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### PART 204.

#### ENVIRONMENTAL CONTAMINATION INSURANCE

#### SEC. 20401. AS USED IN THIS PART:

(A) "COMMISSIONER" MEANS THAT TERM AS DEFINED IN SECTION 102  
OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.102.

(B) "DEPARTMENT" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY OR HIS OR HER DESIGNEE TO WHOM THE DIRECTOR  
DELEGATES A POWER OR DUTY BY WRITTEN INSTRUMENT.

(C) "ENVIRONMENT" MEANS THAT TERM AS DEFINED IN SECTION 20101.

1 (D) "ENVIRONMENTAL CONTAMINATION" MEANS THE RELEASE OF A  
2 SUBSTANCE, OR THE POTENTIAL RELEASE OF A DISCARDED SUBSTANCE, IN A  
3 QUANTITY THAT IS OR MAY BECOME INJURIOUS TO THE ENVIRONMENT OR TO  
4 THE PUBLIC HEALTH, SAFETY, OR WELFARE.

5 (E) "FINAL SETTLEMENT" MEANS A DETERMINATION OF THE AMOUNT DUE  
6 AND OWING TO THE INSURED FOR A LOSS TO INSURED PROPERTY, MADE BY  
7 ANY OF THE FOLLOWING MEANS:

8 (i) ACCEPTANCE OF A PROOF OF LOSS BY THE INSURER.

9 (ii) EXECUTION OF A RELEASE BY THE INSURED.

10 (iii) ACCEPTANCE OF AN ARBITRATION AWARD BY BOTH THE INSURED AND  
11 THE INSURER.

12 (iv) JUDGMENT OF A COURT OF COMPETENT JURISDICTION.

13 (F) "INDUSTRIAL PROPERTY" MEANS REAL PROPERTY ON WHICH AN  
14 INDUSTRY IS OPERATING OR OPERATED AFTER THE EFFECTIVE DATE OF THIS  
15 SECTION.

16 (G) "INSURED PROPERTY" MEANS INDUSTRIAL PROPERTY FOR WHICH  
17 THERE IS ENVIRONMENTAL CONTAMINATION INSURANCE COVERAGE, UNDER  
18 SECTION 20403 OR OTHERWISE.

19 (H) "INTERIM RESPONSE ACTIVITY" MEANS THE CLEANUP OR REMOVAL  
20 OF A RELEASED SUBSTANCE OR THE TAKING OF OTHER ACTIONS, BEFORE THE  
21 IMPLEMENTATION OF A REMEDIAL ACTION, AS MAY BE NECESSARY TO  
22 PREVENT, MINIMIZE, OR MITIGATE INJURY TO THE PUBLIC HEALTH, SAFETY,  
23 OR WELFARE, OR TO THE ENVIRONMENT. INTERIM RESPONSE ACTIVITY ALSO  
24 INCLUDES, BUT IS NOT LIMITED TO, MEASURES TO LIMIT ACCESS,  
25 REPLACEMENT OF WATER SUPPLIES, AND TEMPORARY RELOCATION OF  
26 INDIVIDUALS AS DETERMINED TO BE NECESSARY BY THE DEPARTMENT. IN  
27 ADDITION, INTERIM RESPONSE ACTIVITY MEANS THE TAKING OF OTHER

1 ACTIONS AS MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE A  
2 THREATENED RELEASE.

3 (I) "MUNICIPALITY" MEANS AND "MUNICIPAL" REFERS TO A CITY,  
4 VILLAGE, OR TOWNSHIP.

5 (J) "OWNER" MEANS A PERSON WHO OWNS AN INDUSTRIAL PROPERTY.  
6 OWNER DOES NOT INCLUDE A PERSON WHO HOLDS INDICIA OF OWNERSHIP  
7 PRIMARILY TO PROTECT THE PERSON'S SECURITY INTEREST IN THE  
8 PROPERTY, INCLUDING, BUT NOT LIMITED TO, A VENDOR'S INTEREST UNDER  
9 A RECORDED LAND CONTRACT.

10 (K) "RELEASE" INCLUDES, BUT IS NOT LIMITED TO, ANY SPILLING,  
11 LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING,  
12 INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF A SUBSTANCE  
13 INTO THE ENVIRONMENT, OR THE ABANDONMENT OR DISCARDING OF BARRELS,  
14 CONTAINERS, AND OTHER CLOSED RECEPTACLES CONTAINING A SUBSTANCE.  
15 RELEASE DOES NOT INCLUDE ANY OF THE FOLLOWING:

16 (i) AN ACTIVITY AUTHORIZED UNDER THIS ACT.

17 (ii) A RELEASE THAT RESULTS IN EXPOSURE TO INDIVIDUALS SOLELY  
18 WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM THAT THESE INDIVIDUALS  
19 MAY ASSERT AGAINST THEIR EMPLOYERS.

20 (iii) EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE,  
21 ROLLING STOCK, AIRCRAFT, OR VESSEL.

22 (iv) A RELEASE OF SOURCE MATERIAL, BY-PRODUCT MATERIAL, OR  
23 SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS  
24 ARE DEFINED IN 42 USC 2014, IF THE RELEASE IS SUBJECT TO  
25 REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY  
26 THE NUCLEAR REGULATORY COMMISSION UNDER 42 USC 2210, OR ANY RELEASE  
27 OF SOURCE MATERIAL, BY-PRODUCT MATERIAL, OR SPECIAL NUCLEAR

1 MATERIAL FROM ANY PROCESSING SITE DESIGNATED UNDER 42 USC 7912 OR  
2 7942.

3 (v) IF APPLIED ACCORDING TO LABEL DIRECTIONS AND ACCORDING TO  
4 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES DEVELOPED  
5 PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471  
6 TO 286.474, THE APPLICATION OF A FERTILIZER, SOIL CONDITIONER,  
7 AGRONOMICALLY APPLIED MANURE, OR PESTICIDE; FRUIT, VEGETABLE, OR  
8 FIELD CROP RESIDUALS OR PROCESSING BY-PRODUCTS; AQUATIC PLANTS; OR  
9 A COMBINATION OF THESE SUBSTANCES. AS USED IN THIS SUBPARAGRAPH,  
10 "FERTILIZER", "SOIL CONDITIONER", AND "PESTICIDE" MEAN THOSE TERMS  
11 AS DEFINED IN SECTIONS 8501, 8501A, AND 8305.

12 (vi) FRUITS, VEGETABLES, FIELD CROP PROCESSING BY-PRODUCTS, OR  
13 AQUATIC PLANTS, THAT ARE APPLIED TO THE LAND FOR AN AGRICULTURAL  
14 USE OR FOR USE AS AN ANIMAL FEED, IF THE USE IS CONSISTENT WITH  
15 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES DEVELOPED  
16 PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471  
17 TO 286.474.

18 (l) "REMEDIAL ACTION" INCLUDES, BUT IS NOT LIMITED TO, CLEANUP,  
19 REMOVAL, CONTAINMENT, ISOLATION, DESTRUCTION, OR TREATMENT OF A  
20 SUBSTANCE RELEASED OR THREATENED TO BE RELEASED INTO THE  
21 ENVIRONMENT AND MONITORING, MAINTENANCE, OR THE TAKING OF OTHER  
22 ACTIONS THAT MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE  
23 INJURY TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR TO THE  
24 ENVIRONMENT.

25 (m) "REPRESENTATIVE OF THE MUNICIPALITY" OR "REPRESENTATIVE"  
26 MEANS AN INDIVIDUAL DESIGNATED BY THE GOVERNING BODY OF THE  
27 MUNICIPALITY AS THE MUNICIPALITY'S AGENT FOR THE PURPOSES OF THIS

1 PART.

2 (N) "RESPONSE ACTIVITY" MEANS EVALUATION, INTERIM RESPONSE  
3 ACTIVITY, REMEDIAL ACTION, DEMOLITION, OR THE TAKING OF OTHER  
4 ACTIONS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE,  
5 THE ENVIRONMENT, OR THE NATURAL RESOURCES. RESPONSE ACTIVITY ALSO  
6 INCLUDES HEALTH ASSESSMENTS OR HEALTH EFFECT STUDIES CARRIED OUT  
7 UNDER THE SUPERVISION, OR WITH THE APPROVAL OF, THE DEPARTMENT OF  
8 PUBLIC HEALTH AND ENFORCEMENT ACTIONS RELATED TO ANY RESPONSE  
9 ACTIVITY.

10 (O) "THREATENED RELEASE" OR "THREAT OF RELEASE" MEANS ANY  
11 CIRCUMSTANCE THAT MAY REASONABLY BE ANTICIPATED TO CAUSE A RELEASE.

12 SEC. 20403. (1) THE OWNER OF INDUSTRIAL PROPERTY SHALL  
13 MAINTAIN ENVIRONMENTAL CONTAMINATION INSURANCE THAT WILL COVER  
14 CLAIMS ARISING FROM OCCURRENCES DURING THAT PERSON'S PERIOD OF  
15 OWNERSHIP. THE INSURANCE SHALL BE PROVIDED BY AN INSURER WHO HAS A  
16 CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER TO SELL  
17 ENVIRONMENTAL CONTAMINATION INSURANCE.

18 (2) NOT LATER THAN 120 DAYS AFTER THE DEPARTMENT PROMULGATES  
19 RULES UNDER SECTION 20417 TO IMPLEMENT THIS PART, OR 120 DAYS AFTER  
20 A PERSON BECOMES THE OWNER OF INDUSTRIAL PROPERTY, WHICHEVER IS  
21 LATER, THE OWNER OF INDUSTRIAL PROPERTY SHALL SUBMIT BOTH OF THE  
22 FOLLOWING TO THE DEPARTMENT AS EVIDENCE OF THE REQUIRED COVERAGE  
23 UNDER SUBSECTION (1):

24 (A) A CERTIFICATE OF INSURANCE THAT USES WORDING APPROVED BY  
25 THE DEPARTMENT.

26 (B) A CERTIFIED TRUE AND COMPLETE COPY OF THE INSURANCE  
27 POLICY.

1           (3) AN INSURANCE POLICY UNDER SUBSECTION (1) SHALL REQUIRE THE  
2 INSURER TO NOTIFY THE DEPARTMENT AND THE OWNER AT LEAST 120 DAYS  
3 BEFORE THE EXPIRATION DATE OF THE POLICY OR UPON CANCELLATION OF  
4 THE POLICY. IF THE OWNER DOES NOT EXTEND THE EFFECTIVE DATE OF THE  
5 INSURANCE POLICY OR OBTAIN A NEW INSURANCE POLICY THAT SATISFIES  
6 THE REQUIREMENTS OF THIS PART WITHIN 90 DAYS AFTER THE DEPARTMENT  
7 RECEIVES THE NOTICE, THE DEPARTMENT SHALL NOTIFY THE MUNICIPALITY,  
8 WHICH MAY DRAW ON THE POLICY AS PROVIDED IN SECTION 20407.

9           SEC. 20405. THE AMOUNT OF THE INSURANCE REQUIRED UNDER SECTION  
10 20403 SHALL BE DETERMINED PURSUANT TO RULES PROMULGATED UNDER  
11 SECTION 20417.

12           SEC. 20407. (1) IF A CLAIM IS FILED FOR A LOSS DUE TO  
13 ENVIRONMENTAL CONTAMINATION FROM AN INSURED INDUSTRIAL PROPERTY AND  
14 A FINAL SETTLEMENT OF THE CLAIM IS REACHED OR A JUDGMENT IS ENTERED  
15 IN AN ACTION THAT INVOLVES THE LOSS, THE INSURER FOR THE INSURED  
16 INDUSTRIAL PROPERTY SHALL WITHHOLD THE FINAL SETTLEMENT OR JUDGMENT  
17 AMOUNT FROM PAYMENT. WHEN THE SETTLEMENT OR JUDGMENT AMOUNT IS  
18 WITHHELD, THE INSURER SHALL GIVE NOTICE OF THE WITHHOLDING TO THE  
19 TREASURER OF THE MUNICIPALITY IN WHICH THE INSURED INDUSTRIAL  
20 PROPERTY IS LOCATED, TO THE INSURED, AND TO ANY MORTGAGEE THAT HAS  
21 A LIEN AGAINST THE INSURED INDUSTRIAL PROPERTY, IF THE MORTGAGEE IS  
22 NAMED ON THE POLICY. IF A JUDGMENT WAS ENTERED, NOTICE SHALL ALSO  
23 BE PROVIDED TO THE COURT IN WHICH THE JUDGMENT WAS ENTERED. THE  
24 NOTICE SHALL INCLUDE ALL OF THE FOLLOWING:

25           (A) THE IDENTITY AND ADDRESS OF THE INSURER.

26           (B) THE NAME AND ADDRESS OR FORWARDING ADDRESS OF EACH  
27 POLICYHOLDER, INCLUDING ANY MORTGAGEE NAMED ON THE POLICY.

1 (C) THE LOCATION OF THE INSURED INDUSTRIAL PROPERTY.

2 (D) THE DATE OF LOSS, POLICY NUMBER, AND CLAIM NUMBER.

3 (E) THE AMOUNT OF MONEY WITHHELD.

4 (F) A STATEMENT THAT THE WITHHELD AMOUNT WILL BE PAID TO THE  
5 MUNICIPALITY FOR DEPOSIT INTO A TRUST OR ESCROW ACCOUNT ESTABLISHED  
6 FOR THE PURPOSES OF THIS PART IF WITHIN 15 DAYS AFTER THE NOTICE IS  
7 SENT BY THE INSURER THE MUNICIPALITY NOTIFIES THE INSURER THAT THE  
8 MONEY SHOULD BE PAID TO THE MUNICIPALITY FOR THE PURPOSES OF THIS  
9 PART.

10 (G) A STATEMENT THAT, IF THE MUNICIPALITY DOES NOT NOTIFY THE  
11 INSURER AS PROVIDED IN SUBDIVISION (F), THE WITHHELD AMOUNT WILL BE  
12 PAID TO THE INSURED.

13 (H) AN EXPLANATION OF THIS PART.

14 (2) THE INSURER SHALL NOT PAY THE WITHHELD AMOUNT TO THE  
15 MUNICIPALITY UNLESS ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

16 (A) WITHIN 15 DAYS AFTER THE INSURER SENDS NOTICE UNDER  
17 SUBSECTION (1), A REPRESENTATIVE OF THE MUNICIPALITY REQUESTS, FOR  
18 CAUSE AS DESCRIBED IN THIS SUBDIVISION, THAT THE INSURER PAY THE  
19 WITHHELD AMOUNT TO THE MUNICIPALITY FOR DEPOSIT IN A TRUST OR  
20 ESCROW ACCOUNT MAINTAINED BY THE MUNICIPAL TREASURER FOR THE  
21 PURPOSES OF THIS PART. EITHER OR BOTH OF THE FOLLOWING ARE PRIMA  
22 FACIE EVIDENCE OF ENVIRONMENTAL CONTAMINATION FROM THE INSURED  
23 INDUSTRIAL PROPERTY AND CONSTITUTE CAUSE FOR THE ESCROWING OF THE  
24 WITHHELD AMOUNT AS SURETY FOR RESPONSE ACTIVITY:

25 (i) A FINAL SETTLEMENT OR JUDGMENT THAT EQUALS OR EXCEEDS 50%  
26 OF THE AMOUNT OF ENVIRONMENTAL CONTAMINATION INSURANCE ON THE  
27 INSURED INDUSTRIAL PROPERTY.

1           (ii) A CERTIFICATE FROM THE DEPARTMENT THAT THERE IS A  
2 REASONABLE BASIS TO BELIEVE THAT RESPONSE ACTIVITIES WHOSE COST  
3 EQUALS OR EXCEEDS 50% OF THE AMOUNT OF ENVIRONMENTAL CONTAMINATION  
4 INSURANCE ON THE INSURED INDUSTRIAL PROPERTY WILL BE REQUIRED  
5 BECAUSE OF A RELEASE FROM INDUSTRY OPERATING ON THE REAL PROPERTY  
6 DURING THE PERIOD OF THE OWNER'S OWNERSHIP.

7           (B) IF THERE IS A SETTLEMENT, THE REQUEST UNDER SUBDIVISION  
8 (A) IS SENT TO THE INSURER WITH A COPY TO THE INSURED AND ANY  
9 MORTGAGEES NAMED ON THE INSURANCE POLICY. THE COPY TO THE INSURED  
10 SHALL CONTAIN THE NOTICE REQUIRED UNDER SUBDIVISION (D). UPON  
11 RECEIPT OF THE REQUEST, THE INSURER SHALL FORWARD THE WITHHELD  
12 AMOUNT TO THE MUNICIPAL TREASURER AND SHALL PROVIDE NOTICE OF THE  
13 FORWARDING TO THE INSURED AND ANY MORTGAGEES NAMED ON THE INSURANCE  
14 POLICY.

15           (C) IF THERE IS A JUDGMENT, THE REQUEST UNDER SUBDIVISION (A)  
16 IS SENT TO THE INSURER WITH A COPY TO THE INSURED, ANY MORTGAGEES  
17 NAMED ON THE INSURANCE POLICY, AND THE COURT IN WHICH JUDGMENT WAS  
18 ENTERED. THE COPY TO THE INSURED SHALL CONTAIN THE NOTICE REQUIRED  
19 UNDER SUBDIVISION (D). UPON THE MOTION OF THE MUNICIPALITY, THE  
20 COURT SHALL ORDER THE INSURER TO TRANSMIT THE WITHHELD AMOUNT TO  
21 THE MUNICIPAL TREASURER.

22           (D) THE MUNICIPALITY NOTIFIES THE INSURED OF THE INSURED'S  
23 RIGHT TO OBJECT TO THE MUNICIPALITY'S RETENTION OF THE WITHHELD  
24 AMOUNT UNDER SUBSECTION (3). THE NOTICE SHALL IDENTIFY THE  
25 REPRESENTATIVE OF THE MUNICIPALITY TO WHOM THE INSURED SHOULD  
26 ADDRESS HIS OR HER OBJECTIONS.

27           (3) WITHIN 10 DAYS FROM THE DATE OF MAILING OF NOTICE TO THE



1 INSURED UNDER SUBSECTION (2), THE INSURED MAY OBJECT TO THE  
2 MUNICIPALITY'S RETENTION OF THE WITHHELD AMOUNT AND DO EITHER OF  
3 THE FOLLOWING:

4 (A) SEEK RESOLUTION WITH THE REPRESENTATIVE OF THE  
5 MUNICIPALITY DESIGNATED TO RECEIVE AND RESOLVE OBJECTIONS UNDER  
6 THIS SECTION. IF THE INSURED SEEKS RESOLUTION UNDER THIS  
7 SUBDIVISION, THE MUNICIPALITY SHALL MAKE A FINAL DETERMINATION AND  
8 SHALL NOTIFY THE INSURED OF THAT DETERMINATION NOT LATER THAN 30  
9 DAYS AFTER RECEIPT OF NOTICE THAT THE INSURED WISHES TO SEEK  
10 RESOLUTION UNDER THIS SUBDIVISION. THIS FINAL DETERMINATION SHALL  
11 INCLUDE NOTICE TO THE INSURED THAT IF THE INSURED OBJECTS TO THE  
12 MUNICIPALITY'S DETERMINATION, THE INSURED MAY SEEK RELIEF IN  
13 CIRCUIT COURT.

14 (B) SEEK RELIEF IN THE CIRCUIT COURT.

15 (4) UPON RECEIPT OF MONEY AND INFORMATION FROM AN INSURER AS  
16 PRESCRIBED IN SUBSECTIONS (1) AND (2), THE MUNICIPAL TREASURER  
17 SHALL RECORD THE INFORMATION AND THE DATE OF RECEIPT OF THE MONEY  
18 AND SHALL IMMEDIATELY DEPOSIT THE MONEY IN A TRUST OR ESCROW  
19 ACCOUNT ESTABLISHED FOR THE PURPOSES OF THIS PART. THE ACCOUNT MAY  
20 EARN INTEREST. IF A MORTGAGE ON THE INSURED INDUSTRIAL PROPERTY IS  
21 IN DEFAULT, THE MUNICIPAL TREASURER, NOT MORE THAN 10 DAYS AFTER  
22 RECEIPT OF A WRITTEN REQUEST FROM A FIRST MORTGAGEE, SHALL RELEASE  
23 TO THE MORTGAGEE POLICY PROCEEDS RECEIVED BY THE MUNICIPALITY WITH  
24 RESPECT TO THAT PROPERTY TO THE EXTENT NECESSARY TO SATISFY ANY  
25 OUTSTANDING LIEN OF THE MORTGAGEE.

26 (5) EXCEPT AS PROVIDED IN SECTION 20409(3), MONEY DEPOSITED IN  
27 A TRUST OR ESCROW ACCOUNT PURSUANT TO SUBSECTION (4) SHALL NOT BE

1 COMMINGLED WITH MUNICIPAL FUNDS. ANY INTEREST EARNED ON THE MONEY  
2 SHALL BE RETAINED BY THE MUNICIPALITY TO DEFRAY EXPENSES INCURRED  
3 UNDER THIS PART.

4 SEC. 20409. (1) THE REPRESENTATIVE OF THE MUNICIPALITY SHALL  
5 IMMEDIATELY FORWARD THE POLICY PROCEEDS DEPOSITED UNDER SECTION  
6 20407(4) TO THE INSURED IF THE REPRESENTATIVE RECEIVES OR IS SHOWN  
7 REASONABLE PROOF THAT ANY NECESSARY RESPONSE ACTIVITY IS UNDER WAY  
8 OR HAS BEEN COMPLETED, EXCEPT TO THE EXTENT THAT THE AMOUNT  
9 WITHHELD UNDER SECTION 20407 IS NEEDED TO COMPLETE RESPONSE  
10 ACTIVITY. THE REPRESENTATIVE SHALL IMMEDIATELY FORWARD THE POLICY  
11 PROCEEDS TO A CONTRACTOR PERFORMING RESPONSE ACTIVITIES RELATIVE TO  
12 A RELEASE AT THE INSURED PROPERTY WHEN THE REPRESENTATIVE RECEIVES  
13 OR IS SHOWN REASONABLE PROOF THAT THE INSURED HAS ENTERED INTO A  
14 CONTRACT WITH THE CONTRACTOR FOR THE PERFORMANCE OF RESPONSE  
15 ACTIVITIES RELATIVE TO A RELEASE AT THE INSURED PROPERTY AND THAT  
16 THE INSURED CONSENTS TO PAYMENT OF FUNDS DIRECTLY TO THE CONTRACTOR  
17 PERFORMING THE RESPONSE ACTIVITIES UPON COMPLETION.

18 (2) REASONABLE PROOF REQUIRED UNDER SUBSECTION (1) INCLUDES  
19 ANY OF THE FOLLOWING:

20 (A) ORIGINALS OR COPIES OF PERTINENT CONTRACTS, INVOICES,  
21 RECEIPTS, AND OTHER SIMILAR PAPERS EVIDENCING BOTH THE WORK  
22 PERFORMED OR TO BE PERFORMED AND THE MATERIALS USED OR TO BE USED  
23 BY ALL CONTRACTORS PERFORMING RESPONSE ACTIVITY RELATIVE TO A  
24 RELEASE AT THE INSURED PROPERTY, OTHER THAN A CONTRACTOR SUBJECT TO  
25 SUBDIVISION (B).

26 (B) AN AFFIDAVIT EXECUTED BY THE CONTRACTOR THAT HAS PERFORMED  
27 THE GREATEST AMOUNT OF RESPONSE ACTIVITY RELATIVE TO A RELEASE AT

1 THE INSURED PROPERTY. THE CONTRACTOR SHALL ATTACH TO THE AFFIDAVIT  
2 ALL PERTINENT CONTRACTS, INVOICES, AND RECEIPTS AND SHALL SWEAR  
3 THAT THESE ATTACHED PAPERS CORRECTLY INDICATE THE NATURE AND EXTENT  
4 OF THE WORK PERFORMED TO DATE BY THE CONTRACTOR AND THE MATERIALS  
5 USED.

6 (C) AN INSPECTION OF THE INSURED REAL PROPERTY THAT VERIFIES  
7 THAT RESPONSE ACTIVITY HAS BEEN COMPLETED IN ACCORDANCE WITH  
8 SUBSECTION (1).

9 (3) IF REASONABLE PROOF REQUIRED UNDER SUBSECTION (1) IS NOT  
10 RECEIVED BY OR SHOWN TO THE AUTHORIZED REPRESENTATIVE OF THE  
11 MUNICIPALITY WITHIN 120 DAYS AFTER THE WITHHELD POLICY PROCEEDS  
12 WERE RECEIVED BY THE MUNICIPAL TREASURER, THE MUNICIPALITY SHALL  
13 USE THE WITHHELD PROCEEDS TO PERFORM RESPONSE ACTIVITIES RELATIVE  
14 TO THE RELEASE AT THE INSURED PROPERTY. ANY UNUSED PORTION OF THE  
15 WITHHELD PROCEEDS SHALL BE RETURNED TO THE INSURED. THE  
16 MUNICIPALITY MAY EXTEND THE 120-DAY TIME PERIOD UNDER THIS  
17 SUBSECTION.

18 (4) AN INSURER OR AN AGENT OR EMPLOYEE OF AN INSURER IS NOT  
19 LIABLE FOR WITHHOLDING OR TRANSFERRING MONEY IN THE COURSE OF  
20 COMPLYING OR ATTEMPTING TO COMPLY WITH THIS PART. IF THERE IS A  
21 DISPUTE WITH A LIENHOLDER CONCERNING THE DISTRIBUTION OF AN AMOUNT  
22 WITHHELD FROM PAYMENT UNDER THIS SECTION, THE INSURER MAY FILE AN  
23 ACTION IN CIRCUIT COURT TO IDENTIFY ALL PARTIES THAT MAY HAVE A  
24 FINANCIAL INTEREST IN THE WITHHELD AMOUNT AND TO DETERMINE HOW THE  
25 WITHHELD AMOUNT SHOULD BE DISTRIBUTED.

26 SEC. 20411. (1) THIS PART DOES NOT APPLY TO INDUSTRIAL  
27 PROPERTY LOCATED IN A MUNICIPALITY UNLESS THE MUNICIPALITY BY

1 RESOLUTION BY ITS GOVERNING BODY NOTIFIES THE COMMISSIONER IN  
2 WRITING THAT THE MUNICIPALITY HAS ESTABLISHED A TRUST OR ESCROW  
3 ACCOUNT TO BE USED AS PRESCRIBED IN THIS PART AND INTENDS TO  
4 UNIFORMLY APPLY THIS SECTION WITH RESPECT TO ALL INDUSTRIAL  
5 PROPERTY LOCATED WITHIN THE MUNICIPALITY. THE COMMISSIONER SHALL  
6 PREPARE AND DISTRIBUTE TO ALL INSURANCE COMPANIES THAT PROVIDE  
7 ENVIRONMENTAL CONTAMINATION INSURANCE IN THIS STATE A LIST OF ALL  
8 MUNICIPALITIES THAT HAVE ELECTED TO APPLY THIS PART.

9 (2) IF THE COMMISSIONER RECEIVES A NOTIFICATION UNDER  
10 SUBSECTION (1) AFTER THE LIST UNDER SUBSECTION (1) HAS FIRST BEEN  
11 DISTRIBUTED, THE COMMISSIONER SHALL PREPARE AND DISTRIBUTE AN  
12 AMENDED LIST INDICATING THE ADDITION. THE ADDITION IS EFFECTIVE ON  
13 THE DATE SPECIFIED BY THE COMMISSIONER IN THE AMENDMENT. THE  
14 COMMISSIONER SHALL NOTIFY THE MUNICIPALITY ADDED TO THE LIST, AND  
15 INSURANCE COMPANIES THAT PROVIDE ENVIRONMENTAL CONTAMINATION  
16 INSURANCE IN THIS STATE, OF THE EFFECTIVE DATE OF THE ADDITION,  
17 WHICH SHALL BE AT LEAST 30 DAYS AFTER RECEIPT OF NOTICE BY THE  
18 INSURANCE COMPANY. A MUNICIPALITY ADDED TO THE LIST SHALL NOT APPLY  
19 THIS PART TO ANY LOSS THAT OCCURRED BEFORE THE EFFECTIVE DATE OF  
20 THE ADDITION.

21 (3) A MUNICIPALITY MAY REQUEST TO BE DELETED FROM THE LIST  
22 UNDER SUBSECTION (1) OR MAY CEASE TO APPLY THIS PART FOR A PERIOD  
23 OF NOT LESS THAN 6 MONTHS UPON NOT LESS THAN 30 DAYS' WRITTEN  
24 NOTICE TO THE COMMISSIONER. AFTER RECEIPT OF A MUNICIPALITY'S  
25 REQUEST TO BE DELETED FROM THE LIST, THE COMMISSIONER SHALL PREPARE  
26 AND DISTRIBUTE AN AMENDMENT TO THE LIST INDICATING THE DELETION.  
27 THE DELETION IS EFFECTIVE ON THE DATE SPECIFIED BY THE COMMISSIONER

1 IN THE AMENDMENT. THE COMMISSIONER SHALL NOTIFY THE MUNICIPALITY  
2 DELETED FROM THE LIST, AND INSURANCE COMPANIES THAT PROVIDE  
3 ENVIRONMENTAL CONTAMINATION INSURANCE IN THIS STATE, OF THE  
4 EFFECTIVE DATE OF THE DELETION, WHICH SHALL BE NOT LESS THAN 30  
5 DAYS AFTER RECEIPT OF THE NOTICE BY THE INSURANCE COMPANY. A  
6 MUNICIPALITY DELETED FROM THE LIST SHALL CONTINUE TO APPLY THIS  
7 SECTION TO ANY LOSS THAT OCCURRED BEFORE THE EFFECTIVE DATE OF THE  
8 DELETION, NOTWITHSTANDING THE DELETION.

9 SEC. 20413. (1) THE WITHHOLDING REQUIREMENTS OF SECTION 20407  
10 DO NOT APPLY IF ALL OF THE FOLLOWING OCCUR:

11 (A) WITHIN 15 DAYS AFTER AGREEMENT ON A FINAL SETTLEMENT  
12 BETWEEN THE INSURED AND THE INSURER, THE INSURED HAS FILED WITH THE  
13 INSURER EVIDENCE OF A CONTRACT FOR THE PERFORMANCE OF RESPONSE  
14 ACTIVITIES AS DESCRIBED IN SECTION 20409(1) AND (2).

15 (B) THE INSURED CONSENTS TO THE PAYMENT OF MONEY DIRECTLY TO  
16 THE CONTRACTOR PERFORMING THE RESPONSE ACTIVITY. MONEY RELEASED  
17 UNDER THIS SUBDIVISION MAY BE FORWARDED ONLY TO A CONTRACTOR  
18 PERFORMING THE RESPONSE ACTIVITY ON THE INSURED PROPERTY.

19 (2) UPON RECEIPT UNDER SUBSECTION (1) OF THE CONTRACT TO  
20 PERFORM RESPONSE ACTIVITY, THE INSURER SHALL GIVE NOTICE TO THE  
21 MUNICIPALITY IN WHICH THE PROPERTY IS SITUATED THAT THERE WILL NOT  
22 BE A WITHHOLDING UNDER THIS SECTION BECAUSE OF THE CONTRACT.

23 SEC. 20415. IF AN INSURER WITHHOLDS PAYMENT UNDER AN  
24 ENVIRONMENTAL CONTAMINATION INSURANCE POLICY IN GOOD FAITH BECAUSE  
25 OF A SUSPECTED INTENTIONAL RELEASE, FRAUD, OR ANOTHER QUESTION  
26 CONCERNING COVERAGE, THIS PART DOES NOT APPLY UNTIL THE ISSUE IS  
27 RESOLVED AND FINAL SETTLEMENT IS MADE.

1        SEC. 20417. THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT  
2 THIS PART. THE DEPARTMENT SHALL SUBMIT PROPOSED RULES FOR PUBLIC  
3 HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969  
4 PA 306, MCL 24.201 TO 24.328, WITHIN 1 YEAR AFTER THE EFFECTIVE  
5 DATE OF THIS PART.

6        SEC. 20419. (1) AN OWNER OF INDUSTRIAL PROPERTY WHO VIOLATES  
7 THIS PART MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN  
8 \$10,000.00. A VIOLATION OF THIS PART MAY BE PROSECUTED BY THE  
9 PROSECUTOR OF THE COUNTY IN WHICH THE VIOLATION OCCURRED OR BY THE  
10 ATTORNEY GENERAL.

11        (2) IF AN INSURER VIOLATES THIS PART, THE COMMISSIONER, AFTER  
12 PROVIDING THE INSURER NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY  
13 TEMPORARILY REVOKE THE INSURER'S AUTHORITY TO TRANSACT BUSINESS IN  
14 THIS STATE.