

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 532

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 21313a, 21319a, and 21323 (MCL 324.21313a,
324.21319a, and 324.21323), section 21313a as amended by 1996 PA
116 and section 21319a as added and section 21323 as amended by
1995 PA 22.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21313a. (1) Beginning on the effective date of the
2 ~~amendatory act that added subsection (7),~~ **2012 AMENDATORY ACT THAT**
3 **AMENDED THIS SECTION,** except as provided in subsection ~~(7),~~ **(6),**
4 and except for the confirmation provided in section 21312a(2), if a
5 ~~report is not completed or a~~ required submittal under section
6 21308a, 21311a, or 21312a(1) is not provided during the time
7 required, the department may impose a penalty according to the

1 following schedule:

2 (a) Not more than \$100.00 per day for the first 7 days that
3 the report is late.

4 (b) Not more than \$500.00 per day for days 8 through 14 that
5 the report is late.

6 (c) Not more than \$1,000.00 per day for each day beyond day 14
7 that the report is late.

8 (2) ~~For~~ **SUBJECT TO SUBSECTION (6),** FOR purposes of this
9 section, in computing a period of time, the day of the act, event,
10 or default, after which the designated period of time begins to run
11 is not included. The last day of the period is included, unless it
12 is a Saturday, Sunday, legal holiday, or holiday, in which event
13 the period runs until the end of the next day that is not a
14 Saturday, Sunday, legal holiday, or holiday.

15 (3) The department may, upon request, grant an extension to a
16 reporting deadline provided in this part for good cause upon
17 written request 15 days prior to the deadline.

18 (4) The owner or operator may by contract transfer the
19 responsibility for paying fines under this section to a consultant
20 retained by the owner or operator.

21 (5) The department shall forward all money collected pursuant
22 to this section to the state treasurer for deposit in the emergency
23 response fund created in section 21507.

24 ~~—— (6) An appeal of a penalty imposed under this section may be~~
25 ~~taken pursuant to section 631 of the revised judicature act of~~
26 ~~1961, Act No. 236 of the Public Acts of 1961, being section 600.631~~
27 ~~of the Michigan Compiled Laws.~~

Senate Bill No. 532 (H-1) as amended April 17, 2012

1 (6) ~~(7)~~—A penalty shall not begin to accrue under this section
2 unless the department has first notified the person on whom the
3 penalty is imposed that he or she is subject to the penalties
4 provided in this section.

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

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

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

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

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

Senate Bill No. 532 (H-1) as amended April 17, 2012

violator to comply with the administrative order.

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

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

] THE

1 **ADMINISTRATIVE ORDER PURSUANT TO SECTION 21333.**

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

4 (a) A temporary or permanent injunction.

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

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

10 **(D) DECLARATORY JUDGMENT ON LIABILITY FOR FUTURE CORRECTIVE**
11 **ACTION COSTS.**

12 **(E) ~~(d)~~—A SUBJECT TO SECTION 21313A, A** civil fine of not more
13 than \$10,000.00 for each underground storage tank system for each
14 day of noncompliance with a requirement of this part or a rule
15 promulgated under this part. A fine imposed under this subdivision
16 shall be based upon the seriousness of the violation and any good
17 faith efforts by the violator to comply with the part or rule.

18 **(F) ~~(e)~~—A** civil fine of not more than \$25,000.00 for each day
19 of noncompliance with a corrective action order issued pursuant to
20 this part. A fine imposed under this subdivision shall be based
21 upon the seriousness of the violation and any good faith efforts by
22 the violator to comply with the corrective action order.

23 **(G) ~~(f)~~—**Recovery of funds provided to the state from the
24 United States environmental protection agency's leaking underground
25 storage tank trust fund.

26 (2) A civil action brought under subsection (1) may be brought
27 in the circuit court ~~for the county of Ingham,~~ for the county where

1 the release occurred ~~or~~ for the county where the defendant
2 resides.

3 (3) The state may, when appropriate, return to the United
4 States environmental protection agency any federal funds recovered
5 under this part. The state may also retain any federal funds
6 recovered under this part in a separate account for use in
7 implementing this part, with such use subject to approval of the
8 United States environmental protection agency.

9 Enacting section 1. This amendatory act does not take effect
10 unless all of the following bills of the 96th Legislature are
11 enacted into law:

12 (a) Senate Bill No. 528.

13 (b) Senate Bill No. 529.

14 (c) Senate Bill No. 530.

15 (d) Senate Bill No. 531.

16 (e) Senate Bill No. 533.