

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 533**

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21326, 21327, 21502, 21503, 21506a, 21510, 21515, 21517, 21520, 21550, 21558, and 21559 (MCL 324.21326, 324.21327, 324.21502, 324.21503, 324.21506a, 324.21510, 324.21515, 324.21517, 324.21520, 324.21550, 324.21558, and 324.21559), sections 21502 and 21503 as amended by 2006 PA 318, section 21506a as amended by 2007 PA 67, section 21510 as amended by 1995 PA 252, section 21515 as amended by 1996 PA 181, section 21550 as amended by 2010 PA 263, section 21558 as added by 2006 PA 322, and section 21559 as amended by 2008 PA 417; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21326. (1) Upon request of the department for the purpose

1 of ~~developing or assisting in the development of a rule, conducting~~
2 an investigation, taking corrective action, or enforcing this part,
3 the owner or operator shall furnish the department with all

4 **AVAILABLE** information about all of the following:

5 (a) The underground storage tank system and its associated
6 equipment.

7 (b) The past or present contents of the underground storage
8 tank system.

9 (c) Any releases and investigations of releases.

10 (2) The department has the right to enter at all reasonable
11 times in or upon any private or public property for any of the
12 following purposes:

13 (a) Inspecting an underground storage tank system.

14 (b) Obtaining samples of any substance from an underground
15 storage tank system.

16 (c) Requiring and supervising the conduct of monitoring or
17 testing of an underground storage tank system, its associated
18 equipment, or contents.

19 (d) Conducting monitoring or testing of an underground storage
20 tank system in cases where there is no identified responsible
21 party.

22 (e) Conducting monitoring or testing, or taking samples of
23 soils, air, surface water, or groundwater.

24 (f) Taking corrective action.

25 (g) Inspecting and copying any records related to an
26 underground storage tank system.

27 (3) All inspections and investigations undertaken by the

1 department under this section shall be commenced and completed with
2 reasonable promptness.

3 (4) The attorney general, on behalf of the department, may do
4 either of the following:

5 (a) Petition a court of appropriate jurisdiction for a warrant
6 to authorize access to any private or public property to implement
7 this part.

8 (b) Commence a civil action pursuant to section 21323 for an
9 order authorizing the department to enter any private or public
10 property as necessary to implement this part.

11 Sec. 21327. ~~The department may promulgate rules as necessary~~
12 ~~to implement this part.~~

13 (1) BEGINNING ON THE EFFECTIVE DATE OF THE 2012 AMENDATORY ACT
14 THAT AMENDED THIS SECTION, THE DEPARTMENT SHALL NOT PROMULGATE
15 RULES TO IMPLEMENT THIS PART.

16 (2) A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
17 MEMORANDUM, OR FORM WITH INSTRUCTIONS PUBLISHED UNDER THIS PART
18 SHALL NOT BE GIVEN THE FORCE AND EFFECT OF LAW BY THE DEPARTMENT
19 AND IS CONSIDERED MERELY ADVISORY. THE DEPARTMENT SHALL NOT RELY
20 UPON A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
21 MEMORANDUM, OR FORM WITH INSTRUCTIONS TO SUPPORT THE DEPARTMENT'S
22 DECISION TO ACT OR REFUSE TO ACT. A COURT SHALL NOT RELY UPON A
23 GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
24 MEMORANDUM, OR FORM WITH INSTRUCTIONS TO UPHOLD THE DEPARTMENT'S
25 DECISION TO ACT OR REFUSAL TO ACT.

26 Sec. 21502. As used in this part:

27 (a) "Administrator" means the fund administrator provided for

1 in section 21513.

2 ~~—— (b) "Advisory board" means the temporary reimbursement program~~
3 ~~advisory board established under section 21562.~~

4 (B) ~~(e)~~—"Approved claim" means a claim that is approved
5 pursuant to section 21515.

6 (C) ~~(d)~~—"Authority" means the Michigan underground storage
7 tank financial assurance authority created in section 21523.

8 ~~—— (e) "Board" means the Michigan underground storage tank~~
9 ~~financial assurance policy board created in section 21541.~~

10 (D) ~~(f)~~—"Board of directors" means the board of directors of
11 the authority.

12 (E) ~~(g)~~—"Bond proceeds account" means the account or fund to
13 which proceeds of bonds or notes issued under this part have been
14 credited.

15 (F) ~~(h)~~—"Bonds or notes" means the bonds, notes, commercial
16 paper, other obligations of indebtedness, or any combination of
17 these, issued by the authority pursuant to this part.

18 (G) ~~(i)~~—"Claim" means the submission by the owner or operator
19 or his or her representative of documentation on an application
20 requesting payment from the fund. A claim shall include, at a
21 minimum, a completed and signed claim form and the name, address,
22 telephone number, and federal tax identification number of ~~the~~
23 ~~consultant retained by the owner or operator. to carry out~~
24 ~~responsibilities pursuant to part 213.~~

25 (H) ~~(j)~~—"Class 1 site" means a site posing the highest degree
26 of threat to the public and environment as determined by the
27 department, based on the classification system developed by the

1 department pursuant to section 21314a.

2 (I) ~~(k)~~ "Class 2 site" means a site posing the second highest
3 degree of threat to the public and environment as determined by the
4 department, based on the classification system developed by the
5 department pursuant to section 21314a.

6 ~~(l)~~ "Consultant" means a person on the list of qualified
7 underground storage tank consultants prepared pursuant to section
8 21542.

9 (J) ~~(m)~~ "Co-pay amount" means the co-pay amount provided for
10 in section 21514.

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

17 (L) ~~(o)~~ "Department" means the department of environmental
18 quality.

19 (M) ~~(p)~~ "Eligible person" means an owner or operator who meets
20 the eligibility requirements in section 21556 or 21557 and received
21 approval of his or her precertification application by the
22 department.

23 (N) ~~(q)~~ "Financial responsibility requirements" means the
24 financial responsibility for taking corrective action and for
25 compensating third parties for bodily injury and property damage
26 caused by a release from an underground storage tank system that
27 the owner or operator of an underground storage tank system must

1 demonstrate under part 211 and the rules promulgated under that
2 part.

3 (O) ~~(r)~~—"Fund" means the Michigan underground storage tank
4 financial assurance fund created in section 21506.

5 (P) ~~(s)~~—"Heating oil" means petroleum that is No. 1, No. 2,
6 No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6
7 technical grades of fuel oil; other residual fuel oils including
8 navy special fuel oil and bunker C; and other fuels when used as
9 substitutes for 1 of these fuel oils.

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

17 (R) ~~(u)~~—"Location" means a facility or parcel of property
18 where petroleum underground storage tank systems are registered
19 pursuant to part 211.

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

24 (T) ~~(w)~~—"Owner" means a person, other than a regulated
25 financial institution, who, at the time of discovery of a release,
26 held a legal, equitable, or possessory interest of any kind in an
27 underground storage tank system or in the property on which an

1 underground storage tank system is located, including, but not
2 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
3 includes a person to whom an approved claim is assigned or
4 transferred. Owner does not include a person or a regulated
5 financial institution who, without participating in the management
6 of an underground storage tank system and without being otherwise
7 engaged in petroleum production, refining, or marketing relating to
8 the underground storage tank system, is acting in a fiduciary
9 capacity or who holds indicia of ownership primarily to protect the
10 person's or the regulated financial institution's security interest
11 in the underground storage tank system or the property on which it
12 is located. This exclusion does not apply to a grantor,
13 beneficiary, remainderman, or other person who could directly or
14 indirectly benefit financially from the exclusion other than by the
15 receipt of payment for fees and expenses related to the
16 administration of a trust.

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

21 Sec. 21503. As used in this part:

22 (a) "Payment voucher" means a form prepared by the department
23 that specifies payment authorization by the department to the
24 department of treasury.

25 (b) "Petroleum" means crude oil, crude oil fractions, and
26 refined petroleum fractions including gasoline, kerosene, heating
27 oils, and diesel fuels.

1 (c) "Petroleum underground storage tank system" means an
2 underground storage tank system used for the storage of petroleum.

3 (d) "Precertification application" means the application
4 submitted by an owner or operator seeking the department's
5 eligibility determination for reimbursement for the costs of
6 corrective action from the temporary reimbursement program.

7 (e) "Refined petroleum" means aviation gasoline, middle
8 distillates, jet fuel, kerosene, gasoline, residual oils, and any
9 oxygenates that have been blended with any of these.

10 (f) "Refined petroleum fund" means the refined petroleum fund
11 established under section 21506a.

12 (g) "Refined petroleum product cleanup initial program" means
13 the program established in section 21553.

14 (h) "Refined petroleum product cleanup program" means the
15 refined petroleum product cleanup ~~initial program and the program~~
16 ~~based upon the recommendations of the petroleum cleanup advisory~~
17 ~~council under section 21552(10).~~ **ESTABLISHED BY LAW.**

18 (i) "Regulated financial institution" means a state or
19 nationally chartered bank, savings and loan association or savings
20 bank, credit union, or other state or federally chartered lending
21 institution or a regulated affiliate or regulated subsidiary of any
22 of these entities.

23 (j) "Regulatory fee" means the environmental protection
24 regulatory fee imposed under section 21508.

25 (k) "Release" means any spilling, leaking, emitting,
26 discharging, escaping, or leaching from a petroleum underground
27 storage tank system into groundwater, surface water, or subsurface

1 soils.

2 (l) "Site" means a location where a release has occurred or a
3 threat of a release exists from an underground storage tank system,
4 excluding any location where corrective action was completed which
5 satisfies the cleanup criteria for unrestricted residential use
6 under part 213.

7 (m) "Temporary reimbursement program" means the program
8 established in section 21554.

9 (n) "Underground storage tank system" means an existing tank
10 or combination of tanks, including underground pipes connected to
11 the tank or tanks, which is or was used to contain an accumulation
12 of regulated substances, and is not currently being used for any
13 other purpose, and the volume of which, including the volume of the
14 underground pipes connected to the tank or tanks, is 10% or more
15 beneath the surface of the ground. An underground storage tank
16 system includes an underground storage tank that is properly closed
17 in place pursuant to part 211 and rules promulgated under that
18 part. An underground storage tank system does not include any of
19 the following:

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

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

24 (iii) A septic tank.

25 (iv) A pipeline facility, including gathering lines regulated
26 under ~~either of the following~~ **49 USC 60101 TO 60137**.

27 ~~(A) The natural gas pipeline safety act of 1968, Public Law~~

1 ~~90 481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.~~
2 ~~—— (B) Sections 201 to 215, 217, and 219 of the hazardous liquid~~
3 ~~pipeline safety act of 1979, title II of the pipeline safety act of~~
4 ~~1979, Public Law 96 129, 49 USC Appx 2001 to 2015.~~

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

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

7 (vii) A flow-through process tank.

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

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

13 (x) Any pipes connected to a tank described in subparagraphs
14 (i) to (ix).

15 (xi) An underground storage tank system holding hazardous
16 wastes listed or identified under ~~subtitle C of the solid waste~~
17 ~~disposal act, title II of Public Law 89 272, 42 USC 6921 to 6939e,~~
18 **6939F**, or a mixture of such hazardous waste and other regulated
19 substances.

20 (xii) A wastewater treatment tank system that is part of a
21 wastewater treatment facility regulated under ~~section 307(b) of~~
22 ~~title III or section 402 of title IV of the federal water pollution~~
23 ~~control act, 33 USC 1317 and 1317(B) OR 33 USC 1342.~~

24 (xiii) Equipment or machinery that contains regulated substances
25 for operational purposes such as hydraulic lift tanks and
26 electrical equipment tanks.

27 (xiv) An underground storage tank system with a capacity of 110

1 gallons or less.

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

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

6 (xvii) A wastewater treatment tank system.

7 (xviii) An underground storage tank system containing
8 radioactive material that is regulated under the atomic energy act
9 of 1954, ~~chapter 1073, 68 Stat. 919.42~~ **USC 2011 TO 2297H-13.**

10 (xix) An underground storage tank system that is part of an
11 emergency generator system at nuclear power generation facilities
12 regulated by the nuclear regulatory commission under 10 CFR part
13 50. ~~, appendix A to part 50 of title 10 of the code of federal~~
14 ~~regulations.~~

15 (xx) Airport hydrant fuel distribution systems.

16 (xxi) Underground storage tank systems with field-constructed
17 tanks.

18 (o) "Work invoice" means an original billing acceptable to the
19 administrator and signed by the owner or operator ~~and a consultant~~
20 that includes all of the following:

21 (i) The name, address, and federal tax identification number of
22 each contractor who performed work.

23 (ii) The name and social security number of each employee who
24 performed work.

25 (iii) A specific itemized list of the work performed by each
26 contractor and an itemized list of the cost of each of these items.

27 (iv) A statement that the ~~consultant~~ **OWNER OR OPERATOR** employed

1 a documented sealed competitive bidding process for any contract
2 award exceeding \$5,000.00.

3 (v) If the ~~consultant~~**OWNER OR OPERATOR** did not accept the
4 lowest responsive bid received, a specific reason why the lowest
5 responsive bid was not accepted.

6 (vi) Upon request of the administrator, a list of all bids
7 received.

8 (vii) Proof of payment of the co-pay amount as required under
9 section 21514.

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

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

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

20 (4) ~~Subject to subsection (5), money~~**MONEY** from the refined
21 petroleum fund shall be expended, upon appropriation, only for 1 or
22 more of the following purposes:

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

25 (i) The weights and measures act, 1964 PA 283, MCL 290.601 to
26 290.634.

27 (ii) The motor fuels quality act, 1984 PA 44, MCL 290.641 to

1 290.650d.

2 (b) ~~Not more than \$15,000,000.00 of the money transferred to~~
3 ~~the refined petroleum fund pursuant to section 21506(6), for FOR~~
4 the refined petroleum product cleanup initial program and for the
5 department's administrative costs associated with the temporary
6 reimbursement program.

7 (c) ~~Not more than \$45,000,000.00 of the money transferred to~~
8 ~~the refined petroleum fund pursuant to section 21506(6), for FOR~~
9 implementation of the temporary reimbursement program.

10 (d) For corrective actions necessary to address releases of
11 refined petroleum products under a refined petroleum product
12 cleanup program established by law.

13 (e) For the reasonable administrative costs of the department,
14 the department of agriculture, the department of attorney general,
15 and the department of treasury in administering the refined
16 petroleum fund and in implementing the programs receiving revenue
17 from the refined petroleum fund.

18 ~~— (5) For the state fiscal year ending September 30, 2007 only,~~
19 ~~surplus funds of \$70,000,000.00 in the refined petroleum fund are~~
20 ~~hereby appropriated to the environmental protection fund created in~~
21 ~~section 503a.~~

22 (5) THE DEPARTMENT SHALL ESTABLISH AN UNDERGROUND STORAGE TANK
23 SYSTEM CLEANUP ADVISORY BOARD CONSISTING OF OWNERS AND OPERATORS OF
24 UNDERGROUND STORAGE TANK SYSTEMS AND OTHER PERSONS WITH KNOWLEDGE
25 AND EXPERTISE IN CORRECTIVE ACTIONS ASSOCIATED WITH RELEASES FROM
26 UNDERGROUND STORAGE TANK SYSTEMS AND THE FINANCING OF THOSE
27 CORRECTIVE ACTIONS. NOT LATER THAN MARCH 1, 2013, THE UNDERGROUND

1 STORAGE TANK SYSTEM CLEANUP ADVISORY BOARD SHALL SUBMIT A REPORT TO
2 THE DEPARTMENT AND THE LEGISLATURE THAT RECOMMENDS A CLEANUP
3 PROGRAM, FUNDED WITH MONEY FROM THE FUND, THAT WOULD ASSIST OWNERS
4 AND OPERATORS IN FINANCING CORRECTIVE ACTIONS REQUIRED UNDER PART
5 213.

6 (6) NOT LATER THAN MARCH 1, 2013, THE AUDITOR GENERAL SHALL
7 CONDUCT A FINANCIAL AUDIT OF EXPENDITURES FROM THE REFINED
8 PETROLEUM FUND DURING THE TIME PERIOD BEGINNING OCTOBER 12, 2004
9 THROUGH THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
10 SUBSECTION.

11 Sec. 21510. (1) Except as provided in section 21521, an owner
12 or operator is eligible to receive money from the fund or bond
13 proceeds account for corrective action or indemnification only if
14 all of the following requirements are satisfied and the owner or
15 operator otherwise complies with this part:

16 (a) The release from which the corrective action or
17 indemnification arose was discovered and reported on or after July
18 18, 1989.

19 (b) The petroleum underground storage tank from which the
20 release occurred was, at the time of discovery of the release, and
21 is presently, in compliance with the registration and fee
22 requirements of part 211 and the rules promulgated under that part.

23 (c) The owner or operator ~~or a consultant retained by the~~
24 ~~owner or operator~~ reported the release within 24 hours after its
25 discovery as required by part 211 and the rules promulgated under
26 that part.

27 (d) The owner or operator is not the United States government.

1 (e) The work invoice or request for indemnification is
2 submitted to the administrator pursuant to this part and the rules
3 promulgated under this part on or before 5 p.m., June 29, 1995.

4 (f) The claim is not for a release from an underground storage
5 tank closed prior to January 1, 1974, in compliance with the fire
6 prevention code, ~~Act No. 207 of the Public Acts of 1941, being~~
7 ~~sections 29.1 to 29.33 of the Michigan Compiled Laws, 1941 PA 207,~~
8 **MCL 29.1 TO 29.33**, and the rules promulgated under that act.

9 (2) The owner or operator may receive money from the fund or
10 bond proceeds account for corrective action or indemnification due
11 to a release that originates from an aboveground piping and
12 dispensing portion of a petroleum underground storage tank system
13 if all of the following requirements are satisfied:

14 (a) The owner or operator is otherwise in compliance with this
15 part and the rules promulgated under this part.

16 (b) The release is sudden and immediate.

17 (c) The release is of a quantity exceeding 25 gallons and is
18 released into groundwater, surface water, or soils.

19 (d) The release is reported to the department of natural
20 resources, underground storage tank division within 24 hours of
21 discovery of the release.

22 (3) Either the owner or the operator may receive money from
23 the fund or bond proceeds account under this part for an
24 occurrence, but not both.

25 (4) An owner or operator who is a public utility with more
26 than 500,000 customers in this state is ineligible to receive money
27 from the fund or bond proceeds account for corrective action or

1 indemnification associated with a release from a petroleum
2 underground storage tank system used to supply petroleum for the
3 generation of steam electricity.

4 (5) If an owner or operator has received money from the fund
5 or bond proceeds account under this part for a release at a
6 location, the owner and operator are not eligible to receive money
7 from the fund or bond proceeds account for a subsequent release at
8 the same location unless the owner or operator has done either or
9 both of the following:

10 (a) Discovered the subsequent release pursuant to corrective
11 action being taken on a confirmed release and included this
12 subsequent release as part of the corrective action for the
13 confirmed release.

14 (b) Upgraded, replaced, removed, or properly closed in place
15 all underground storage tank systems at the location of the release
16 so as to meet the requirements of part 211 and the rules
17 promulgated under that part.

18 (6) An owner or operator who discovers a subsequent release at
19 the same location as an initial release pursuant to subsection
20 (5)(a) may receive money from the fund or bond proceeds account to
21 perform corrective action on the subsequent release, if the owner
22 or operator otherwise complies with the requirements of this part
23 and the rules promulgated under this part. However, the subsequent
24 release shall be considered as part of the claim for the initial
25 release for purposes of determining the total amount of
26 expenditures for corrective action and indemnification under
27 section 21512.

1 (7) An owner or operator who discovers a subsequent release at
2 the same location as an initial release following compliance with
3 subsection (5)(b) may receive money from the fund or bond proceeds
4 account to perform corrective action on the subsequent release, if
5 there have been not more than 2 releases at the location, if the
6 owner or operator pays the subsequent release co-pay amount
7 pursuant to section 21514, and if the owner or operator otherwise
8 complies with the requirements of this part and the rules
9 promulgated under this part. The subsequent release shall be
10 considered a separate claim for purposes of determining the total
11 amount of expenditures for corrective action and indemnification
12 under section 21512.

13 Sec. 21515. (1) To receive money from the fund or bond
14 proceeds account for corrective action, the owner or operator ~~, or~~
15 ~~a consultant retained by the owner or operator,~~ shall follow the
16 procedures outlined in this section and shall submit reports, work
17 plans, feasibility analyses, hydrogeological studies, and
18 corrective action plans prepared under part 213 and rules
19 promulgated under that part to the department, and shall provide
20 other information required by the administrator relevant to
21 determining compliance with this part.

22 (2) To receive money from the fund for corrective action, an
23 owner or operator shall submit a claim to the administrator. An
24 owner or operator shall not submit a claim until work invoices in
25 excess of \$5,000.00 of the costs of corrective action have been
26 incurred.

27 (3) Upon receipt of a completed claim pursuant to subsection

1 (2), the administrator shall make all of the following
2 determinations:

3 (a) Whether the department ~~of environmental quality,~~
4 ~~underground storage tank division~~ has objected to payment on the
5 claim because the work performed or proposed to be performed is not
6 consistent with the requirements of part 213 and rules promulgated
7 under that part.

8 (b) Whether the work performed is necessary and appropriate
9 considering conditions at the site of the release.

10 (c) Whether the cost of performing the work is reasonable.

11 (d) Whether the owner or operator is eligible to receive
12 funding under this part.

13 (e) Whether ~~the consultant retained by~~ the owner or operator
14 has complied with section 21517.

15 (4) If the administrator fails to make the determinations
16 required under this section within 30 days after receipt of
17 certification from the department ~~of environmental quality,~~
18 ~~underground storage tank division~~ that the owner or operator has
19 met the requirements of section 21510(1)(b) and (c), the claim is
20 considered to be approved.

21 (5) If the administrator determines under subsection (3) that
22 the work invoices included with the claim are necessary and
23 appropriate considering conditions at the site of the release and
24 reasonable in terms of cost and the owner or operator is eligible
25 for funding under this part, the administrator shall approve the
26 claim and notify the owner or operator who submitted the claim of
27 the approval. If the administrator determines that the work

1 described on the work invoices submitted was not necessary or
2 appropriate or the cost of the work is not reasonable, or that the
3 owner or operator is not eligible for funding under this part, the
4 administrator shall deny the claim or any portion of the work
5 invoices submitted and give notice of the denial to the owner or
6 operator who submitted the claim.

7 (6) The owner or operator may submit additional work invoices
8 to the administrator after approval of a claim under subsection
9 (5). Within 45 days after receipt of a work invoice, the
10 administrator shall make the following determinations:

11 (a) Whether the work invoice complies with subsection (3).

12 (b) Whether the owner or operator is currently in compliance
13 with the registration and fee requirements of part 211 and the
14 rules promulgated under that part for the underground storage tank
15 system from which the release occurred.

16 (7) If the administrator determines that the work invoice does
17 not meet the requirements of subsection (6), he or she shall deny
18 the work invoice and give written notice of the denial to the owner
19 or operator who submitted the work invoice.

20 (8) The administrator shall keep records of approved work
21 invoices. If the owner or operator has not exceeded the allowable
22 amount of expenditure provided in section 21512, the administrator
23 shall forward payment vouchers to the state treasurer within 45
24 days of making the determinations under subsection (6).

25 (9) The administrator may approve a reimbursement for a work
26 invoice that was submitted by an owner or operator for corrective
27 action taken if the work invoice meets the requirements of this

1 part for an approved claim and an approved work invoice.

2 (10) Except as provided in subsection (11) or as otherwise
3 provided in this subsection, upon receipt of a payment voucher, the
4 state treasurer or the authority shall make a payment jointly to
5 the owner or operator ~~and the consultant~~ within 30 days if
6 sufficient money exists in the fund or a bond proceeds account.
7 ~~However, the owner or operator may submit to the fund administrator~~
8 ~~a signed affidavit stating that the consultant listed on a work~~
9 ~~invoice has been paid in full. The affidavit shall list the work~~
10 ~~invoice and claim to which the affidavit applies, a statement that~~
11 ~~the owner or operator has mailed a copy of the affidavit by first-~~
12 ~~class mail to the consultant listed on the work invoice, and the~~
13 ~~date that the affidavit was mailed to the consultant. The~~
14 ~~department is not required to verify affidavits submitted under~~
15 ~~this subsection. If, within 14 days after the affidavit was mailed~~
16 ~~to the consultant under this subsection, the fund administrator has~~
17 ~~not received an objection in writing from the consultant listed on~~
18 ~~the work invoice, the state treasurer or the authority shall make~~
19 ~~the payment directly to the owner or operator. If a check has~~
20 ~~already been issued to the owner or operator and the consultant,~~
21 ~~the owner or operator may return the original check to the fund~~
22 ~~administrator along with the affidavit. If within 14 days after the~~
23 ~~affidavit was mailed to the consultant the fund administrator has~~
24 ~~not received an objection from the consultant listed on the check,~~
25 ~~the state treasurer or the authority shall reissue a check to the~~
26 ~~owner or operator. If a consultant objects to an affidavit received~~
27 ~~under this subsection, and notifies the fund administrator in~~

1 ~~writing within 14 days after the affidavit was mailed to the~~
2 ~~consultant, the fund administrator shall notify the state treasurer~~
3 ~~and the authority, and the state treasurer or the authority shall~~
4 ~~issue or reissue the check to the owner or operator and the~~
5 ~~consultant. The grounds for an objection by a consultant under this~~
6 ~~subsection must be that the consultant has not been paid in full~~
7 ~~and the objection must be made by affidavit. The state treasurer or~~
8 ~~the authority shall issue checks under this subsection within 60~~
9 ~~days after an affidavit has been received by the fund~~
10 ~~administrator. Once payment has been made under this section, the~~
11 ~~fund is not liable for any claim on the basis of that payment.~~

12 (11) Upon direction of the administrator, the state treasurer
13 or the authority may withhold partial payment of money on payment
14 vouchers if there is reasonable cause to believe that there are
15 suspected violations of section 21548 or if necessary to assure
16 acceptable completion of the proposed work.

17 (12) The department ~~of environmental quality~~ shall prepare and
18 make available to owners and operators ~~and consultants~~ standardized
19 claim and work invoice forms.

20 Sec. 21517. (1) In order to receive money from the fund, an
21 owner or operator shall ~~retain a consultant to perform the~~
22 ~~responsibilities required under part 213 , and the consultant shall~~
23 ~~comply with all of the following requirements:~~

24 (a) The ~~consultant~~ **OWNER OR OPERATOR** shall submit the
25 following items for competitive bidding in accordance with
26 procedures established by the department:

27 (i) Well drilling, including monitoring wells.

1 (ii) Laboratory analysis.

2 (iii) Construction of treatment systems.

3 (iv) Removal of contaminated soil.

4 (v) Operation of treatment systems.

5 (b) All bids received by the ~~consultant~~ **OWNER OR OPERATOR**
6 shall be submitted on a standardized bid form prepared by the
7 department.

8 ~~—— (c) A consultant may perform work activities only if the~~
9 ~~consultant bids for the work activity and the consultant's bid is~~
10 ~~the lowest responsive bid. A consultant who intends to submit a bid~~
11 ~~must submit the bid to the administrator prior to receiving bids~~
12 ~~from contractors.~~

13 (C) ~~(d)~~ Upon receipt of bids, the ~~consultant~~ **OWNER OR OPERATOR**
14 shall submit to the administrator a copy of all bid forms received
15 and the bid accepted. If the lowest responsive bid was not
16 accepted, the ~~consultant~~ **OWNER OR OPERATOR** shall provide a specific
17 reason why the lowest responsive bid was not accepted.

18 (2) Bids are not required for initial response actions under
19 section 21307.

20 ~~—— (3) An owner or operator may request that the consultant~~
21 ~~retained by the owner or operator add qualified bidders to the list~~
22 ~~for requests for bids.~~

23 (3) ~~(4)~~ After the ~~consultant~~ **OWNER OR OPERATOR** employs the
24 competitive bidding process described in this section, the owner or
25 operator may hire contractors directly.

26 ~~—— (5) Upon hiring a contractor, a consultant may mark up the~~
27 ~~contractor's work invoice only if the consultant pays the~~

1 ~~contractor and does the billing.~~

2 (4) ~~(6)~~ Removal of underground storage tank systems is not
3 eligible for funding under this part. If a release is discovered
4 during the removal, the ~~consultant~~ **OWNER OR OPERATOR** shall allow
5 the contractor removing the underground storage tank system to
6 complete the underground storage tank system removal.

7 (5) ~~(7)~~ An owner or operator may receive funding under this
8 part to implement a corrective action alternative that is not the
9 preferred corrective action alternative only if the owner or
10 operator pays the difference between the selected corrective action
11 alternative and the preferred corrective action alternative.

12 Sec. 21520. The department shall establish an audit program to
13 monitor compliance with this part. As part of the audit program,
14 the department shall employ or contract with qualified individuals
15 to provide on-site inspections of locations where there has been a
16 release. The on-site inspectors shall assure that the preferred
17 corrective action alternative selected by the ~~consultant~~ **OWNER OR**
18 **OPERATOR** and the work performed on sites eligible for funding under
19 this part are necessary and appropriate considering conditions at
20 the location, and that work is performed in a cost-effective
21 manner. The department shall annually evaluate the need for on-site
22 inspectors, and if the department determines that they are
23 unnecessary due to other cost containment procedures implemented by
24 the department, the department may discontinue the on-site
25 inspections.

26 Sec. 21550. (1) Section 21508 is repealed effective December
27 31, ~~2012~~ **2015**.

1 (2) The authority's obligation to pay off any bonds or notes
2 issued pursuant to this part shall survive the repeal of section
3 21508.

4 Sec. 21558. (1) In order to receive money under the temporary
5 reimbursement program, an eligible person shall ~~retain a consultant~~
6 ~~to perform the corrective actions required under part 213.~~

7 (2) The ~~consultant~~ **ELIGIBLE PERSON** shall comply with all of
8 the following requirements:

9 (a) The ~~consultant~~ **ELIGIBLE PERSON** shall submit the following
10 items for competitive bidding in accordance with procedures
11 established in this section:

12 (i) Well drilling, including monitoring wells.

13 (ii) Laboratory analysis.

14 (iii) Construction of treatment systems.

15 (iv) Removal of contaminated soil.

16 (v) Operation of treatment systems.

17 (b) All bids received by the ~~consultant~~ **ELIGIBLE PERSON** shall
18 be submitted on a standardized bid form prepared by the department.

19 ~~—— (c) A consultant may perform work activities specified in~~
20 ~~subsection (2) (a) only if the consultant bids for the work activity~~
21 ~~and the consultant's bid is the lowest responsive bid. A consultant~~
22 ~~who intends to submit a bid must submit the bid to the department~~
23 ~~prior to receiving bids from contractors.~~

24 (C) ~~(d)~~ Upon receipt of bids, the ~~consultant~~ **ELIGIBLE PERSON**
25 shall submit to the department a copy of all bid forms received and
26 the bid accepted.

27 (D) ~~(e)~~ The ~~consultant~~ **ELIGIBLE PERSON** shall notify the

1 department in writing of the bid accepted. If the lowest responsive
2 bid was not accepted, the ~~consultant~~ **ELIGIBLE PERSON** shall provide
3 sufficient justification to the department and receive concurrence
4 from the department before commencing work. Failure of the
5 department to provide a response within 21 days shall be considered
6 as concurrence.

7 ~~—— (3) An eligible person may request that the consultant~~
8 ~~retained by the eligible person add qualified bidders to the list~~
9 ~~for requests for bids.~~

10 ~~—— (4) Upon hiring a contractor, a consultant may include a~~
11 ~~markup to the contractor's work invoices only if the consultant~~
12 ~~pays the contractor and does the billing.~~

13 (3) ~~(5)~~ After the ~~consultant~~ **ELIGIBLE PERSON** employs the
14 competitive bidding process described in this section, the ~~owner or~~
15 ~~operator~~ **ELIGIBLE PERSON** may hire contractors directly.

16 (4) ~~(6)~~ Removal of underground storage tank systems or
17 installation of new or upgraded equipment for the purpose of
18 attaining compliance with part 211, or work performed for any other
19 reason not related to the performance of part 213 corrective
20 actions, is not eligible for temporary reimbursement program
21 funding under this part.

22 Sec. 21559. (1) For an eligible person to receive money under
23 the temporary reimbursement program for corrective action, all of
24 the following conditions shall be met:

25 (a) The eligible person, ~~and the consultant retained by the~~
26 ~~eligible person,~~ shall follow the procedures outlined in this
27 section and shall submit reports, work plans, feasibility analyses,

1 hydrogeological studies, and corrective action plans prepared under
2 part 213 to the department, and shall provide other information
3 required by the department relevant to determining compliance with
4 this part and part 213.

5 (b) The eligible person shall submit a work invoice to the
6 department, with an attached summary report of the work performed
7 under the invoice and results of the work performed, including, but
8 not limited to, laboratory results, soil boring logs, construction
9 logs, site investigation results, and other information that may be
10 requested by the department.

11 (c) Work invoices shall comply with all of the following:

12 (i) Be submitted on a standardized work invoice form provided
13 by the department.

14 (ii) Contain complete information in accordance with the form
15 and the requirements of this section and as requested by the
16 department.

17 (iii) Be in an amount consistent with the requirements of
18 section 21556.

19 (2) Upon receipt of a work invoice pursuant to subsection (1),
20 the department shall make all of the following determinations:

21 (a) Whether the work performed is necessary and appropriate
22 considering conditions at the site of the release.

23 (b) Whether the cost of performing the work is reasonable.

24 (c) Whether the eligible person is eligible to receive funding
25 under this part.

26 (d) Whether the ~~consultant retained by the~~ eligible person has
27 complied with section 21558.

1 (3) The department shall deny payment of a work invoice if the
2 department determines that the corrective action work performed is
3 not consistent with the requirements of part 213 or does not comply
4 with the requirements of this part.

5 (4) Within 45 days after receipt of a work invoice, the
6 department shall determine whether the work invoice complies with
7 subsections (1) to (3). The department shall notify the eligible
8 person in writing of such a determination.

9 (5) The department shall keep records of approved
10 precertification applications and work invoices. If the eligible
11 person has not exceeded the allowable amount of expenditure
12 provided in sections 21556 and 21557, the department shall forward
13 an approved payment voucher to the state treasurer within 45 days
14 after approval of the work invoice.

15 (6) Except as provided in subsection (7) or as otherwise
16 provided in this subsection, upon receipt of an approved payment
17 voucher, the state treasurer shall make a payment ~~jointly~~ to the
18 eligible person ~~and the consultant~~ within 30 days. ~~However, the~~
19 ~~eligible person may submit to the department a signed affidavit~~
20 ~~stating that the consultant listed on a work invoice has been paid~~
21 ~~in full. The affidavit shall list the work invoice number and~~
22 ~~precertification application to which the affidavit applies, a~~
23 ~~statement that the eligible person has mailed a copy of the~~
24 ~~affidavit by first class mail to the consultant listed on the work~~
25 ~~invoice, and the date that the affidavit was mailed to the~~
26 ~~consultant. The department is not required to verify affidavits~~
27 ~~submitted under this subsection. If, within 14 days after the~~

1 ~~affidavit was mailed to the consultant under this subsection, the~~
2 ~~department has not received an objection in writing from the~~
3 ~~consultant listed on the work invoice, the state treasurer shall~~
4 ~~make the payment directly to the eligible person. If a check has~~
5 ~~already been issued to the eligible person and the consultant, the~~
6 ~~eligible person shall return the original check to the department~~
7 ~~along with the affidavit. If, within 14 days after the affidavit~~
8 ~~was mailed to the consultant, the department has not received an~~
9 ~~objection from the consultant listed on the check, the state~~
10 ~~treasurer shall reissue a check to the eligible person. If a~~
11 ~~consultant objects to an affidavit received under this subsection~~
12 ~~and notifies the department in writing within 14 days after the~~
13 ~~affidavit was mailed to the consultant, the department shall notify~~
14 ~~the state treasurer, and the state treasurer shall issue or reissue~~
15 ~~the check to the eligible person and the consultant. The grounds~~
16 ~~for an objection by a consultant under this subsection shall be~~
17 ~~that the consultant has not been paid in full and the objection~~
18 ~~shall be made by affidavit. The state treasurer shall issue checks~~
19 ~~under this subsection within 60 days after an affidavit has been~~
20 ~~received by the department. Once payment has been made under this~~
21 ~~section, the refined petroleum fund is not liable for any claim on~~
22 ~~the basis of that payment.~~

23 (7) The temporary reimbursement program is subject to section
24 21548.

25 (8) Upon direction of the department, the state treasurer may
26 withhold partial payment of money on payment vouchers if there is
27 reasonable cause to believe that there are violations of section

1 21548 or if necessary to assure acceptable completion of the
2 corrective actions.

3 Enacting section 1. Sections 21541, 21542, 21543, and 21562 of
4 the natural resources and environmental protection act, 1994 PA
5 451, 324.21541, 324.21542, 324,21543, and 324.21562, are repealed.

6 Enacting section 2. This amendatory act does not take effect
7 unless all of the following bills of the 96th Legislature are
8 enacted into law:

- 9 (a) Senate Bill No. 528.
10 (b) Senate Bill No. 529.
11 (c) Senate Bill No. 530.
12 (d) Senate Bill No. 531.
13 (e) Senate Bill No. 532.