

HOUSE BILL No. 5167

November 10, 2011, Introduced by Reps. Agema, Glardon, Bumstead, Genetski, Lori, Shirkey, MacMaster, Yonker and Kowall and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled
 "Natural resources and environmental protection act,"
 by amending sections 21302, 21304a, 21307, 21307a, 21308a, 21309a, 21310a, 21311a, 21312a, 21313a, 21314a, 21315, 21502, 21503, 21510, 21515, 21517, 21520, 21558, and 21559 (MCL 324.21302, 324.21304a, 324.21307, 324.21307a, 324.21308a, 324.21309a, 324.21310a, 324.21311a, 324.21312a, 324.21313a, 324.21314a, 324.21315, 324.21502, 324.21503, 324.21510, 324.21515, 324.21517, 324.21520, 324.21558, and 324.21559), sections 21302 and 21307 as amended and sections 21307a and 21314a as added by 1995 PA 22, sections 21304a, 21308a, 21309a, 21310a, 21311a, 21312a, 21313a, and 21315 as amended by 1996 PA 116, sections 21502 and 21503 as amended by 2006 PA 318, section 21510 as amended by 1995 PA 252, section 21515 as amended by 1996 PA 181, 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. 21302. As used in this part:

2 (a) "Biota" means the plant and animal life in an area
3 affected by a corrective action plan.

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

7 (B) ~~(e)~~ "Contamination" means the presence of a regulated
8 substance in soil or groundwater.

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

15 (D) ~~(e)~~ "De minimis spill" means a spill of petroleum as that
16 term is described in section 21303(d)(ii) that contaminates not more
17 than 20 cubic yards of soil per underground storage tank or 50
18 cubic yards of soil per location, in which groundwater has not been
19 affected by the spill. ~~, and which is abated pursuant to section~~
20 ~~21306.~~

21 (E) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
22 QUALITY.

23 (f) "Free product" means a regulated substance in a liquid
24 phase equal to or greater than 1/8 inch of measurable thickness,
25 that is not dissolved in water, and that has been released into the

1 environment.

2 (g) "Groundwater" means water below the land surface in the
3 zone of saturation.

4 (h) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-
5 light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical
6 grades of fuel oil; other residual fuel oils including navy special
7 fuel oil and bunker c; and other fuels when used as substitutes for
8 1 of these fuel oils. Heating oil is typically used in the
9 operation of heating equipment, boilers, or furnaces.

10 (i) "Local unit of government" means a city, village,
11 township, county, fire department, or local health department as
12 defined in section 1105 of the public health code, ~~Act No. 368 of~~
13 ~~the Public Acts of 1978, being section 333.1105 of the Michigan~~
14 ~~Compiled Laws. 1978 PA 368, MCL 333.1105.~~

15 Sec. 21304a. (1) Corrective action activities undertaken
16 pursuant to this part shall be conducted in accordance with the
17 process outlined in RBCA in a manner that is protective of the
18 public health, safety, and welfare, and the environment.

19 (2) Subject to subsections (3) and (4), the department shall
20 establish cleanup criteria for corrective action activities
21 undertaken under this part using the process outlined in RBCA. The
22 department shall utilize only reasonable and relevant exposure
23 assumptions and pathways in determining the cleanup criteria.

24 (3) If a regulated substance poses a carcinogenic risk to
25 humans, the cleanup criteria derived for cancer risk shall be the
26 95% upper bound on the calculated risk of 1 additional cancer above
27 the background cancer rate per 100,000 individuals using the

1 exposure assumptions and pathways established by the department and
2 the process in RBCA. If a regulated substance poses a risk of both
3 cancer and an adverse health effect other than cancer, cleanup
4 criteria shall be derived for cancer and each adverse health
5 effect.

6 (4) If a cleanup criterion for groundwater differs from either
7 (a) the state drinking water standard established pursuant to
8 section 5 of the safe drinking water act, ~~Act No. 399 of the Public~~
9 ~~Acts of 1976, being section 325.1005 of the Michigan Compiled Laws,~~
10 **1976 PA 399, MCL 325.1005**, or (b) criteria for adverse aesthetic
11 characteristics derived pursuant to R 299.5709 of the Michigan
12 administrative code, the cleanup criterion shall be the more
13 stringent of (a) or (b) unless ~~a consultant retained by the owner~~
14 or operator determines that compliance with (a) or (b) is not
15 necessary because the use of the groundwater is reliably restricted
16 pursuant to section 21310a.

17 (5) Notwithstanding any other provision of this part, if a
18 release or threat of release at a site is not solely the result of
19 a release or threat of release from an underground storage tank
20 system, the owner or operator of the underground storage tank
21 system may choose to perform response activities pursuant to part
22 201 in lieu of corrective actions pursuant to this part.

23 Sec. 21307. (1) Upon confirmation of a release from an
24 underground storage tank system, the owner or operator shall report
25 the release and whether free product has been discovered to the
26 department within 24 hours after discovery. The department may
27 investigate the release. However, an investigation by the

1 department does not relieve the owner or operator from any
2 responsibilities related to the release provided for in this part.

3 (2) After a release has been reported under subsection (1),
4 the owner or operator ~~or a consultant retained by the owner or~~
5 ~~operator~~ shall immediately begin and expeditiously perform all of
6 the following initial response actions:

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

8 (b) Take action to prevent further release of the regulated
9 substance into the environment including removing the regulated
10 substance from the underground storage tank system that is causing
11 the release.

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

14 (i) Conduct free product removal in a manner that minimizes the
15 spread of contamination into previously uncontaminated zones by
16 using recovery and disposal techniques appropriate to the
17 conditions at the site and in a manner that properly treats,
18 discharges, or disposes of recovery by-products as required by law.

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

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

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

26 (d) Excavate and contain, treat, or dispose of soils above the
27 water table that are visibly contaminated with a regulated

1 substance if the contamination is likely to cause a fire hazard or
2 spread and increase the cost of corrective action.

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

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

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

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

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

19 (c) If free product is discovered at any time at a location
20 not previously identified under subsection (2)(c), report the
21 discovery within 24 hours to the department and initiate free
22 product recovery in compliance with subsection (2)(c).

23 Sec. 21307a. (1) Following initiation of initial response
24 actions under section 21307, ~~a consultant retained by~~ the owner or
25 operator shall complete the requirements of this part and submit
26 related reports or executive summaries detailed in this part to
27 address the contamination at the site. At any time that sufficient

1 corrective action has been undertaken to address contamination, a
2 ~~consultant retained by~~ the owner or operator shall complete and
3 submit a site closure report pursuant to section 21312a and omit
4 the remaining interim steps.

5 (2) In addition to the reporting requirements specified in
6 this part, a ~~consultant retained by~~ the owner or operator shall
7 provide 48-hour notification to the department prior to initiating
8 any of the following activities:

9 (a) Soil excavation.

10 (b) Well drilling, including monitoring well installation.

11 (c) Sampling of soil or groundwater.

12 (d) Construction of treatment systems.

13 Sec. 21308a. (1) Within 90 days after a release has been
14 discovered, a ~~consultant retained by~~ the owner or operator shall
15 complete an initial assessment report and submit the report to the
16 department on a form created pursuant to section 21316. The report
17 shall include, but is not limited to, the following information:

18 (a) Results of initial response actions taken under section
19 21307(2).

20 (b) Site information and site characterization results. The
21 following items shall be included as appropriate given the site
22 conditions:

23 (i) The facility address.

24 (ii) The name of the facility.

25 (iii) The name, address, and telephone number of facility
26 compliance contact person.

27 (iv) The time and date of release discovery.

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

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

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

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

8 (C) The location of fill ports, dispensers, and other
9 pertinent system components.

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

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

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

14 (viii) A list of regulated substances the underground storage
15 tank system contained when the release occurred.

16 (ix) A list of the regulated substances the underground storage
17 tank system contained in the past other than those listed in
18 subparagraph (viii).

19 (x) The location of nearby surface waters and wetlands.

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

22 (xii) The component of the underground storage tank system from
23 which the release occurred (e.g., piping, underground storage tank,
24 overfill).

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

27 (xiv) A description of what other steps were taken to prevent

1 further migration of the regulated substance into the soil or
2 groundwater.

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

6 (xvi) The extent to which all or part of the underground
7 storage tank system or soil, or both, was removed.

8 (xvii) Data from analytical testing of soil and groundwater
9 samples.

10 (xviii) A description of the free product investigation and
11 removal if free product was present, including all of the
12 following:

13 (A) A description of the actions taken to remove any free
14 product.

15 (B) The name of the person or persons responsible for
16 implementing the free product removal measures.

17 (C) The estimated quantity, type, and thickness of free
18 product observed or measured in wells, boreholes, and excavations.

19 (D) The type of free product recovery system used.

20 (E) Whether any discharge will take place on site or off site
21 during the recovery operation and where this discharge will be
22 located.

23 (F) The type of treatment applied to, and the effluent quality
24 expected from, any discharge.

25 (G) The steps that have been or are being taken to obtain
26 necessary permits for any discharge.

27 (H) The quantity and disposition of the recovered free

1 product.

2 (xix) Identification of any other contamination on the site not
3 resulting from the release and the source, if known.

4 (xx) An estimate of the horizontal and vertical extent of on-
5 site and off-site soil contamination.

6 (xxi) The depth to groundwater.

7 (xxii) An identification of potential migration and exposure
8 pathways and receptors.

9 (xxiii) An estimate of the amount of soil in the vadose zone
10 that is contaminated.

11 (xxiv) If the on-site assessment indicates that off-site soil
12 or groundwater may be affected, report the steps that have been
13 taken or will be taken including an implementation schedule to
14 expeditiously secure access to off-site properties to complete the
15 delineation of the extent of the release.

16 (xxv) Groundwater flow rate and direction.

17 (xxvi) Laboratory analytical data collected.

18 (xxvii) The vertical distribution of contaminants.

19 (c) Site classification under section 21314a.

20 (d) Tier I or tier II evaluation according to the RBCA
21 process.

22 (e) A work plan, including an implementation schedule for
23 conducting a final assessment report under section 21311a, to
24 determine the vertical and horizontal extent of the contamination
25 as necessary for preparation of the corrective action plan.

26 (2) If free product is discovered at a site after the
27 submittal of an initial assessment report pursuant to subsection

1 (1), the owner or operator ~~, or consultant retained by the owner or~~
2 ~~operator,~~ shall do both of the following:

3 (a) Perform initial response actions identified in section
4 21307(2)(c)(i) to (iv).

5 (b) Submit to the department an amendment to the initial
6 assessment report within 30 days of discovery of the free product
7 that describes response actions taken as a result of the free
8 product discovery.

9 Sec. 21309a. (1) If initial response actions under section
10 21307 have not resulted in completion of corrective action, a
11 ~~consultant retained by an~~ **THE** owner or operator shall prepare a
12 corrective action plan to address contamination at the site. For
13 corrective action plans submitted as part of a final assessment
14 report pursuant to section 21311a after October 1, 1995, the
15 corrective action plan shall use the process described in RBCA.

16 (2) A corrective action plan shall include all of the
17 following:

18 (a) A description of the corrective action to be implemented,
19 including an explanation of how that action will meet the
20 requirements of the RBCA process. The corrective action plan shall
21 also include an analysis of the selection of indicator parameters
22 to be used in evaluating the implementation of the corrective
23 action plan, if indicator parameters are to be used. The corrective
24 action plan shall include a description of ambient air quality
25 monitoring activities to be undertaken during the corrective action
26 if such activities are appropriate.

27 (b) An operation and maintenance plan if any element of the

1 corrective action requires operation and maintenance. The operation
2 and maintenance plan shall include all of the following:

3 (i) Name, telephone number, and address of the person who is
4 responsible for operation and maintenance.

5 (ii) Operation and maintenance schedule.

6 (iii) Written and pictorial plan of operation and maintenance.

7 (iv) Design and construction plans.

8 (v) Equipment diagrams, specifications, and manufacturers'
9 guidelines.

10 (vi) Safety plan.

11 (vii) Emergency plan, including emergency contact telephone
12 numbers.

13 (viii) A list of spare parts available for emergency repairs.

14 (ix) Other information required by the department to determine
15 the adequacy of the operation and maintenance plan. Department
16 requests for information pursuant to this subparagraph shall be
17 limited to factors not adequately addressed by information required
18 by subparagraphs (i) through (viii) and shall be accompanied by an
19 explanation of the need for the additional information.

20 (c) A monitoring plan if monitoring of environmental media or
21 site activities or both is required to confirm the effectiveness
22 and integrity of the remedy. The monitoring plan shall include all
23 of the following:

24 (i) Location of monitoring points.

25 (ii) Environmental media to be monitored, including, but not
26 limited to, soil, air, water, or biota.

27 (iii) Monitoring schedule.

1 (iv) Monitoring methodology, including sample collection
2 procedures.

3 (v) Substances to be monitored, including an explanation of
4 the selection of any indicator parameters to be used.

5 (vi) Laboratory methodology, including the name of the
6 laboratory responsible for analysis of monitoring samples, method
7 detection limits, and practical quantitation levels. Raw data used
8 to determine method detection limits shall be made available to the
9 department on request.

10 (vii) Quality control/quality assurance plan.

11 (viii) Data presentation and evaluation plan.

12 (ix) Contingency plan to address ineffective monitoring.

13 (x) Operation and maintenance plan for monitoring.

14 (xi) How the monitoring data will be used to demonstrate
15 effectiveness of corrective action activities.

16 (xii) Other elements required by the department to determine
17 the adequacy of the monitoring plan. Department requests for
18 information pursuant to this subparagraph shall be limited to
19 factors not adequately addressed by information required under
20 subparagraphs (i) through (xi) and shall be accompanied by an
21 explanation of the need for the additional information.

22 (d) An explanation of any land use or resource use
23 restrictions, if the restrictions are required pursuant to section
24 21310a.

25 (e) A schedule for implementation of the corrective action.

26 (f) A financial assurance mechanism, as provided for in R
27 29.2161 to R 29.2169 of the Michigan administrative code, in an

1 amount approved by the department, to pay for monitoring, operation
2 and maintenance, oversight, and other costs if required by the
3 department as necessary to assure the effectiveness and integrity
4 of the corrective action.

5 (g) If provisions for operation and maintenance, monitoring,
6 or financial assurance are included in the corrective action plan,
7 and those provisions are not complied with, the corrective action
8 plan is void from the time of lapse or violation unless the lapse
9 or violation is corrected to the satisfaction of the department.

10 (3) If a corrective action plan prepared under this section
11 does not result in an unrestricted use of the property for any
12 purpose, the owner or operator ~~or a consultant retained by the~~
13 ~~owner or operator~~ shall provide notice to the public by means
14 designed to reach those members of the public directly impacted by
15 the release and the proposed corrective action. The notice shall
16 include the name, address, and telephone number of a contact
17 person. A copy of the notice and proof of providing the notice
18 shall be submitted to the department. The department shall ensure
19 that site release information and corrective action plans that do
20 not result in an unrestricted use of property are made available to
21 the public for inspection upon request.

22 Sec. 21310a. (1) If the corrective action activities at a site
23 result in a final remedy that relies on tier I commercial or
24 industrial criteria, institutional controls shall be implemented as
25 provided in this subsection. A notice of corrective action shall be
26 recorded with the register of deeds for the county in which the
27 site is located prior to submittal of a closure report under

1 section 21312a. A notice shall be filed under this subsection only
2 by the property owner or with the express written permission of the
3 property owner. The form and content of the notice shall be subject
4 to approval by the department. A notice of corrective action
5 recorded under this subsection shall state the land use that was
6 the basis of the corrective action selected by ~~a consultant~~
7 ~~retained by~~ the owner or operator. The notice shall state that if
8 there is a proposed change in the land use at any time in the
9 future, that change may necessitate further evaluation of potential
10 risks to the public health, safety, and welfare and to the
11 environment and that the department shall be contacted regarding
12 any proposed change in the land use. Additional requirements for
13 financial assurance, monitoring, or operation and maintenance shall
14 not apply if contamination levels do not exceed the levels
15 established in the tier I evaluation.

16 (2) If corrective action activities at a site rely on
17 institutional controls other than as provided in subsection (1),
18 the institutional controls shall be implemented as provided in this
19 subsection. The restrictive covenant shall be recorded with the
20 register of deeds for the county in which the property is located
21 within 30 days from submittal of the final assessment report
22 pursuant to section 21311a, unless otherwise agreed to by the
23 department. The restrictive covenant shall be filed only by the
24 property owner or with the express written permission of the
25 property owner. The restrictions shall run with the land and be
26 binding on the owner's successors, assigns, and lessees. The
27 restrictions shall apply until the department determines that

1 regulated substances no longer present an unacceptable risk to the
2 public health, safety, or welfare or to the environment. The
3 restrictive covenant shall include a survey and property
4 description which define the areas addressed by the corrective
5 action plan and the scope of any land use or resource use
6 limitations. The form and content of the restrictive covenant are
7 subject to approval by the department and shall include provisions
8 to accomplish all of the following:

9 (a) Restrict activities at the site that may interfere with
10 corrective action, operation and maintenance, monitoring, or other
11 measures necessary to assure the effectiveness and integrity of the
12 corrective action.

13 (b) Restrict activities that may result in exposure to
14 regulated substances above levels established in the corrective
15 action plan.

16 (c) Prevent a conveyance of title, an easement, or other
17 interest in the property from being consummated by the property
18 owner without adequate and complete provision for compliance with
19 the corrective action plan and prevention of exposure to regulated
20 substances described in subdivision (b).

21 (d) Grant to the department and its designated representatives
22 the right to enter the property at reasonable times for the purpose
23 of determining and monitoring compliance with the corrective action
24 plan, including but not limited to the right to take samples,
25 inspect the operation of the corrective action measures, and
26 inspect records.

27 (e) Allow the state to enforce restrictions set forth in the

1 covenant by legal action in a court of appropriate jurisdiction.

2 (f) Describe generally the uses of the property that are
3 consistent with the corrective action plan.

4 (3) If ~~a consultant retained by~~ the owner or operator
5 determines that exposure to regulated substances may be reliably
6 restricted by a means other than a restrictive covenant and that
7 imposition of land use or resource use restrictions through
8 restrictive covenants is impractical, the ~~consultant~~ **OWNER OR**
9 **OPERATOR** may select a corrective action plan that relies on
10 alternative mechanisms. Mechanisms that may be considered under
11 this subsection include, but are not limited to, an ordinance that
12 prohibits the use of groundwater in a manner and to a degree that
13 protects against unacceptable exposure to a regulated substance as
14 defined by the cleanup criteria identified in the corrective action
15 plan. An ordinance that serves as an exposure control under this
16 subsection shall include both of the following:

17 (a) A requirement that the local unit of government notify the
18 department 30 days before adopting ~~a modification~~ **AN AMENDMENT** to
19 the ordinance or the lapsing or revocation of the ordinance.

20 (b) A requirement that the ordinance be filed with the
21 register of deeds as an ordinance affecting multiple properties.

22 (4) Notwithstanding subsections (1), (2), and (3), if a
23 mechanism other than a notice of corrective action, an ordinance,
24 or a restrictive covenant is requested by ~~a consultant retained by~~
25 an owner or operator and the department determines that the
26 alternative mechanism is appropriate, the department may approve of
27 the alternate mechanism.

1 (5) A person who implements corrective action activities shall
2 provide notice of the land use restrictions that are part of the
3 corrective action plan to the local unit of government in which the
4 site is located within 30 days of submittal of the corrective
5 action plan, unless otherwise approved by the department.

6 Sec. 21311a. (1) Within 365 days after a release has been
7 discovered, ~~a consultant retained by an~~ **THE** owner or operator shall
8 complete a final assessment report that includes a corrective
9 action plan developed under section 21309a and submit the report to
10 the department on a form created pursuant to section 21316. The
11 report shall include, but is not limited to, the following
12 information:

13 (a) The extent of contamination.

14 (b) Tier II and tier III evaluation, as appropriate, under the
15 RBCA process.

16 (c) A feasibility analysis. The following shall be included,
17 as appropriate, given the site conditions:

18 (i) On-site and off-site corrective action alternatives to
19 remediate contaminated soil and groundwater for each cleanup type,
20 including alternatives that permanently and significantly reduce
21 the volume, toxicity, and mobility of the regulated substances.

22 (ii) The costs associated with each corrective action
23 alternative including alternatives that permanently and
24 significantly reduce the volume, toxicity, and mobility of the
25 regulated substances.

26 (iii) The effectiveness and feasibility of each corrective
27 action alternative in meeting cleanup criteria.

1 (iv) The time necessary to implement and complete each
2 corrective action alternative.

3 (v) The preferred corrective action alternative based upon
4 subparagraphs (i) through (iv) and an implementation schedule for
5 completion of the corrective action.

6 (d) A corrective action plan.

7 (e) A schedule for corrective action plan implementation.

8 (2) If the preferred corrective action alternative under
9 subsection (1)(c)(v) is based on the use of institutional controls
10 regarding off-site migration of regulated substances, the
11 corrective action plan shall not be implemented until it is
12 reviewed and determined by the department to be in compliance with
13 this part.

14 Sec. 21312a. (1) Within 30 days following completion of the
15 corrective action, ~~a consultant retained by~~ the owner or operator
16 shall complete a closure report and submit the report to the
17 department on a form created pursuant to section 21316. The report
18 shall include, but is not limited to, the following information:

19 (a) A summary of corrective action activities.

20 (b) Closure verification sampling results.

21 (c) A closure certification prepared by ~~the consultant~~
22 ~~retained by~~ the owner or operator.

23 (2) Within 60 days after receipt of a closure report under
24 subsection (1), the department shall provide the ~~consultant~~ **OWNER**
25 **OR OPERATOR** who submitted the closure report with a confirmation of
26 the department's receipt of the report.

27 Sec. 21313a. (1) ~~Beginning on the effective date of the~~

1 ~~amendatory act that added subsection (7), except~~ **EXCEPT** as provided
2 in subsection ~~(7)~~ **(6)**, and except for the confirmation provided in
3 section 21312a(2), if a report is not completed or a required
4 submittal under section 21308a, 21311a, or 21312a(1) is not
5 provided during the time required, the department may impose a
6 penalty according to the following schedule:

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

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

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

13 (2) For purposes of this section, in computing a period of
14 time, the day of the act, event, or default, after which the
15 designated period of time begins to run is not included. The last
16 day of the period is included, unless it is a Saturday, Sunday,
17 legal holiday, or holiday, in which event the period runs until the
18 end of the next day that is not a Saturday, Sunday, legal holiday,
19 or holiday.

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

23 ~~—— (4) The owner or operator may by contract transfer the~~
24 ~~responsibility for paying fines under this section to a consultant~~
25 ~~retained by the owner or operator.~~

26 ~~—— (5) The department shall forward all money collected pursuant~~
27 ~~to this section to the state treasurer for deposit in the emergency~~

1 ~~response fund created in section 21507.~~

2 (4) ~~(6)~~ An appeal of a penalty imposed under this section may
 3 be taken pursuant to section 631 of the revised judicature act of
 4 1961, ~~Act No. 236 of the Public Acts of 1961, being section 600.631~~
 5 ~~of the Michigan Compiled Laws.~~ **1961 PA 236, MCL 600.631.**

6 (5) ~~(7)~~ A penalty shall not begin to accrue under this section
 7 unless the department has first notified the person on whom the
 8 penalty is imposed that he or she is subject to the penalties
 9 provided in this section.

10 Sec. 21314a. The department shall establish and implement a
 11 classification system for sites considering impacts on public
 12 health, safety, and welfare, and the environment. Notwithstanding
 13 any other provision in this part, at sites posing an imminent risk
 14 to the public health, safety, or welfare, or the environment,
 15 corrective action shall be implemented immediately. If the
 16 department determines that no imminent risk to the public health,
 17 safety, or welfare, or the environment exists at a site, the
 18 department may allow corrective action at these sites to be
 19 conducted on a schedule approved by the department. This provision
 20 shall not be used by the department to limit the ability of a owner
 21 ~~, OR operator or a consultant~~ to submit a claim to the Michigan
 22 underground storage tank financial assurance fund, or delay payment
 23 on a valid claim to an owner ~~, OR operator. or consultant.~~

24 Sec. 21315. (1) The department shall design and implement a
 25 program to selectively audit or oversee all aspects of corrective
 26 actions undertaken under this part to assure compliance with this
 27 part. The department may audit a site at any time prior to receipt

1 of a closure report pursuant to section 21312a and within 6 months
2 after receipt of the closure report.

3 (2) If the department conducts an audit under this section and
4 the audit confirms that the cleanup criteria have been met, the
5 department shall provide the owner or operator with a letter that
6 describes the audit and its results. Notwithstanding section
7 21312a, after conducting an audit under this section, the
8 department may issue a closure letter for any site that meets the
9 cleanup criteria pursuant to section 21304a.

10 (3) If an audit conducted under this section does not confirm
11 that corrective action has been conducted in compliance with this
12 part or that cleanup criteria have been met, the department may
13 require an owner or operator to do either or both of the following:

14 (a) Provide additional information related to any requirement
15 of this part.

16 (b) ~~Retain a consultant to take~~ **TAKE** additional corrective
17 actions necessary to comply with this part or to protect public
18 health, safety, or welfare, or the environment.

19 Sec. 21502. As used in this part:

20 (a) "Administrator" means the fund administrator provided for
21 in section 21513.

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

24 (B) ~~(e)~~ "Approved claim" means a claim that is approved
25 pursuant to section 21515.

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

1 ~~—— (c) "Board" means the Michigan underground storage tank~~
2 ~~financial assurance policy board created in section 21541.~~

3 (D) ~~(f)~~ "Board of directors" means the board of directors of
4 the authority.

5 (E) ~~(g)~~ "Bond proceeds account" means the account or fund to
6 which proceeds of bonds or notes issued under this part have been
7 credited.

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

11 (G) ~~(i)~~ "Claim" means the submission by the owner or operator
12 or his or her representative of documentation on an application
13 requesting payment from the fund. A claim shall include, at a
14 minimum, a completed and signed claim form and the name, address,
15 telephone number, and federal tax identification number of ~~the~~
16 ~~consultant retained by the owner or operator. to carry out~~
17 ~~responsibilities pursuant to part 213.~~

18 (H) ~~(j)~~ "Class 1 site" means a site posing the highest degree
19 of threat to the public and environment as determined by the
20 department, based on the classification system developed by the
21 department pursuant to section 21314a.

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

26 ~~—— (l) "Consultant" means a person on the list of qualified~~
27 ~~underground storage tank consultants prepared pursuant to section~~

1 ~~21542.~~

2 (J) ~~(m)~~—"Co-pay amount" means the co-pay amount provided for
3 in section 21514.

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

10 (I) ~~(o)~~—"Department" means the department of environmental
11 quality.

12 (M) ~~(p)~~—"Eligible person" means an owner or operator who meets
13 the eligibility requirements in section 21556 or 21557 and received
14 approval of his or her precertification application by the
15 department.

16 (N) ~~(q)~~—"Financial responsibility requirements" means the
17 financial responsibility for taking corrective action and for
18 compensating third parties for bodily injury and property damage
19 caused by a release from an underground storage tank system that
20 the owner or operator of an underground storage tank system must
21 demonstrate under part 211 and the rules promulgated under that
22 part.

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

25 (P) ~~(s)~~—"Heating oil" means petroleum that is No. 1, No. 2,
26 No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6
27 technical grades of fuel oil; other residual fuel oils including

1 navy special fuel oil and bunker C; and other fuels when used as
2 substitutes for 1 of these fuel oils.

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

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

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

17 (T) ~~(w)~~—"Owner" means a person, other than a regulated
18 financial institution, who, at the time of discovery of a release,
19 held a legal, equitable, or possessory interest of any kind in an
20 underground storage tank system or in the property on which an
21 underground storage tank system is located, including, but not
22 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
23 includes a person to whom an approved claim is assigned or
24 transferred. Owner does not include a person or a regulated
25 financial institution who, without participating in the management
26 of an underground storage tank system and without being otherwise
27 engaged in petroleum production, refining, or marketing relating to

1 the underground storage tank system, is acting in a fiduciary
2 capacity or who holds indicia of ownership primarily to protect the
3 person's or the regulated financial institution's security interest
4 in the underground storage tank system or the property on which it
5 is located. This exclusion does not apply to a grantor,
6 beneficiary, remainderman, or other person who could directly or
7 indirectly benefit financially from the exclusion other than by the
8 receipt of payment for fees and expenses related to the
9 administration of a trust.

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

14 Sec. 21503. As used in this part:

15 (a) "Payment voucher" means a form prepared by the department
16 that specifies payment authorization by the department to the
17 department of treasury.

18 (b) "Petroleum" means crude oil, crude oil fractions, and
19 refined petroleum fractions including gasoline, kerosene, heating
20 oils, and diesel fuels.

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

23 (d) "Precertification application" means the application
24 submitted by an owner or operator seeking the department's
25 eligibility determination for reimbursement for the costs of
26 corrective action from the temporary reimbursement program.

27 (e) "Refined petroleum" means aviation gasoline, middle

1 distillates, jet fuel, kerosene, gasoline, residual oils, and any
2 oxygenates that have been blended with any of these.

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

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

7 (h) "Refined petroleum product cleanup program" means the
8 refined petroleum product cleanup initial program and the program
9 based upon the recommendations of the **FORMER** petroleum cleanup
10 advisory council under **FORMER** section 21552(10).

11 (i) "Regulated financial institution" means a state or
12 nationally chartered bank, savings and loan association or savings
13 bank, credit union, or other state or federally chartered lending
14 institution or a regulated affiliate or regulated subsidiary of any
15 of these entities.

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

18 (k) "Release" means any spilling, leaking, emitting,
19 discharging, escaping, or leaching from a petroleum underground
20 storage tank system into groundwater, surface water, or subsurface
21 soils.

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

27 (m) "Temporary reimbursement program" means the program

1 established in section 21554.

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

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

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

17 (iii) A septic tank.

18 (iv) A pipeline facility, including gathering lines regulated
19 under either of the following:

20 (A) The natural gas pipeline safety act of 1968, Public Law
21 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

22 (B) Sections 201 to 215, 217, and 219 of the hazardous liquid
23 pipeline safety act of 1979, title II of the pipeline safety act of
24 1979, Public Law 96-129, 49 USC Appx 2001 to 2015.

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

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

27 (vii) A flow-through process tank.

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

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

6 (x) Any pipes connected to a tank described in subparagraphs
7 (i) to (ix).

8 (xi) An underground storage tank system holding hazardous
9 wastes listed or identified under subtitle C of the solid waste
10 disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e,
11 or a mixture of such hazardous waste and other regulated
12 substances.

13 (xii) A wastewater treatment tank system that is part of a
14 wastewater treatment facility regulated under section 307(b) of
15 title III or section 402 of title IV of the federal water pollution
16 control act, 33 USC 1317 and 1342.

17 (xiii) Equipment or machinery that contains regulated substances
18 for operational purposes such as hydraulic lift tanks and
19 electrical equipment tanks.

20 (xiv) An underground storage tank system with a capacity of 110
21 gallons or less.

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

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

26 (xvii) A wastewater treatment tank system.

27 (xviii) An underground storage tank system containing

1 radioactive material that is regulated under the atomic energy act
2 of 1954, chapter 1073, 68 Stat. 919.

3 (xix) An underground storage tank system that is part of an
4 emergency generator system at nuclear power generation facilities
5 regulated by the nuclear regulatory commission under 10 CFR part
6 50, appendix A to part 50 of title 10 of the code of federal
7 regulations.

8 (xx) Airport hydrant fuel distribution systems.

9 (xxi) Underground storage tank systems with field-constructed
10 tanks.

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

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

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

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

20 (iv) A statement that the ~~consultant~~ **OWNER OR OPERATOR** employed
21 a documented sealed competitive bidding process for any contract
22 award exceeding \$5,000.00.

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

26 (vi) Upon request of the administrator, a list of all bids
27 received.

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

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

8 (a) The release from which the corrective action or
9 indemnification arose was discovered and reported on or after July
10 18, 1989.

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

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

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

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

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

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

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

8 (b) The release is sudden and immediate.

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

11 (d) The release is reported to the department of natural
12 resources, underground storage tank division within 24 hours of
13 discovery of the release.

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

17 (4) An owner or operator who is a public utility with more
18 than 500,000 customers in this state is ineligible to receive money
19 from the fund or bond proceeds account for corrective action or
20 indemnification associated with a release from a petroleum
21 underground storage tank system used to supply petroleum for the
22 generation of steam electricity.

23 (5) If an owner or operator has received money from the fund
24 or bond proceeds account under this part for a release at a
25 location, the owner and operator are not eligible to receive money
26 from the fund or bond proceeds account for a subsequent release at
27 the same location unless the owner or operator has done either or

1 both of the following:

2 (a) Discovered the subsequent release pursuant to corrective
3 action being taken on a confirmed release and included this
4 subsequent release as part of the corrective action for the
5 confirmed release.

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

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

20 (7) An owner or operator who discovers a subsequent release at
21 the same location as an initial release following compliance with
22 subsection (5)(b) may receive money from the fund or bond proceeds
23 account to perform corrective action on the subsequent release, if
24 there have been not more than 2 releases at the location, if the
25 owner or operator pays the subsequent release co-pay amount
26 pursuant to section 21514, and if the owner or operator otherwise
27 complies with the requirements of this part and the rules

1 promulgated under this part. The subsequent release shall be
2 considered a separate claim for purposes of determining the total
3 amount of expenditures for corrective action and indemnification
4 under section 21512.

5 Sec. 21515. (1) To receive money from the fund or bond
6 proceeds account for corrective action, the owner or operator ~~, or~~
7 ~~a consultant retained by the owner or operator,~~ shall follow the
8 procedures outlined in this section and shall submit reports, work
9 plans, feasibility analyses, hydrogeological studies, and
10 corrective action plans prepared under part 213 and rules
11 promulgated under that part to the department, and shall provide
12 other information required by the administrator relevant to
13 determining compliance with this part.

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

19 (3) Upon receipt of a completed claim pursuant to subsection
20 (2), the administrator shall make all of the following
21 determinations:

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

27 (b) Whether the work performed is necessary and appropriate

1 considering conditions at the site of the release.

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

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

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

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

13 (5) If the administrator determines under subsection (3) that
14 the work invoices included with the claim are necessary and
15 appropriate considering conditions at the site of the release and
16 reasonable in terms of cost and the owner or operator is eligible
17 for funding under this part, the administrator shall approve the
18 claim and notify the owner or operator who submitted the claim of
19 the approval. If the administrator determines that the work
20 described on the work invoices submitted was not necessary or
21 appropriate or the cost of the work is not reasonable, or that the
22 owner or operator is not eligible for funding under this part, the
23 administrator shall deny the claim or any portion of the work
24 invoices submitted and give notice of the denial to the owner or
25 operator who submitted the claim.

26 (6) The owner or operator may submit additional work invoices
27 to the administrator after approval of a claim under subsection

1 (5). Within 45 days after receipt of a work invoice, the
2 administrator shall make the following determinations:

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

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

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

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

17 (9) The administrator may approve a reimbursement for a work
18 invoice that was submitted by an owner or operator for corrective
19 action taken if the work invoice meets the requirements of this
20 part for an approved claim and an approved work invoice.

21 (10) Except as provided in subsection (11) or as otherwise
22 provided in this subsection, upon receipt of a payment voucher, the
23 state treasurer or the authority shall make a payment jointly to
24 the owner or operator ~~and the consultant~~ within 30 days if
25 sufficient money exists in the fund or a bond proceeds account.
26 ~~However, the owner or operator may submit to the fund administrator~~
27 ~~a signed affidavit stating that the consultant listed on a work~~

~~1 invoice has been paid in full. The affidavit shall list the work
2 invoice and claim to which the affidavit applies, a statement that
3 the owner or operator has mailed a copy of the affidavit by first
4 class mail to the consultant listed on the work invoice, and the
5 date that the affidavit was mailed to the consultant. The
6 department is not required to verify affidavits submitted under
7 this subsection. If, within 14 days after the affidavit was mailed
8 to the consultant under this subsection, the fund administrator has
9 not received an objection in writing from the consultant listed on
10 the work invoice, the state treasurer or the authority shall make
11 the payment directly to the owner or operator. If a check has
12 already been issued to the owner or operator and the consultant,
13 the owner or operator may return the original check to the fund
14 administrator along with the affidavit. If within 14 days after the
15 affidavit was mailed to the consultant the fund administrator has
16 not received an objection from the consultant listed on the check,
17 the state treasurer or the authority shall reissue a check to the
18 owner or operator. If a consultant objects to an affidavit received
19 under this subsection, and notifies the fund administrator in
20 writing within 14 days after the affidavit was mailed to the
21 consultant, the fund administrator shall notify the state treasurer
22 and the authority, and the state treasurer or the authority shall
23 issue or reissue the check to the owner or operator and the
24 consultant. The grounds for an objection by a consultant under this
25 subsection must be that the consultant has not been paid in full
26 and the objection must be made by affidavit. The state treasurer or
27 the authority shall issue checks under this subsection within 60~~

~~days after an affidavit has been received by the fund~~
~~administrator.~~ Once payment has been made under this section, the
fund is not liable for any claim on the basis of that payment.

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

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

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

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

(i) Well drilling, including monitoring wells.

(ii) Laboratory analysis.

(iii) Construction of treatment systems.

(iv) Removal of contaminated soil.

(v) Operation of treatment systems.

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

~~(c) A consultant may perform work activities only if the~~

~~consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the administrator prior to receiving bids from contractors.~~

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

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

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

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

~~— (5) Upon hiring a contractor, a consultant may mark up the contractor's work invoice only if the consultant pays the contractor and does the billing.~~

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

(5) ~~(7)~~ An owner or operator may receive funding under this part to implement a corrective action alternative that is not the

1 preferred corrective action alternative only if the owner or
2 operator pays the difference between the selected corrective action
3 alternative and the preferred corrective action alternative.

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

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

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

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

26 (i) Well drilling, including monitoring wells.

27 (ii) Laboratory analysis.

1 (iii) Construction of treatment systems.

2 (iv) Removal of contaminated soil.

3 (v) Operation of treatment systems.

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

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

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

14 (D) ~~(e)~~ The ~~consultant~~ **ELIGIBLE PERSON** shall notify the
15 department in writing of the bid accepted. If the lowest responsive
16 bid was not accepted, the ~~consultant~~ **ELIGIBLE PERSON** shall provide
17 sufficient justification to the department and receive concurrence
18 from the department before commencing work. Failure of the
19 department to provide a response within 21 days shall be considered
20 as concurrence.

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

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

27 (3) ~~(5)~~ After the ~~consultant~~ **ELIGIBLE PERSON** employs the

1 competitive bidding process described in this section, the ~~owner or~~
2 ~~operator~~ **ELIGIBLE PERSON** may hire contractors directly.

3 (4) ~~(6)~~ Removal of underground storage tank systems or
4 installation of new or upgraded equipment for the purpose of
5 attaining compliance with part 211, or work performed for any other
6 reason not related to the performance of part 213 corrective
7 actions, is not eligible for temporary reimbursement program
8 funding under this part.

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

12 (a) The eligible person ~~, and the consultant retained by the~~
13 ~~eligible person,~~ shall follow the procedures outlined in this
14 section and shall submit reports, work plans, feasibility analyses,
15 hydrogeological studies, and corrective action plans prepared under
16 part 213 to the department, and shall provide other information
17 required by the department relevant to determining compliance with
18 this part and part 213.

19 (b) The eligible person shall submit a work invoice to the
20 department, with an attached summary report of the work performed
21 under the invoice and results of the work performed, including, but
22 not limited to, laboratory results, soil boring logs, construction
23 logs, site investigation results, and other information that may be
24 requested by the department.

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

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

1 (ii) Contain complete information in accordance with the form
2 and the requirements of this section and as requested by the
3 department.

4 (iii) Be in an amount consistent with the requirements of
5 section 21556.

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

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

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

11 (c) Whether the eligible person is eligible to receive funding
12 under this part.

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

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

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

23 (5) The department shall keep records of approved
24 precertification applications and work invoices. If the eligible
25 person has not exceeded the allowable amount of expenditure
26 provided in sections 21556 and 21557, the department shall forward
27 an approved payment voucher to the state treasurer within 45 days

1 after approval of the work invoice.

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

~~the state treasurer, and the state treasurer shall issue or reissue the check to the eligible person and the consultant. The grounds for an objection by a consultant under this subsection shall be that the consultant has not been paid in full and the objection shall be made by affidavit. The state treasurer shall issue checks under this subsection within 60 days after an affidavit has been received by the department.~~ Once payment has been made under this section, the refined petroleum fund is not liable for any claim on the basis of that payment.

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

(8) Upon direction of the department, the state treasurer may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are violations of section 21548 or if necessary to assure acceptable completion of the corrective actions.

Enacting section 1. Sections 21304, 21541, 21542, 21543, and 21562 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21304, 324.21541, 324.21542, 324.21543, and 324.21562, are repealed.