

SENATE BILL No. 533

June 28, 2011, Introduced by Senators GREEN, PROOS, KOWALL, PAPPAGEORGE, MARLEAU and WALKER and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 21326 and 21327 (MCL 324.21326 and 324.21327).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21326. (1) Upon request of the department for the purpose
2 of ~~developing or assisting in the development of a rule,~~ conducting
3 an investigation, taking corrective action, or enforcing this part,
4 the owner or operator shall furnish the department with all
5 information about all of the following:

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

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

10 (c) Any releases and investigations of releases.

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

4 (a) Inspecting an underground storage tank system.

5 (b) Obtaining samples of any substance from an underground
6 storage tank system.

7 (c) Requiring and supervising the conduct of monitoring or
8 testing of an underground storage tank system, its associated
9 equipment, or contents.

10 (d) Conducting monitoring or testing of an underground storage
11 tank system in cases where there is no identified responsible
12 party.

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

15 (f) Taking corrective action.

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

18 (3) All inspections and investigations undertaken by the
19 department under this section shall be commenced and completed with
20 reasonable promptness.

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

23 (a) Petition a court of appropriate jurisdiction for a warrant
24 to authorize access to any private or public property to implement
25 this part.

26 (b) Commence a civil action pursuant to section 21323 for an
27 order authorizing the department to enter any private or public

1 property as necessary to implement this part.

2 Sec. 21327. (1) ~~The~~ WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF
3 THE AMENDATORY ACT THAT AMENDED THIS SECTION, THE department ~~may~~
4 SHALL promulgate rules ~~as necessary to~~ implement this part.

5 (2) THE RULES PROMULGATED BY THE DEPARTMENT SHALL ADOPT BY
6 REFERENCE THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)
7 DOCUMENTS ENTITLED STANDARD GUIDE FOR RISK-BASED CORRECTIVE ACTION
8 APPLIED AT PETROLEUM RELEASE SITES, DESIGNATION E 1739-95; STANDARD
9 GUIDE FOR DEVELOPMENT OF CONCEPTUAL SITE MODELS AND REMEDIATION
10 STRATEGIES FOR LIGHT NONAQUEOUS-PHASE LIQUIDS RELEASED TO THE
11 SUBSURFACE, DESIGNATION E 2531-06; AND GUIDE FOR RISK-BASED
12 CORRECTIVE ACTION, DESIGNATION E 2801.

13 (3) THE DEPARTMENT SHALL NOT PROMULGATE A RULE UNDER THIS PART
14 THAT IS MORE STRINGENT THAN THE APPLICABLE FEDERAL STANDARD.

15 (4) THE DEPARTMENT SHALL NOT PROMULGATE A RULE OR PROMULGATE A
16 REVISION TO A RULE UNDER THIS PART UNLESS IT HAS CONDUCTED A STUDY
17 TO DETERMINE WHETHER THE BENEFIT TO PUBLIC HEALTH, SAFETY, AND
18 WELFARE AND THE ENVIRONMENT EXCEEDS THE COST OF IMPLEMENTING THE
19 PROPOSED RULE BY OWNERS OR OPERATORS. THE RESULTS OF THE STUDY
20 CONDUCTED UNDER THIS SECTION SHALL BE INCLUDED IN THE NOTICE
21 REQUIRED UNDER SECTION 41 OF THE ADMINISTRATIVE PROCEDURES ACT OF
22 1969, 1969 PA 306, MCL 24.241.

23 (5) IF A RULE PROPOSED FOR ADOPTION UNDER THIS PART
24 ESTABLISHES OR MODIFIES A CLEANUP CRITERION FOR CORRECTIVE ACTION,
25 THE DEPARTMENT SHALL DEMONSTRATE THAT THE PROPOSED CLEANUP
26 CRITERION COMPLIES WITH SECTION 21304A(3).

27 (6) A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL

1 MEMORANDUM, OR FORM WITH INSTRUCTIONS PUBLISHED UNDER THIS PART
2 SHALL NOT BE GIVEN THE FORCE AND EFFECT OF LAW BY THE DEPARTMENT
3 AND IS CONSIDERED MERELY ADVISORY. THE DEPARTMENT SHALL NOT RELY
4 UPON A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
5 MEMORANDUM, OR FORM WITH INSTRUCTIONS TO SUPPORT THE DEPARTMENT'S
6 DECISION TO ACT OR REFUSE TO ACT. A COURT SHALL NOT RELY UPON A
7 GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
8 MEMORANDUM, OR FORM WITH INSTRUCTIONS TO UPHOLD THE DEPARTMENT'S
9 DECISION.

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

13 (a) Senate Bill No. 528.

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15 (b) Senate Bill No. 529.

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17 (c) Senate Bill No. 531.

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19 (d) Senate Bill No. 530.

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21 (e) Senate Bill No. 532.

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