

Act No. 111  
Public Acts of 2012  
Approved by the Governor  
May 1, 2012  
Filed with the Secretary of State  
May 1, 2012  
EFFECTIVE DATE: May 1, 2012

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Senators Meekhof, Proos, Kowall, Pappageorge, Marleau and Walker

# **ENROLLED SENATE BILL No. 531**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 21302 and 21303 (MCL 324.21302 and 324.21303), section 21302 as amended by 1995 PA 22 and section 21303 as amended by 1996 PA 116.

*The People of the State of Michigan enact:*

Sec. 21302. As used in this part:

(a) "Air" means ambient or indoor air at the point of exposure.

(b) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312.

(c) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a site. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property.

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

(e) "Capillary fringe" means the portion of the aquifer above an unconfined saturated zone in which groundwater is drawn upward by capillary force and can include the presence of LNAPL.

(f) "Consultant" means a person that meets the requirements set forth in section 21325.

(g) "Contamination" means the presence of a regulated substance in soil, surface water, or groundwater or air that has been released from an underground storage tank system at a concentration exceeding the level set forth in the RCBA tier I screening levels established under section 20120a(1)(a) and (b).

(h) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment from an underground storage tank system that is necessary under this part to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(i) “DNAPL” means a dense nonaqueous-phase liquid with a specific gravity greater than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. DNAPL encompasses all potential occurrences of DNAPL.

(j) “Grab sample” means a single sample or measurement taken at a specific time or over as short a period as feasible.

(k) “Groundwater” means water below the land surface in the zone of saturation and capillary fringe.

(l) “Groundwater not in an aquifer” means the saturated formation below the land surface that yields groundwater at an insignificant rate considering the local and regional hydrogeology and is not likely in hydraulic communication with groundwater in an aquifer. This includes water trapped or isolated in fill material in an underground storage tank or equivalent basin.

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

(n) “LNAPL” means a light nonaqueous-phase liquid having a specific gravity less than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water, and the term encompasses all potential occurrences of LNAPL.

(o) “Local unit of government” means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(p) “Low flow sampling” means minimal drawdown groundwater sampling procedures as described in the United States environmental protection agency, office of research and development, office of solid waste and emergency response, EPA/540/S-95/504, December, 1995, EPA groundwater issue.

(q) “Migrating NAPL” means NAPL that is observed to spread or expand laterally or vertically or otherwise result in an increased volume of the NAPL extent, usually indicated by time series data or observation. Migrating NAPL does not include NAPL that appears in a well within the historical extent of the NAPL due to a fluctuating water table.

(r) “Mobile NAPL” means NAPL that exceeds residual saturation, and includes migrating NAPL, but not all mobile NAPL is migrating NAPL.

Sec. 21303. As used in this part:

(a) “NAPL” means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) “Operator” means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system and who is liable under part 213.

(c) “Owner” means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 213.

(d) “Property” means real estate that has been impacted by a release from an underground storage tank system.

(e) “Qualified underground storage tank consultant” means a person who meets the requirements established in section 21325.

(f) “RBCA” means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(g) “Regulated substance” means any of the following:

(i) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

(ii) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(iii) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 USC 7412.

(h) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) “Residual NAPL saturation” means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(j) “Risk-based screening level” or “RBSL” means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(k) “Saturated zone” means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(l) “Site” means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(m) “Surface water” means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(i) The Great Lakes and their connecting waters.

(ii) All inland lakes.

(iii) Rivers.

(iv) Streams.

(v) Impoundments.

(n) “Site-specific target level” or “SSTL” means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

(o) “Threat of release” or “threatened release” means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(p) “Tier I”, “tier II”, and “tier III” mean those terms as they are used in RBCA.

(q) “Underground storage tank system” means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

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

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

(iii) A septic tank.

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

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

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

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

(vi) A storm water or wastewater collection system.

(vii) A flow-through process tank.

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

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

(x) Any pipes connected to a tank that is described in subdivisions (i) to (ix).

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

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

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

(xiv) An underground storage tank system that has a capacity of 110 gallons or less.

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

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

(r) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

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

(a) Senate Bill No. 528.

(b) Senate Bill No. 529.

(c) Senate Bill No. 530.

(d) Senate Bill No. 532.

(e) Senate Bill No. 533.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved .....

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Governor