

SENATE BILL No. 1081

September 23, 2014, Introduced by Senator ROBERTSON 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 21502, 21503, 21508, and 21509 (MCL 324.21502,
324.21503, 324.21508, and 324.21509), sections 21502 and 21503 as
amended by 2012 PA 113 and section 21508 as amended by 2004 PA 390.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21502. As used in this part:

2 (a) "Administrator" means the fund administrator provided for
3 in section 21513.

4 (b) "Approved claim" means a claim that is approved pursuant
5 to section 21515.

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

8 (d) "Board of directors" means the board of directors of the

1 authority.

2 (e) "Bond proceeds account" means the account or fund to which
3 proceeds of bonds or notes issued under this part have been
4 credited.

5 (f) "Bonds or notes" means the bonds, notes, commercial paper,
6 other obligations of indebtedness, or any combination of these,
7 issued by the authority pursuant to this part.

8 (G) "BULK PLANT" MEANS A REFINED PETROLEUM STORAGE AND
9 DISTRIBUTION FACILITY THAT IS NOT A TERMINAL AND FROM WHICH REFINED
10 PETROLEUM MAY BE WITHDRAWN BY A TANK WAGON, A TRANSPORT TRUCK, OR A
11 MARINE VESSEL.

12 (H) "BULK TRANSFER" MEANS A TRANSFER OF REFINED PETROLEUM FROM
13 1 LOCATION TO ANOTHER BY PIPELINE TENDER OR MARINE DELIVERY WITHIN
14 THE BULK TRANSFER/TERMINAL SYSTEM, INCLUDING, BUT NOT LIMITED TO,
15 ALL OF THE FOLLOWING TRANSFERS:

16 (i) A MARINE VESSEL MOVEMENT OF REFINED PETROLEUM FROM A
17 REFINERY OR TERMINAL TO A TERMINAL.

18 (ii) PIPELINE MOVEMENTS OF REFINED PETROLEUM FROM A REFINERY OR
19 TERMINAL TO A TERMINAL.

20 (iii) BOOK TRANSFERS OF REFINED PETROLEUM WITHIN A TERMINAL
21 BETWEEN LICENSED SUPPLIERS BEFORE COMPLETION OF REMOVAL ACROSS THE
22 TERMINAL RACK.

23 (iv) TWO-PARTY EXCHANGES BETWEEN LICENSED SUPPLIERS.

24 (I) "BULK TRANSFER/TERMINAL SYSTEM" MEANS THE REFINED
25 PETROLEUM DISTRIBUTION SYSTEM CONSISTING OF REFINERIES, PIPELINES,
26 TERMINALS, AND MARINE VESSELS. REFINED PETROLEUM IN A REFINERY,
27 PIPELINE, TERMINAL, OR MARINE VESSEL TRANSPORTING REFINED PETROLEUM

1 TO A REFINERY OR TERMINAL IS IN THE BULK TRANSFER/TERMINAL SYSTEM.
2 REFINED PETROLEUM IN A FUEL STORAGE FACILITY, INCLUDING, BUT NOT
3 LIMITED TO, A BULK PLANT THAT IS NOT PART OF A REFINERY OR
4 TERMINAL, IN THE FUEL SUPPLY TANK OF ANY ENGINE OR MOTOR VEHICLE,
5 IN A MARINE VESSEL TRANSPORTING REFINED PETROLEUM TO A FUEL STORAGE
6 FACILITY THAT IS NOT IN THE BULK TRANSFER/TERMINAL SYSTEM, OR IN
7 ANY TANK CAR, RAIL CAR, TRAILER, TRUCK, OR OTHER EQUIPMENT SUITABLE
8 FOR GROUND TRANSPORTATION IS NOT IN THE BULK TRANSFER/TERMINAL
9 SYSTEM.

10 (J) ~~(g)~~ "Claim" means the submission by the owner or operator
11 or his or her representative of documentation on an application
12 requesting payment from the fund. A claim shall include, at a
13 minimum, a completed and signed claim form and the name, address,
14 telephone number, and federal tax identification number of the
15 owner or operator.

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

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

24 (M) ~~(j)~~ "Co-pay amount" means the co-pay amount provided for
25 in section 21514.

26 (N) ~~(k)~~ "Corrective action" means the investigation,
27 assessment, cleanup, removal, containment, isolation, treatment, or

1 monitoring of regulated substances released into the environment or
2 the taking of such other actions as may be necessary to prevent,
3 minimize, or mitigate injury to the public health, safety, or
4 welfare, the environment, or natural resources.

5 (O) ~~(H)~~ "Department" means the department of environmental
6 quality.

7 (P) ~~(m)~~ "Eligible person" means an owner or operator who meets
8 the eligibility requirements in section 21556 or 21557 and received
9 approval of his or her precertification application by the
10 department.

11 (Q) "EXCLUDED LIQUID" MEANS THAT TERM AS DEFINED IN 26 CFR
12 48.4081-1.

13 (R) "EXPORT" MEANS TO OBTAIN REFINED PETROLEUM IN THIS STATE
14 FOR SALE OR OTHER DISTRIBUTION OUTSIDE OF THIS STATE. REFINED
15 PETROLEUM DELIVERED OUTSIDE OF THIS STATE BY OR FOR THE SELLER
16 CONSTITUTES AN EXPORT BY THE SELLER, AND REFINED PETROLEUM
17 DELIVERED OUTSIDE OF THIS STATE BY OR FOR THE PURCHASER CONSTITUTES
18 AN EXPORT BY THE PURCHASER.

19 (S) "EXPORTER" MEANS A PERSON WHO EXPORTS REFINED PETROLEUM.

20 (T) ~~(n)~~ "Financial responsibility requirements" means the
21 financial responsibility for taking corrective action and for
22 compensating third parties for bodily injury and property damage
23 caused by a release from an underground storage tank system that
24 the owner or operator of an underground storage tank system must
25 demonstrate under part 211 and the rules promulgated under that
26 part.

27 (U) ~~(o)~~ "Fund" means the Michigan underground storage tank

1 financial assurance fund created in section 21506.

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

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

14 (X) ~~(r)~~—"Location" means a facility or parcel of property
15 where petroleum underground storage tank systems are registered
16 pursuant to part 211.

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

21 (Z) ~~(t)~~—"Owner" means a person, other than a regulated
22 financial institution, who, at the time of discovery of a release,
23 held a legal, equitable, or possessory interest of any kind in an
24 underground storage tank system or in the property on which an
25 underground storage tank system is located, including, but not
26 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
27 includes a person to whom an approved claim is assigned or

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

14 (AA) ~~(u)~~ "Oxygenate" means an organic compound containing
15 oxygen and having properties as a fuel that are compatible with
16 petroleum, including, but not limited to, ethanol, methanol, or
17 methyl tertiary butyl ether (MTBE).

18 Sec. 21503. As used in this part:

19 (a) "Payment voucher" means a form prepared by the department
20 that specifies payment authorization by the department to the
21 department of treasury.

22 (b) "Petroleum" means crude oil, crude oil fractions, and
23 refined petroleum fractions including gasoline, kerosene, heating
24 oils, and diesel fuels.

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

27 (d) "Precertification application" means the application

1 submitted by an owner or operator seeking the department's
2 eligibility determination for reimbursement for the costs of
3 corrective action from the temporary reimbursement program.

4 (e) "Refined petroleum" means aviation gasoline, middle
5 distillates, jet fuel, kerosene, gasoline, residual oils, and any
6 oxygenates that have been blended with any of these. **REFINED**
7 **PETROLEUM INCLUDES TRANSMIX. REFINED PETROLEUM DOES NOT INCLUDE**
8 **EXCLUDED LIQUIDS.**

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

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

13 (h) "Refined petroleum product cleanup program" means the
14 refined petroleum product cleanup program established by law.

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

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

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

26 (l) "Site" means a location where a release has occurred or a
27 threat of a release exists from an underground storage tank system,

1 excluding any location where corrective action was completed which
2 satisfies the cleanup criteria for unrestricted residential use
3 under part 213.

4 (m) "Temporary reimbursement program" means the program
5 established in section 21554.

6 (N) "TERMINAL" MEANS A REFINED PETROLEUM STORAGE AND
7 DISTRIBUTION FACILITY THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

8 (i) IS REGISTERED AS A QUALIFIED TERMINAL BY THE INTERNAL
9 REVENUE SERVICE.

10 (ii) IS SUPPLIED BY A PIPELINE OR A MARINE VESSEL.

11 (iii) HAS A RACK FROM WHICH REFINED PETROLEUM MAY BE REMOVED.

12 (O) "TRANSMIX" MEANS THE MIXED PRODUCT THAT RESULTS FROM THE
13 BUFFER OR INTERFACE OF 2 DIFFERENT PRODUCTS IN A PIPELINE SHIPMENT,
14 OR A MIXTURE OF 2 DIFFERENT PRODUCTS WITHIN A REFINERY OR TERMINAL
15 THAT RESULTS IN AN OFF-GRADE MIXTURE.

16 (P) ~~(n)~~—"Underground storage tank system" means an existing
17 tank or combination of tanks, including underground pipes connected
18 to the tank or tanks, which is or was used to contain an
19 accumulation of regulated substances, and is not currently being
20 used for any other purpose, and the volume of which, including the
21 volume of the underground pipes connected to the tank or tanks, is
22 10% or more beneath the surface of the ground. An underground
23 storage tank system includes an underground storage tank that is
24 properly closed in place pursuant to part 211 and rules promulgated
25 under that part. An underground storage tank system does not
26 include any of the following:

27 (i) A farm or residential tank of 1,100 gallons or less

1 capacity used for storing motor fuel for noncommercial purposes.

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

4 (iii) A septic tank.

5 (iv) A pipeline facility, including gathering lines regulated
6 under 49 USC 60101 to 60137.

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

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

9 (vii) A flow-through process tank.

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

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

15 (x) Any pipes connected to a tank described in subparagraphs
16 (i) to (ix).

17 (xi) An underground storage tank system holding hazardous
18 wastes listed or identified under 42 USC 6921 to 6939f, or a
19 mixture of such hazardous waste and other regulated substances.

20 (xii) A wastewater treatment tank system that is part of a
21 wastewater treatment facility regulated under 33 USC 1317(b) or 33
22 USC 1342.

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

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

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

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

5 (xvii) A wastewater treatment tank system.

6 (xviii) An underground storage tank system containing
7 radioactive material that is regulated under the atomic energy act
8 of 1954, 42 USC 2011 to 2297h-13.

9 (xix) An underground storage tank system that is part of an
10 emergency generator system at nuclear power generation facilities
11 regulated by the nuclear regulatory commission under 10 CFR part
12 50.

13 (xx) Airport hydrant fuel distribution systems.

14 (xxi) Underground storage tank systems with field-constructed
15 tanks.

16 **(Q)** ~~(e)~~ "Work invoice" means an original billing acceptable to
17 the administrator and signed by the owner or operator that includes
18 all of the following:

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

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

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

25 (iv) A statement that the owner or operator employed a
26 documented sealed competitive bidding process for any contract
27 award exceeding \$5,000.00.

1 (v) If the owner or operator did not accept the lowest
2 responsive bid received, a specific reason why the lowest
3 responsive bid was not accepted.

4 (vi) Upon request of the administrator, a list of all bids
5 received.

6 (vii) Proof of payment of the co-pay amount. ~~as required under~~
7 ~~section 21514.~~

8 Sec. 21508. (1) An environmental protection regulatory fee is
9 imposed on all refined petroleum products sold for resale in this
10 state or consumption in this state. The regulatory fee shall be
11 charged for capacity utilization of underground storage tanks
12 measured on a per gallon basis. The regulatory fee shall be charged
13 against all refined petroleum products sold for resale in this
14 state or consumption in this state so as to not exclude any
15 products that may be stored in an underground tank at any point
16 after the petroleum is refined. The regulatory fee shall be 7/8
17 cent per gallon for each gallon of refined petroleum sold for
18 resale in this state or consumption in this state, with the per
19 gallon charge being a direct measure of capacity utilization of an
20 underground storage tank system. **THE REGULATORY FEE SHALL NOT BE**
21 **IMPOSED ON REFINED PETROLEUM PRODUCTS THAT ARE TRANSFERRED WITHIN**
22 **THE BULK TRANSFER/TERMINAL SYSTEM. THE REGULATORY FEE SHALL NOT BE**
23 **IMPOSED ON REFINED PETROLEUM PRODUCTS THAT ARE EXPORTED FROM THIS**
24 **STATE.**

25 (2) The department of treasury shall precollect regulatory
26 fees from persons who refine petroleum in this state for resale in
27 this state or consumption in this state and persons who import

1 refined petroleum into this state for resale in this state or
2 consumption in this state. The department of treasury shall collect
3 regulatory fees that can be collected at the same time as the sales
4 tax under section 6a of the general sales tax act, 1933 PA 167, MCL
5 205.56a, at that time. The remainder of the regulatory fees shall
6 be collected in the manner determined by the state treasurer.

7 (3) A public utility with more than 500,000 customers in this
8 state is exempt from any fee or assessment imposed under this part
9 if that fee or assessment is imposed on petroleum used by that
10 public utility for the generation of steam or electricity.

11 ~~(4) Beginning on the effective date of the 2004 amendatory act~~
12 ~~that amended this section, all~~ **ALL** regulatory fees collected
13 pursuant to this part shall be deposited into the refined petroleum
14 fund. ~~created in section 21506a.~~

15 (5) Consistent with the March 31, 1995 determination by the
16 state treasurer that revenue will not be sufficient to pay expected
17 expenditures, and consistent with the April 3, 1995 notice of the
18 fund administrator pursuant to subsection (6), funding is no longer
19 available under this part for new claims, work invoices, and
20 requests for indemnification received after 5 p.m. on June 29,
21 1995. Claims, work invoices, and requests for indemnification
22 received after 5 p.m. on June 29, 1995 are not eligible for funding
23 under this part. Work invoices and requests for indemnification
24 received prior to 5 p.m. on June 29, 1995 may be paid to the extent
25 money is available in the fund as provided in this part.

26 (6) If the state treasurer determines that fund revenues will
27 not be sufficient to pay expected expenditures from the fund, the

1 state treasurer shall notify the administrator, and 90 days after
2 this notification has been given the administrator shall not accept
3 any new work invoices or requests for indemnification. Upon
4 receiving this notification from the state treasurer, the
5 administrator shall notify by certified mail the owners and
6 operators of petroleum underground storage tank systems registered
7 under part 211 that funding under this part will no longer be
8 available for new claims after the 90-day period has expired.
9 However, work invoices and requests for indemnification that were
10 submitted to the administrator prior to or during this 90-day
11 period may be paid to the extent money is available in the fund as
12 provided in this part.

13 (7) The department of treasury may audit, enforce, collect,
14 and assess the fee imposed by this part in the same manner and
15 subject to the same requirements as revenues collected pursuant to
16 1941 PA 122, MCL 205.1 to 205.31.

17 Sec. 21509. ~~(1)~~ Notwithstanding any other provision in this
18 part, regulatory fees shall be calculated and paid upon gross or
19 metered gallons with respect to all "light" petroleum products.
20 With respect only to "heavy" petroleum products (No. 4, No. 5, No.
21 6 residual oils), regulatory fees shall be calculated and paid upon
22 net or temperature-corrected gallons.

23 ~~—— (2) Notwithstanding any other provision in this part, if a~~
24 ~~person receives refined petroleum products in this state for resale~~
25 ~~in this state or consumption in this state pursuant to a product~~
26 ~~exchange agreement, the department of treasury shall collect the~~
27 ~~regulatory fees from that person. As used in this subsection,~~

1 ~~"product exchange agreement" means an agreement between buyers and~~
2 ~~sellers of refined petroleum products in which refined petroleum~~
3 ~~products in bulk quantity are made available to a person solely in~~
4 ~~consideration of that person making available a like volume of~~
5 ~~refined petroleum products to the other party at some other~~
6 ~~location.~~