

Act No. 416  
Public Acts of 2014  
Approved by the Governor  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Senator Green

# **ENROLLED SENATE BILL No. 791**

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 protect the people’s right to hunt and fish; 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 the part heading to part 215 and sections 21502, 21503, 21504, 21505, 21506a, 21508, 21509, 21510, 21515, 21516, 21518, 21519, 21521, 21523, 21524, 21525, 21526, 21527, 21528, 21531, 21546, and 21548 (MCL 324.21502, 324.21503, 324.21504, 324.21505, 324.21506a, 324.21508, 324.21509, 324.21510, 324.21515, 324.21516, 324.21518, 324.21519, 324.21521, 324.21523, 324.21524, 324.21525, 324.21526, 324.21527, 324.21528, 324.21531, 324.21546, and 324.21548), sections 21502, 21503, 21506a, 21510, and 21515 as amended by 2012 PA 113, sections 21504, 21505, 21508, 21546, and 21548 as amended by 2004 PA 390, and section 21528 as amended by 2009 PA 98, and by adding sections 21506b, 21510a, 21510b, and 21510c; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

PART 215

**UNDERGROUND STORAGE TANK  
CORRECTIVE ACTION FUNDING**

Sec. 21502. As used in this part:

- (a) “Administrator” means the administrator of the authority as provided for in section 21525.
- (b) “Affiliate” means a person that directly, or indirectly through 1 or more intermediaries, controls the person specified.
- (c) “Approved claim” means a claim that is approved pursuant to section 21515.
- (d) “Authority” means the underground storage tank authority created in section 21523.
- (e) “Board of directors” or “board” means the board of directors of the authority.

(f) “Bond proceeds account” means the account within the fund to which proceeds of bonds or notes issued under this part have been credited.

(g) “Bonds or notes” means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the finance authority pursuant to this part.

(h) “Bulk transfer” means a transfer of refined petroleum or a refined petroleum product from, or purchase for resale by, a refiner, pipeline terminal operator, supplier, or marine terminal operator to or from another refiner, pipeline terminal operator, supplier, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of refined petroleum or a refined petroleum product from 1 or more marine vessel movements of refined petroleum or a refined petroleum product. Refined petroleum or a refined petroleum product in a refinery, pipeline, terminal, or marine vessel transporting refined petroleum or a refined petroleum product to a refinery or terminal is in the bulk transfer terminal system. Notwithstanding anything to the contrary in this subdivision, refined petroleum or a refined petroleum product transferred or purchased for resale by a refiner, pipeline terminal operator, supplier, or marine terminal operator must be delivered to or otherwise remain within the bulk transfer terminal system prior to removal across the rack in order to constitute a bulk transfer.

(i) “Bulk transfer terminal system” means the refined petroleum or refined petroleum product distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes refined petroleum or refined petroleum product storage tanks and refined petroleum or refined petroleum product storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

(j) “Claim” means the submission by the owner or operator or his or her representative of documentation on an application requesting payment by the authority. A claim shall include, at a minimum, a completed and signed claim form and the name, address, telephone number, and federal tax identification number of the owner or operator.

(k) “Claim limit” means \$1,000,000.00 for all claims of owners or operators and their affiliates during a claim period for owners and operators of 1 to 100 refined petroleum underground storage tanks or \$2,000,000.00 for all claims of owners or operators and their affiliates during a claim period for owners or operators of more than 100 refined petroleum underground storage tanks.

(l) “Claim period” means a 1-year period commencing on October 1 of each year and ending on September 30 the following year.

(m) “Controls” means the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or interests, by contract, other than a commercial contract for goods or nonmanagement services, by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(n) “Corrective action” means that term as it is defined in section 21302.

(o) “Deductible amount” means the amount of corrective action costs or indemnification costs that are required to be paid by an owner or operator as provided in section 21510a before the owner or operator is eligible to submit a claim under this part.

(p) “Department” means the department of environmental quality.

(q) “Eligible person” means an owner or operator who meets the eligibility requirements under this part to submit a claim.

(r) “Excluded liquid” means that term as defined in 26 CFR 48.4081-1.

(s) “Finance authority” means the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(t) “Financial responsibility requirements” means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from a refined petroleum underground storage tank system that the owner or operator of a refined petroleum underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(u) “Fund” means the underground storage tank cleanup fund created in section 21506b and includes the bond proceeds account established within the fund.

(v) “Indemnification” means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan administrative code.

(w) “Location” means a parcel of property where refined petroleum underground storage tank systems are registered pursuant to part 211.

(x) “Marine terminal operator” means a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.

(y) “Operator” means that term as it is defined in section 21303 or a person to whom an approved claim has been assigned or transferred.

(z) “Owner” means that term as it is defined in section 21303.

(aa) “Oxygenate” means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

Sec. 21503. As used in this part:

(a) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) “Pipeline terminal operator” means a person that receives and stores refined petroleum or a refined petroleum product in tanks and other equipment used in receiving and storing refined petroleum or a refined petroleum product from interstate and intrastate pipelines, pending wholesale bulk reshipment.

(c) “Qualifying expenditures” means an expenditure for a specific activity that does not exceed the allowable payment for that activity as detailed on the schedule of costs.

(d) “Rack” means a mechanism for delivering refined petroleum or a refined petroleum product from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.

(e) “Refined petroleum” means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these. Refined petroleum includes refined petroleum products and transmix. Refined petroleum does not include excluded liquids.

(f) “Refined petroleum fund” means the refined petroleum fund established under section 21506a.

(g) “Refined petroleum underground storage tank” means an underground storage tank system used for the storage of refined petroleum.

(h) “Refiner” means a person that meets both of the following:

(i) Manufactures or produces refined petroleum or a refined petroleum product at a refinery.

(ii) Is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.

(i) “Refinery” means a facility used by a refiner to produce refined petroleum or a refined petroleum product from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons by any process involving substantially more than the blending of refined petroleum and from which refined petroleum or a refined petroleum product may be removed by pipeline or marine vessel or at a rack.

(j) “Regulated financial institution” means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(k) “Regulatory fee” means the environmental protection regulatory fee imposed under section 21508.

(l) “Release” means that term as it is defined in section 21303.

(m) “Removal” or “removed” means a physical transfer other than by evaporation, loss, or destruction of refined petroleum or a refined petroleum product from a refiner, pipeline terminal operator, or marine terminal operator.

(n) “Schedule of costs” means the list of allowable reimbursement amounts that may be paid on a claim, as established in section 21510b.

(o) “Site” means that term as it is defined in section 21303.

(p) “Supplier” means a supplier or permissive supplier licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(q) “Tank wagon” means a straight truck having 1 or more compartments other than the fuel supply tank designed or used to carry fuel.

(r) “Terminal” means a refined petroleum or refined petroleum products storage and distribution facility that meets all of the following requirements:

(i) Is registered as a qualified terminal by the internal revenue service.

(ii) Is supplied by a pipeline or a marine vessel.

(iii) Has a rack from which refined petroleum or refined petroleum products may be removed.

(s) “Transmix” means the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a refinery or terminal that results in an off-grade mixture.

(t) “Transport truck” means a semitrailer combination rig designed or used for the purpose of transporting refined petroleum or a refined petroleum product over the public roads or highways.

(u) "Two-party exchange" means a transaction, including a book transfer, in which refined petroleum or a refined petroleum product is transferred from 1 supplier to another supplier and to which all of the following apply:

(i) The transaction includes a transfer of refined petroleum or a refined petroleum product from the person that holds the original inventory position for the refined petroleum or refined petroleum product in storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator.

(ii) The exchange transaction is completed before removal across the rack by the receiving supplier.

(iii) The refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the refined petroleum or refined petroleum product across a rack for purposes of reporting the transaction to the department under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(v) "Underground storage tank system" means that term as it is defined in section 21303.

Sec. 21504. The objectives of this part are to fund corrective actions to address releases from refined petroleum underground storage tank systems, to assist owners and operators of refined petroleum underground storage tank systems in meeting their financial responsibility requirements pursuant to part 211, and to achieve compliance with part 213.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. The purpose of this part and of the authority created by this part is to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, and to assist in the financing of corrective actions due to releases from refined petroleum underground storage tank systems.

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

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

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

(4) Money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) Corrective actions performed by the department pursuant to section 21320.

(b) The reasonable costs of the department in administering the refined petroleum fund and implementing part 213.

(c) Until December 31, 2016, for gasoline inspection programs under both of the following:

(i) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.635.

(ii) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(d) Other purposes as determined by the legislature.

Sec. 21506b. (1) The underground storage tank cleanup fund is created within the state treasury. The state treasurer shall establish a bond proceeds account within the fund and may establish procedures for accounting for deposits and expenditures from the bond proceeds account.

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

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

(4) The authority shall be the administrator of the fund for auditing purposes.

(5) The authority and the finance authority shall expend money from the fund, upon appropriation, only for the following purposes:

(a) As a first priority, to pay principal and interest due on bonds or notes issued by the finance authority pursuant to this part, plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution, indenture, or other agreement of the finance authority.

(b) For the reasonable administrative cost of implementing this part incurred by the department, the department of treasury, the department of attorney general, and the finance authority. Administrative costs include the actual and necessary expenses incurred by the finance authority and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any

year. Costs incurred by the finance authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) To pay approved claims as provided for in this part.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of refined petroleum underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in a refined petroleum underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of a refined underground storage tank system. Beginning January 1, 2015, the regulatory fee shall not be imposed on a bulk transfer of or a 2-party exchange involving refined petroleum or refined petroleum products.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

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

(4) Beginning on the effective date of the 2014 amendatory act that amended this section, all regulatory fees collected pursuant to this part during each state fiscal year shall be deposited as follows:

(a) The first \$20,000,000.00 that is collected shall be deposited into the fund.

(b) Following the deposit under subdivision (a), all money collected shall be deposited into the refined petroleum fund.

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

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

(2) Notwithstanding any other provision in this part, until January 1, 2015, if a person receives refined petroleum products in this state for resale in this state or consumption in this state pursuant to a product exchange agreement, the department of treasury shall collect the regulatory fees from that person. As used in this subsection, "product exchange agreement" means an agreement between buyers and sellers of refined petroleum products in which refined petroleum products in bulk quantity are made available to a person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.

Sec. 21510. (1) An owner or operator is eligible to receive money from the authority for corrective action or indemnification due to a release from a refined petroleum underground storage tank system only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after the effective date of the 2014 amendatory act that amended this section.

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

(c) The owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

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

(e) The claim is not for a release from a refined petroleum underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act.

(f) The owner or operator has maintained financial responsibility requirements for the deductible amount.

(g) The owner or operator has paid the deductible amount.

(h) The owner or operator is otherwise eligible to receive money from the authority under this part.

(i) The total amount of expenditures, including the deductible amount, does not exceed the claim limit.



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

- (a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part.
- (b) The release is sudden and immediate.
- (c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.
- (d) The owner or operator reported the release to the department within 24 hours after its discovery.

(3) Either the owner or the operator may receive money from the authority under this part for an occurrence, but not both.

(4) An owner or operator that is a public utility with more than 500,000 customers in this state is ineligible to receive money from the authority for corrective action or indemnification associated with a release from a refined petroleum underground storage tank system used to supply refined petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the authority under this part for a release at a location, the owner and operator are not eligible to receive money from the authority for a subsequent release at the same location unless the owner or operator has done either or both of the following:

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

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

(6) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the authority to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(i).

(7) An owner or operator who discovers a subsequent release at the same location as an initial release following compliance with subsection (5)(b) may receive money from the authority to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, and if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(i).

(8) An owner or operator may submit to the authority a request for a determination that the owner or operator would be eligible for funding under this part in the event of a release from a refined petroleum underground storage tank system. Upon receipt of a request under this subsection, the authority shall make a determination and provide notice of that determination, in writing, to the owner or operator. The notice may contain conditions for maintenance of that eligibility.

Sec. 21510a. (1) Prior to submitting a claim under this part, an owner or operator is responsible for a deductible amount as follows:

(a) Subject to subdivision (b), \$50,000.00 per claim.

(b) If the owner or operator or its affiliate owns or operates fewer than 8 refined petroleum underground storage tanks and pays the authority an annual fee of \$500.00 per refined petroleum underground storage tank, \$15,000.00 per claim. For purposes of this subdivision, each compartment of a multiple compartment refined petroleum underground storage tank is considered a refined petroleum underground storage tank for purposes of calculating the annual fee.

(2) The due date for the annual fee paid pursuant to subsection (1)(b) shall be set by the authority.

(3) The deductible amount applies to each claim. However, 2 or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be considered a single claim and be subject to 1 claim limit and 1 deductible amount. Any claim which takes place over 2 or more claim periods shall be subject to 1 claim limit and 1 deductible amount.

(4) An owner or operator that submits a claim under section 21515 shall include work invoices or other evidence that the deductible amount described in subsection (1) has been met. The expenses toward meeting the deductible amount shall be documented and shall comply with the following:

(a) Expenses for items listed in the schedule of costs shall be at or below the allowable reimbursement amount listed in the schedule of costs.

(b) Expenses for items that are not listed in the schedule of costs shall be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the authority.

Sec. 21510b. (1) The authority shall establish a schedule of costs that itemizes corrective actions that are generally conducted at a site and lists an allowable reimbursement amount that may be paid for each corrective action as part of a claim under this part. If the authority determines that costs for particular corrective actions vary in different regions of the state, the authority may establish allowable reimbursement amounts that reflect regional differences.

(2) The authority shall annually review and update the schedule of costs as necessary or appropriate.

(3) The department shall post the schedule of costs and any updates to the schedule of costs on the department's website.

Sec. 21510c. A claim shall not be approved by the authority for any of the following:

(a) A release that was expected or intended by an owner or operator, or an employee of an owner or operator.

(b) Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.

(c) A claim made by an owner or operator against any other person that is also an owner or operator of the refined petroleum underground storage tank system.

(d) A release caused by, based upon, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

(e) A release arising from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, rolling stock, or watercraft, including loading and unloading.

(f) Costs, charges, or expenses incurred by the owner or operator for goods supplied by the owner or operator or services performed by the staff or employees of the owner or operator, or its parent, subsidiary, or affiliate, unless the costs, charges, or expenses are incurred with the prior written approval of the authority.

(g) A release arising from any consequence, whether direct or indirect, of war, invasion, act of a foreign enemy, act of terrorists, hostilities, whether war has been declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

(h) Costs arising out of the reconstruction, repair, replacement, upgrading of a refined petroleum underground storage tank system, or any other improvements and any site enhancements or routine maintenance on, within, or under a location.

(i) Costs arising out of the removing, replacing, or recycling of the contents of a refined petroleum underground storage tank system.

(j) Costs, charges, or expenses incurred to investigate or verify that a confirmed release has taken place.

(k) Costs related to the injury of an employee of the owner or operator or its parent, subsidiary, or affiliate arising out of and in the course of employment by the owner or operator or its parent, subsidiary, or affiliate or performing duties related to the conduct of the business of the owner or operator or its parent, subsidiary, or affiliate by a spouse, child, parent, brother, or sister of that employee. This subdivision applies whether the owner or operator may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(l) Any obligation of the owner or operator under worker's compensation, unemployment compensation, or disability benefits law or similar law.

(m) Any liability or claim for liability of others assumed by the owner or operator under any contract or agreement, unless the owner or operator would have been liable in the absence of the contract or agreement.

(n) A release on, within, under, or emanating from a location if the release commenced subsequent to the time such location was sold, given away, or abandoned.

Sec. 21515. (1) To receive money from the authority for corrective action, the owner or operator shall follow the procedures outlined in this section and shall submit a claim to the administrator containing information required by the administrator relevant to determining compliance with this part.

(2) An owner or operator shall not submit a claim under subsection (1) until work invoices in excess of the deductible amount have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (1), the administrator shall make all of the following determinations:

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

(b) Whether the work performed or proposed to be performed is consistent with the requirements of part 213, and whether those activities are consistent with achieving site closure.

(c) Whether the owner or operator has paid the deductible amount.

(d) Whether the corrective action performed is reasonable and necessary considering conditions at the site of the release.

(e) Whether the cost of performing the corrective action work is at or below the allowable reimbursement amount in the schedule of costs or, if the corrective action work is not a listed item, whether the cost is reasonable and necessary.

(4) The administrator may consult with the department and the department of licensing and regulatory affairs to make the determination required in subsection (3).

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

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

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

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

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

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 21510(1)(i), the administrator shall pay the claim within 45 days of making the determinations under subsection (6).

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

(10) Except as provided in subsection (11) and section 21519, the authority shall make a payment to the owner or operator within 30 days if sufficient money exists in the fund. Once payment has been made under this section, the authority is not liable for any claim on the basis of that payment.

(11) The authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that there are violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(12) The authority shall prepare and make available to owners and operators standardized claim and work invoice forms.

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21515 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the authority as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the deductible amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

Sec. 21518. (1) To receive money from the authority for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator, including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness of and justification for the judgment or settlement, and work invoices which conform to the requirements of this part. If the administrator determines that the owner or operator is eligible for funding under this part, is eligible for the amount requested, has paid the deductible amount, and has not exceeded the allowable amount of expenditure provided in section 21510(1)(i), and that the work invoices are payable under this part, the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of this part. The attorney general may raise as a defense to the request any rights or defenses that were or are available to



the owner or operator and, in the case of a judgment, that were not heard and ruled upon by the court. If a request for indemnification is approved by the attorney general, the authority shall pay the indemnification amount.

(2) The administrator shall keep records of all approved requests for indemnification.

(3) The authority shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money is available to make the payment.

Sec. 21519. (1) The authority shall make payments on claims in the order in which they are received. However, if there is insufficient money available to make payments on all approved claims, the authority shall give notice to each owner that is eligible to submit a claim under this part advising the owners of the financial situation and the authority shall prioritize payments based upon the risks at the site to the public health, safety, or welfare or the environment. Payments on claims that are not funded shall be paid if revenues subsequently become available.

(2) The authority and the state are not liable for work invoices or requests for indemnification if revenues of the authority are insufficient to meet these claims.

Sec. 21521. (1) If the administrator denies a claim or work invoice, or a request for indemnification, the owner or operator who submitted the claim, work invoice, or request for indemnification may, within 14 days following the denial, request review by the board. However, if the administrator believes the dispute may be able to be resolved without the board's review, the administrator may contact the owner or operator regarding the issues in dispute and may negotiate a resolution of the dispute prior to the board's review. The board shall conduct a review of the denial to determine whether the claim, work invoice, or request for indemnification is payable under this part.

(2) A person who is denied approval by the board after review under subsection (1) may appeal the decision directly to the circuit court.

Sec. 21523. The underground storage tank authority is created as a body corporate within the department and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

Sec. 21524. (1) The authority shall be governed by a board of directors consisting of the director of the department and 6 residents of the state appointed by the governor with the advice and consent of the senate as follows:

(a) An individual representing petroleum refiners.

(b) An individual representing independent petroleum marketers.

(c) An individual from a statewide motor fuel retail association.

(d) An individual from a statewide business association that includes owners or operators of refined petroleum underground storage tanks.

(e) An individual from a statewide environmental organization.

(f) A member of the general public.

(2) The 6 appointed members of the board shall serve terms of 3 years. However, in making the initial appointments, the governor shall designate 2 appointed members to serve for 3 years, 2 appointed members to serve for 2 years, and 2 appointed members to serve for 1 year.

(3) Upon appointment to the board of directors under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed.

(4) A vacancy on the board of directors shall be filled in the same manner as the original appointment. A vacancy shall be filled for the balance of the unexpired term. A member of the board of directors shall hold office until a successor is appointed and qualified.

(5) Members of the board of directors and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310, as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the

auditor general or a certified public accountant or the firm of the accountant to fairly reflect the financial condition of the authority.

(6) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by 1976 PA 267, MCL 15.261 to 15.275. Four members of the board of directors constitute a quorum for the transaction of business. An action of the board of directors shall be by a majority of the votes cast. The director of the department may designate a representative from his or her department to serve as a voting member of the board of directors for 1 or more meetings.

(7) The board of directors shall elect a chairperson from among its members and may elect any other officers the board of directors considers appropriate.

Sec. 21525. (1) The board shall appoint an administrator of the authority and may delegate to the administrator responsibilities for acting on behalf of the authority. The authority may employ on a permanent or temporary basis legal and technical experts, and other officers, agents, or employees, to be paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department. The authority may delegate to 1 or more members, officers, agents, or employees any of the powers or duties of the authority as the authority considers proper.

(2) The authority may contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(3) The authority shall annually file with the legislature a written report on its activities of the last year. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes issued by the finance authority under this part.

(4) The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(d) With the prior consent of the director of the department, solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(e) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(f) Invest money of the authority, at the board of directors' discretion, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.

(g) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice, payable out of any money of the authority.

(h) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(i) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

Sec. 21527. (1) The authority shall assess the potential demand for payment of claims under this part and shall provide the results of the assessment to the finance authority. Upon review of the results of the assessment, if the finance authority determines that it is prudent to do so, the finance authority may issue bonds or notes.

(2) The finance authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 21508. Bonds or notes of the finance authority are not a debt or liability of the state, do not create or constitute any indebtedness, liability, or obligation of the state, and do not constitute a pledge of the

faith and credit of the state. All finance authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the finance authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(3) All expenses incurred in implementing this part are payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the finance authority to incur any indebtedness or liability on behalf of or payable by the state.

Sec. 21528. (1) The finance authority may issue from time to time bonds or notes in principal amounts the finance authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment of approved claims under this part.

(b) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the finance authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(c) The establishment or increase of reserves to secure or to pay finance authority bonds or notes or interest on those bonds or notes.

(d) The payment of interest on the bonds or notes for a period determined by the finance authority.

(e) The payment of all other costs or expenses of the finance authority incident to and necessary or convenient to implement its purposes and powers.

(2) The bonds or notes of the finance authority are not a general obligation of the finance authority but are payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the finance authority:

(a) Shall be authorized by resolution of the finance authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 20 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the finance authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(l) May be transferable.

(m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is determined necessary or beneficial by the finance authority.

(4) If a member of the board of directors or any officer of the finance authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that bond or note, the signature continues to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the finance authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the finance authority determines. A finance authority bond or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the finance authority is not required to be filed under the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

Sec. 21531. Within limitations that are contained in the issuance or authorization resolution of the finance authority, the finance authority may authorize a member of the board of directors, the executive director, or any other officer of the finance authority to do 1 or more of the following:

(a) Sell and deliver and receive payment for bonds or notes.

(b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or subject to redemption.

(c) Deliver bonds or notes, partly to refund bonds or notes and partly for any other authorized purpose.

(d) Buy issued bonds or notes and resell those bonds or notes.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the finance authority.

(g) Approve the terms of an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment, revenue, or interest rate exposure.

(h) Execute any power, duty, function, or responsibility of the finance authority.

Sec. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part does not relieve any person who may be eligible to submit a claim to the authority from any liability that he or she may incur as the owner or operator of a refined petroleum underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the finance authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole part shall be considered unconstitutional and invalid.

Sec. 21548. (1) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the authority for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of not more than \$50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the authority for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried, excavated, disposed, or provided.

(b) Submitting paperwork for services or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Causing damage intentionally or as the result of gross negligence to a refined petroleum underground storage tank system, which damage results in a release at a site.

(f) Placing a refined petroleum underground storage tank system at a contaminated site where no refined petroleum underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the refined petroleum underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent refined petroleum underground storage tank system with the department.

(j) Loaning to an owner or operator the deductible amount and then submitting or causing to be submitted inflated claims or invoices designed to recoup the deductible amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

- (l) Inflating bills or work invoices, or both, by adding charges for work that was not performed.
  - (m) Submitting a false or misleading laboratory report.
  - (n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.
  - (o) Falsely characterizing the contents of a refined petroleum underground storage tank system for purposes of obtaining funding under this part.
  - (p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.
  - (q) Characterizing legal services as consulting services for purposes of obtaining funding under this part.
  - (r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this part.
  - (s) Falsifying a signature on a claim application or a work invoice.
  - (t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.
  - (u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in order to obtain funding under this part.
- (4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.
- (5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.
- (6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.
- (7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both.
- (8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than \$25,000.00 for each day of continued noncompliance.
- (9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this state, the person found responsible shall repay any money obtained directly or indirectly under this part. Money owed pursuant to this section constitutes a claim and lien by the authority upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.
- (10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.
- (11) All civil fines collected pursuant to this section shall be apportioned in the following manner:
- (a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.
  - (b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.
  - (c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the refined petroleum fund.



Enacting section 1. Sections 21506, 21511, 21512, 21513, 21514, 21517, 21520, 21522, 21545, 21547, 21549, 21550, 21551, 21553, 21554, 21555, 21556, 21557, 21558, 21559, 21560, 21561, and 21563 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21506, 324.21511, 324.21512, 324.21513, 324.21514, 324.21517, 324.21520, 324.21522, 324.21545, 324.21547, 324.21549, 324.21550, 324.21551, 324.21553, 324.21554, 324.21555, 324.21556, 324.21557, 324.21558, 324.21559, 324.21560, 324.21561, and 324.21563, are repealed.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Ray E. Randall*

Clerk of the House of Representatives

Approved .....

.....  
Governor