

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

**PART 215**

**UNDERGROUND STORAGE TANK CORRECTIVE ACTION FUNDING**

**324.21501 Meanings of words and phrases.**

Sec. 21501. For purposes of this part, the words and phrases defined in sections 21502 and 21503 have the meanings ascribed to them in those sections.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21502 Definitions; A to O.**

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 21510.
- (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, and telephone number of the owner or operator.
- (k) "Claims limit" means \$1,000,000.00 per release. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be subject to 1 claims limit. Any claim that takes place over 2 or more claim periods shall be subject to 1 claims limit.
- (l) "Claim period" means a 1-year period commencing on October 1 of each year and ending on September 30 the following year.
- (m) "Claim period aggregate limit" means the following aggregate claims limit for all releases discovered during a claim period:
  - (i) For owners, operators, and affiliates of 1 to 100 refined petroleum underground storage tanks, \$1,000,000.00.
  - (ii) For owners, operators, and affiliates of more than 100 refined petroleum underground storage tanks, \$2,000,000.00.

(n) "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.

(o) "Corrective action" means that term as it is defined in section 21302.

(p) "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.

(q) "Department" means the department of environmental quality.

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

(s) "Excluded liquid" means that term as defined in 26 CFR 48.4081-1.

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

(u) "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.

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

(w) "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.

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

(y) "Marine terminal operator" means a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.

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

(aa) "Owner" means that term as it is defined in section 21303.

(bb) "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).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21503 Definitions; P to W.**

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.

(w) "Work invoice" means a list of goods or services for costs of corrective action related to a claim, including a statement of the amount due.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21504 Objectives of part.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21505 Legislative findings.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21506 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to Michigan underground storage tank financial assurance fund.

### **324.21506a Refined petroleum fund; creation; deposit of money or other assets; investment; money remaining at close of fiscal year; expenditures; purposes.**

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 remains in the refined petroleum fund and does 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 legacy release program created in section 21519a.

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

(d) Not more than \$5,000,000.00 annually for petroleum product 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.

(e) Not more than \$3,000,000.00 annually for the bureau of fire services and office of the state fire marshal, storage tank division, in the department of licensing and regulatory affairs.

(f) Reimbursement by the authority to local units of government and county road commissions for the costs of corrective action to manage, relocate, or dispose of any media contaminated by regulated substances left in place within a public highway pursuant to section 21310a if all of the following occur:

(i) The local unit of government or county road commission has submitted to the authority a claim for reimbursement on a form created by the authority.

(ii) The claim for reimbursement is for reasonable and necessary eligible corrective action costs determined by the administrator pursuant to section 21515(2) to (10).

(iii) The amount of reimbursement is not more than \$200,000.00 per claim.

(g) Not more than \$5,000,000.00 annually for the department to provide grants and loans in accordance with part 196 to facilitate brownfield redevelopment at part 213 properties. Money shall not be provided under this subsection to fund the performance of response activities at a part 213 property to address contamination that is solely attributable to a release regulated under part 201.

(h) The permanent closure of an underground storage tank system by the department if the underground storage tank system meets the conditions that require permanent closure under R 29.2153 of the Michigan Administrative Code or the department determines it is necessary to protect public health, safety, welfare, or the environment.

**History:** Add. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2007, Act 67, Imd. Eff.

Sept. 28, 2007;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 467, Eff. Mar. 29, 2017;—Am. 2017, Act 134, Eff. Jan. 24, 2018.

**Compiler's note:** Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21506b Underground storage tank cleanup fund; creation; bond proceeds account; receipt of money or other assets; investment; money remaining at close of fiscal year; authority as administrator; expenditures.**

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.

**History:** Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21507 Repealed. 1995, Act 252, Eff. Dec. 22, 1998.**

**Compiler's note:** The repealed section pertained to creation, investment, and disposition of the emergency response fund.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21508 Environmental protection regulatory fee; imposition; precollection; collection; exemption; deposit of fees; audit, enforcement, collection, and assessment of fees by department of treasury.**

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 storage tank at any point after the petroleum is refined. The regulatory fee shall be 1 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 petroleum underground storage tank system. 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) 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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017;—Am. 2016, Act 467, Eff. Mar. 29, 2017.

**Compiler's note:** Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Subsection 2 of MCL 324.21550, as amended by 2012 PA 113, and which repeals this section, provides:

"(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508."

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21509 Calculation and payment of regulatory fees; collection of regulatory fees under product exchange agreement; definition.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21510 Eligibility of owner or operator to receive money from authority for corrective action or indemnification.**

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 December 30, 2014.

(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.

(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 was in compliance with the financial responsibility requirements of part 211 and the rules promulgated under that part at the time of the discovery of the release or releases for which the claim is filed.

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

(h) The total amount of expenditures, including the deductible amount, does not exceed the claims limit or the claim period aggregate limit applicable to the claim.

(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 that 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)(h).

(7) An owner or operator that 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)(h).

(8) An owner or operator that seeks to receive money from the authority for corrective action shall submit to the administrator the cleanup fund claim submittal form created by the authority containing the information required by the administrator to determine compliance with this part. The administrator shall determine whether the claim complies with this part and shall notify the owner or operator. The administrator may consult with the department of licensing and regulatory affairs to make the determination required in this subsection.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21510a Responsibility of owner or operator for deductible amount.**

Sec. 21510a. (1) An owner or operator is responsible for a deductible amount as follows:

(a) If the owner or operator or its affiliate owns or operates fewer than 8 refined petroleum underground storage tanks, \$2,000.00 per claim.

(b) If the owner or operator or its affiliate owns or operates 8 or more refined petroleum underground storage tanks, \$10,000.00 per claim.

(c) The deductible amount under subdivisions (a) and (b) is retroactive to all claims filed for releases discovered and reported on or after December 30, 2014.

(2) 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 are subject to 1 deductible amount. Any claim that takes place over 2 or more claim periods is subject to 1 deductible amount.

(3) An owner or operator that submits a work invoice under section 21515 is responsible for the deductible amount described in subsection (1). 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.

**History:** Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21510b Itemized corrective actions; schedule of costs.**

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.

**History:** Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21510c Approval of claim; prohibitions.**

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 a refined petroleum underground storage tank system or its contents.

(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 the location was sold, given away, or abandoned.

(o) Costs that have been or will be submitted to or that have been paid pursuant to an insurance policy or policies.

(p) Costs arising from corrective actions performed in excess of the corrective actions required to obtain a restricted closure based on then current land use.

(q) Costs incurred after the closure date of the release or releases for which the claim was filed except for costs for monitoring well abandonment or remediation system decommissioning, or both, performed within 1 year of the closure date.

**History:** Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21510d Reliance of owner or operator on fund to meet financial responsibility requirements; submission of request for determination; notice.**

Sec. 21510d. If an owner or operator intends to rely on the fund to meet financial responsibility requirements, the owner or operator shall 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. A determination under this section is based upon a demonstration of all of the following:

(a) The owner or operator is not ineligible for funding under section 21510(4) and (5).

(b) The refined petroleum underground storage tank or tanks are presently in compliance with the registration and fee requirements of part 211.

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

(d) The owner or operator has financial responsibility for the deductible amount. In order to demonstrate that the owner or operator has financial responsibility for the deductible amount under this section and section 21510(1)(f), the owner or operator may rely upon any financial assurance mechanism listed in 40 CFR 280.95 to 280.107 or either of the following:

(i) A financial test of self-insurance. To pass the financial test of self-insurance, the owner or operator must submit, on a form developed by the authority, financial information certified as accurate by the chief financial officer or comparable position that demonstrates a tangible net worth of at least 3 times the deductible amount required under this part.

(ii) A deposit account in the amount of the deductible amount required under this part in a financial institution as defined in section 1202 of the banking code of 1999, 1999 PA 276, MCL 487.11202, if access to the deposit account is restricted by a deposit account control agreement or similar restriction as approved by the authority that requires the approval of the administrator for a withdrawal from the deposit account.

**History:** Add. 2016, Act 380, Eff. Mar. 22, 2017;—Am. 2017, Act 134, Eff. Jan. 24, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21511 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to eligibility of financial institution, land contract vendor, or local unit of government to receive money from fund for corrective action or indemnification.

**324.21512 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to approval of expenditures on behalf of owner or operator.

**324.21513 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to duties of fund administrator.

**324.21514 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to payment of co-payment amount by owner or operator.

**324.21515 Receiving money from authority for corrective action; procedures.**

Sec. 21515. (1) To receive money from the authority for corrective action, an owner or operator that has received notice from the administrator that its claim has been approved pursuant to section 21510(8) shall follow the procedures outlined in this section and shall submit work invoices to the administrator containing information required by the administrator relevant to determining compliance with this part.

(2) Within 45 days of receipt of work invoices submitted pursuant to subsection (1) using forms created by the authority, 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 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, and whether the cost was based upon a competitive bidding process established by the authority.

(3) The administrator may consult with the department and the department of licensing and regulatory affairs to make the determination required in subsection (2).

(4) If the administrator determines under subsection (2) that the work invoice is 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 work invoice and notify the owner or operator that submitted the work invoice 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 work invoice or any portion of the work invoice submitted and give notice of the denial to the owner or operator that submitted the work invoice.

(5) The owner or operator may submit work invoices to the administrator that are related to a claim only after initial approval of the claim under section 21510(8) and if the aggregate amount of work invoices in the submission is \$5,000.00 or more. This limitation does not apply to the final work invoice submission related to the approved claim.

(6) If the administrator determines that a work invoice does not meet the requirements of subsection (2) or (5), the administrator shall deny reimbursement for the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(7) The administrator shall 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.

(8) Except as provided in subsection (9) and section 21519, the authority shall make a joint payment to the owner or operator and the contractor that performed the work listed in the approved work invoices within 45 days after the date of the administrator's approval under subsection (4) 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.

(9) 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.

(10) The authority shall prepare and make available to owners and operators standardized claim and work

invoice forms.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21516 Assignment or transfer of approved claim; notice.**

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21510 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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21517 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to responsibilities of owner or operator and compliance with certain requirements.

#### **324.21518 Receiving money from authority for indemnification; request for indemnification; approval by attorney general; records; payment.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21519 Order of payment; insufficient money available; liability of authority and state.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21519a Legacy release program; establishment; administration; reimbursement; conditions; request for reimbursement; form; approval by authority; "eligible person" defined.**

Sec. 21519a. (1) The department shall establish and the authority shall administer a legacy release program as provided in this section to reimburse eligible persons for costs of corrective actions for certain historic releases from refined petroleum underground storage tank systems. An eligible person may be reimbursed for corrective action costs incurred if the eligible person demonstrates all of the following:

(a) The release from which the corrective action or indemnification arose was discovered and reported prior to December 30, 2014.

(b) The release upon which the request for reimbursement is based has not been closed pursuant to part 213 prior to December 30, 2014.

(c) Any refined petroleum underground storage tank systems that are operating at the location from which the release occurred are currently in compliance with the registration requirements of part 211.

(d) The request for reimbursement does not include reimbursement for money that was reimbursed from any other source, including insurance policies.

(e) A claim submitted to the legacy release program shall not be approved by the authority for any of the prohibitions listed under section 21510c.

(f) The request for reimbursement is for corrective action performed on or after December 30, 2014.

(2) An eligible person that seeks to be reimbursed under the legacy release program established under this section shall submit to the authority a request for reimbursement on a form provided by the authority containing the documentation required by the authority.

(3) The authority shall approve a request for reimbursement under this section only as follows:

(a) The amount approved for reimbursement shall be 50% of the aggregate indemnification and corrective action costs incurred, but not more than 50% of the reasonable and necessary eligible costs as determined by the administrator pursuant to section 21515(2) to (10).

(b) The total amount approved for reimbursement shall not exceed a total of \$50,000.00 for all releases from refined petroleum underground storage tank systems at a single location.

(c) An owner or operator may request a review of a denied claim or work invoice per section 21521.

(4) As used in this section, "eligible person" means the owner or operator of a refined petroleum underground storage tank system at the time of the reporting of the release.

**History:** Add. 2017, Act 134, Eff. Jan. 24, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21520 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to establishment of audit program to monitor compliance.

**324.21521 Denial of claim, invoice, request for indemnification, or request for eligibility determination; review; negotiated resolution; appeal.**

Sec. 21521. (1) If the administrator denies a claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8), the owner or operator who submitted the claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8) 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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21522 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to appointment, terms, and duties of board of directors of Michigan underground storage tank financial assurance authority.

### **324.21523 Underground storage tank authority; creation; handling of funds.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Compiler's note:** For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21524 Authority; appointment, terms, and duties of members; vacancy; conduct of business; meetings open to public; quorum; voting; designation of representative; election of chairperson and other officers.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Compiler's note:** For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21525 Appointment of administrator; employment of experts, other officers, agents, or employees; contract with department; report; audit.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Compiler's note:** For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21526 Board of directors; powers.**

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) 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.

(g) 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.

(h) 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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

**Compiler's note:** For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board

of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For abolishment of board of directors of Michigan underground storage tank financial assurance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21527 Assessment; bonds or notes; issuance; indebtedness, liability, or obligations of state not created; payment; expenses.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21528 Bonds or notes; issuance; amount; purpose; payment; provisions; validity of signatures; sale; bonds or notes subject to other acts.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2009, Act 98, Imd. Eff. Sept. 24, 2009;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21529 Bonds or notes; issuance; amounts; purpose; application of proceeds to purchase or retirement at maturity or redemption; investment of escrowed proceeds; use by authority; refunded bonds or notes considered as paid; termination of obligation.**

Sec. 21529. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and, pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this part.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest become due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21530 Bonds or notes; assurance of timely payments; costs of issuance.**

Sec. 21530. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase bonds or notes, an agreement to remarket bonds or notes, an agreement to manage payment, revenue or interest rate exposure, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the bonds or notes, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, agreements to manage payment, revenue or interest rate exposure, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of bonds or notes.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21531 Members of board of directors, executive director, or other officer; powers.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21532 Contract with holders of bonds or notes; provisions.**

Sec. 21532. A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes:

- (a) A pledge to any payment or purpose of all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders.
- (b) A pledge of a loan, grant, or contribution from the federal or state government.
- (c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.
- (d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured.
- (e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.
- (f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.
- (g) A provision to vest in a trustee, or a secured party, property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise that the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.
- (h) A provision to provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:
  - (i) By mandamus or other suit, action, or proceeding to enforce the rights of the bondholders or noteholders, and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this part.
  - (ii) Bring suit upon the bonds or notes.
  - (iii) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes.

(iv) By action, suit, or proceeding, enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes.

(v) Declare the bonds or notes due and payable, and if all defaults are made good, then, as permitted by the resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21533 Pledge as valid and binding; lien.**

Sec. 21533. A pledge made by the authority is valid and binding from the time the pledge is made. The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21534 Disposition of proceeds.**

Sec. 21534. The proceeds of bonds or notes issued pursuant to this part shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21535 Personal liability.**

Sec. 21535. A member of the authority, any person executing bonds or notes issued under this part, or any person executing any agreement on behalf of the authority is not liable personally on the bonds or notes by reason of their issuance.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21536 Holders of bonds or notes; rights and remedies not limited, restricted, or impaired.**

Sec. 21536. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.21537 Persons authorized to invest funds; authority bonds or notes as security for public deposits.**

Sec. 21537. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized



security for public deposits.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21538 Property and income of authority; bonds or notes as exempt from tax.**

Sec. 21538. (1) Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is for a public purpose.

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state.

(3) Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21539 Construction of part.**

Sec. 21539. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21540 Rules.**

Sec. 21540. The authority may promulgate rules as necessary to implement sections 21523 to 21539.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21541 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.**

**Compiler's note:** For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to creation of Michigan underground storage tank financial assurance policy board.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21542 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.**

**Compiler's note:** For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to list of qualified underground storage tank consultants.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21543 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.**

**Compiler's note:** The repealed section pertained to certification of individual as underground storage tank professional.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21544 Rules.**

Sec. 21544. The department and the department of treasury may promulgate rules necessary to implement this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 324.21501 et seq. of the Michigan Administrative Code.

### **324.21545 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to promulgation of administrative rules.

### **324.21546 Liability; constitutionality of part.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.21547 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to availability and cost of environmental impairment insurance.

### **324.21548 Knowledge of false, misleading, or fraudulent request for payment as felony or subject to civil fine; retroactive application; "fraudulent" or "fraudulent practice" defined; action brought by attorney general or county prosecutor; money owed as claim and lien; prosecutions under other laws not precluded; apportionment of fines.**

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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21549 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to providing information contributing to fine or conviction.

**324.21550 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to repeal of MCL 324.21508 and the authority's obligation to pay off bonds or notes.

**324.21551 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to payment for interest subsidies, work invoices, and requests for indemnification.

**324.21552 Repealed. 2006, Act 318, Eff. Dec. 31, 2006.**

**Compiler's note:** The repealed section pertained to the refined petroleum cleanup advisory council.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21553 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to establishment of refined petroleum product cleanup initial program.

**324.21554 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to establishment of temporary reimbursement program.

**324.21555 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to administration and implementation of temporary reimbursement program.

**324.21556 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to first round precertification applications.

**324.21557 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to second round precertification applications.

**324.21558 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to performance of corrective actions by eligible person and compliance with certain requirements.

**324.21559 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to receipt of money under temporary reimbursement fund for corrective actions.

**324.21560 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to assignment or transfer of approved precertification application.

**324.21561 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to denial of precertification application or work invoice.

**324.21562 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.**

**Compiler's note:** For abolishment of the temporary reimbursement program advisory board and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-3, compiled at MCL 324.99905.

The repealed section pertained to creation of temporary reimbursement program advisory board.

**Popular name:** Act 451

**Popular name:** NREPA

**324.21563 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.**

**Compiler's note:** The repealed section pertained to cessation of temporary reimbursement program.