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

CHAPTER 8
UNDERGROUND STORAGE TANKS

PART 211
UNDERGROUND STORAGE TANK REGULATIONS

****** 324.21101 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21101 Definitions; applicability of certain authority.

Sec. 21101. As used in this part:

(a) "Department" means the department of natural resources, underground storage tank division.

(b) "Fund" means the underground storage tank regulatory enforcement fund created in section 21104.

(c) "Local unit of government" means a municipality, county, or governmental authority or any combination of municipalities, counties, or governmental authorities.

(d) "Natural gas" means natural gas, synthetic gas, and manufactured gas.

(e) "Operator" means a person who is presently, or was at the time of a release, in control of or responsible for the operation of an underground storage tank system.

(f) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(g) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

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

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

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

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

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

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

(*iii*) A septic tank.

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

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

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

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

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

(*vii*) A flow-through process tank.

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

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

(*x*) Any pipes connected to a tank that is described in subparagraphs (*i*) to (*xvi*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, or a mixture of such hazardous waste and other regulated substances.

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

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

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

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

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

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.

For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21102 Underground storage tank system; registration or renewal of registration; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; rules; exemption; notification of closure or removal.

Sec. 21102. (1) A person that is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an 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, is exempt from the registration requirements of this section.

(2) A person that is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) Except as otherwise provided in subsections (4) and (5), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 21103 or of the removal of an underground storage tank system from service.

(4) A person that is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system

unless the material to be stored in the system differs from the information provided on the registration form.

(5) Except as otherwise provided in section 21103(2), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(6) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of a registration or notification of change under this section to the local unit of government where the underground storage tank system is located.

(7) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(8) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

324.21102a Installation of underground storage tanks; prohibited conditions.

Sec. 21102a. (1) Except as provided in subsection (2), a person shall not install an underground storage tank that meets any of the following conditions:

(a) Is within 2,000 feet of an existing type I community or type IIa noncommunity public water well.

(b) Is within 800 feet of an existing type IIb or type III noncommunity public water well.

(c) Is within 300 feet of any other type of well not described in subdivision (a) or (b).

(2) A person that wishes to install an underground storage tank that does not meet the conditions described under subsection (1) may only replace an active underground storage tank if both of the following requirements are met:

(a) A professional engineer or qualified underground storage tank consultant certifies that a combination of the construction material of the underground storage tank and the leak detection used to monitor the underground storage tank is more likely to prevent and detect a release from the replacement underground storage tank than the existing underground storage tank.

(b) The facility where the active, existing underground storage tank is located is in compliance with this part and the rules promulgated under this part.

(3) As used in this section:

(a) "Professional engineer" means that term as defined in section 2001 of the occupational code, 1980 PA 299, MCL 339.2001.

(b) "Qualified underground storage tank consultant" means an individual who meets the requirements described under section 21325.

History: Add. 2022, Act 160, Imd. Eff. July 19, 2022.

Popular name: Act 451

Popular name: NREPA

****** 324.21103 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21103 Registration forms; suspected or confirmed release from system; notice; supplementary information.

Sec. 21103. (1) The registration required by section 21102(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or

operator of the underground storage tank system shall notify the department within 24 hours and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system and the resulting findings.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21104 Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; notice of balance in fund.

Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used by the department only to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, pertaining to the delivery and dispensing operations of regulated substances.

(3) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21105 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21105 Collection and evaluation of information; report.

Sec. 21105. The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21106 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21106 Rules.

Sec. 21106. The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21107 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21107 Maintaining pollution liability insurance; limits.

Sec. 21107. A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than $1,000,000.00 per occurrence.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21108 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21108 Enforcement of part and rules.

Sec. 21108. (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may, at an hour reasonable under the circumstances involved, enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises, and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system standards, establishing timetables for the replacement of equipment, and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21109 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21109 Additional safeguards; resolution; enactment or enforcement of certain ordinances prohibited.

Sec. 21109. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21110 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21110 Prohibited conduct.

Sec. 21110. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21111 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21111 Deferments.

Sec. 21111. The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21112 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21112 Violation; misdemeanor; penalty; civil fine.

Sec. 21112. (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than $5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21113 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21113 Repeal of part.

Sec. 21113. This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

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

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

PART 213
LEAKING UNDERGROUND STORAGE TANKS

324.21301 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to meanings of words and phrases.

Popular name: Act 451

Popular name: NREPA

324.21301a Purpose and applicability of part.

Sec. 21301a. (1) This part is intended to provide remedies using a process and procedures separate and distinct from the process, procedures, and criteria established under part 201 for sites posing a threat to the public health, safety, or welfare, or to the environment, as a result of releases from underground storage tank systems, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, 1988 PA 478, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in this part only apply to violations of this part that occur after April 13, 1995.

(2) The liability provisions that are provided for in this part shall be given retroactive application.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21301b Actions governed by provisions in part; changes in corrective action; corrective actions by nonliable parties.

Sec. 21301b. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995.

(b) An administrative order that was issued on or before May 1, 1995.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(d) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(2) Notwithstanding subsection (1), upon request of a person who has not completed implementing corrective actions under this part, the department shall approve changes in corrective action to be consistent with sections 21304a, 21308a, 21309a, and 21311a.

(3) Notwithstanding any other provision of this part, a person that is not liable under this part may conduct corrective actions under this part in the same manner as a person that is liable under this part. Notwithstanding any other provision of this part, the department shall provide responses to nonliable parties conducting corrective actions for reports submitted under this part in the same manner that it provides responses to persons that are liable under this part.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21302 Definitions; A to M.

Sec. 21302. As used in this part:

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

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

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

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

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

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

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

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

safety, or welfare, the environment, or natural resources.

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21303 Definitions; N to V.

Sec. 21303. As used in this part:

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

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

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

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Public highway" means a road or highway under the jurisdiction of the state transportation department, a county road commission, or a local unit of government.

(f) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

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

(h) "Regulated substance" means any of the following:

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

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

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

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

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

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

(*l*) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

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

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

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

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

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

(q) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

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

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

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

(*iii*) A septic tank.

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

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

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

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

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

(*vii*) A flow-through process tank.

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

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or

tunnel if the storage tank is situated upon or above the surface of the floor.

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304 Liability of owner or operator not limited or removed; owner or operator as or employing consultant.

Sec. 21304. (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator that is liable under section 21323a except as specifically provided for in this part.

(2) Notwithstanding any other provision in this part, if an owner or operator that is liable under section 21323a is a consultant or employs a consultant, this part does not require the owner or operator that is liable under section 21323a to retain an outside consultant to perform the responsibilities required under this part. Those responsibilities may be performed by an owner or operator that is liable under section 21323a who is a consultant or by a consultant employed by the owner or operator that is liable under section 21323a.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304a Corrective action activities; conduct; manner; use of tier I risk-based screening levels for regulated substances; carcinogenic risk from regulated substance; applicable RBSL or SSTL for groundwater differing from certain standards; corrective action by owner or operator of underground storage tank.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment. Corrective action activities that involve a discharge into air or groundwater as defined in section 21302 or surface water as defined in section 21303 shall be consistent with parts 31 and 55.

(2) The tier I risk-based screening levels for regulated substances are the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201 and shall be utilized in accordance with the process outlined in RBCA as screening levels only.

(3) If a regulated substance poses a carcinogenic risk to humans, the tier I RBSLs derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If the applicable RBSL or SSTL for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the SSTL shall be the more stringent of (a) or (b) unless the person that undertakes corrective actions under this part determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank system is regulated exclusively under this part. Notwithstanding any other provision of this part, an owner or operator that is liable under section 21323a may choose, in its sole discretion, to fulfill its corrective action obligations pursuant to part 201 in lieu of corrective actions pursuant to this part in either of the following situations:

(a) If a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

(b) If a release from an underground storage tank system involves venting groundwater, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to follow the procedures set forth in section 20120e in performing corrective action under this part related to venting groundwater to address the venting groundwater pursuant to part 201 in lieu of corrective actions addressing the venting groundwater pursuant to this part.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304b Removal or relocation of soil.

Sec. 21304b. (1) A person shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation under parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the tier I RBSLs established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) A person shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being relocated in a manner not addressed by this section, the person that owns or operates the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the person is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(6) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(7) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304c Duty of owner or operator of property; basis; liability for corrective action activity costs and natural resource damages; applicability of subsection (1)(a) to (f).

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any corrective action or land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform corrective action activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) and (f) does not apply to this state, a county road commission, or a local unit of government if it is not liable under section 21323a(3)(a), (b), (c), or (e) or to this state, a county road commission, or a local unit of government if it acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if this state or a local unit of government, unless exempt from liability under section 21323a(4)(b), acting as the owner or operator of property offers access to the property on a regular or continuous basis for a public purpose and invites the public to use the property for the public purpose, this state or the local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the public for the public purpose, and not the entire property. Public purpose includes, but is not limited to, activities such as a park, office building, or public works operation. Public purpose does not include a public highway or activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

(7) Subsection (1)(a) to (f) applies to an owner or operator who is liable under section 21323a with respect to regulated substances present within a public highway above applicable RBSLs or SSTLs.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304d Transfer of interest in real property in which notice required; certification of completed corrective action activity; disclosure.

Sec. 21304d. (1) If a person owns a parcel of real property and has knowledge or information or is on notice through a recorded instrument that the real property is a site, the person shall not transfer an interest in

that real property unless the person provides written notice to the transferee that the real property is a site and of the general nature and extent of the release.

(2) A person that owns real property for which a notice required in subsection (1) has been recorded may, upon completion of all corrective action activities for the site as approved by the department, record with the register of deeds for the appropriate county a certification that all corrective action activity required in an approved final assessment report has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of corrective action that has been or is being implemented in compliance with section 21304a.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21305 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

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

Popular name: Act 451

Popular name: NREPA

324.21306 Repealed. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Compiler's note: The repealed section pertained to de minimis spills, removal or disposal of contaminated soils, duties of consultants, and eligibility to receive funding.

Popular name: Act 451

Popular name: NREPA

324.21307 Report of release; initial response actions; duties of owner or operator liable under MCL 324.21323a.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator that is liable under section 21323a shall report the release to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator that is liable under section 21323a from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator that is liable under section 21323a shall immediately begin and expeditiously perform all of the following initial actions:

(a) Identify and mitigate immediate fire, explosion hazards, and acute vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Using the process outlined by RBCA regarding NAPL, take steps necessary and feasible under this part to address unacceptable immediate risks.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(3) Immediately following initiation of initial response actions under this section, the owner or operator that is liable under section 21323a shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional immediate fire and safety hazards posed by vapors or NAPL that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21307a Site closure report; activities requiring notification by owner or operator to department.

Sec. 21307a. (1) Following initiation of initial actions under section 21307, the owner or operator that is liable under section 21323a shall complete the requirements of this part and submit related reports or

executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, the owner or operator that is liable under section 21323a shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, the owner or operator that is liable under section 21323a shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21308 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to initial assessment of release.

Popular name: Act 451

Popular name: NREPA

324.21308a Initial assessment report; discovery of migrating or mobile NAPL; additional information; supporting documentation upon request.

Sec. 21308a. (1) Within 180 days after a release has been discovered, the owner or operator that is liable under section 21323a shall complete an initial assessment report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) Results of initial actions taken under section 21307(2).

(b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:

(*i*) The property address.

(*ii*) The name of the business, if applicable.

(*iii*) The name, address, and telephone number of a contact person for the owner or operator that is liable under section 21323a.

(*iv*) The time and date of release discovery.

(*v*) The time and date the release was reported to the department.

(*vi*) A site map that includes all of the following:

(A) The location of each underground storage tank in the leaking underground storage tank system.

(B) The location of any other known current or former underground storage tank system on the site.

(C) The location of fill ports, dispensers, and other pertinent system components for known current or former underground storage tank systems on the site.

(D) Soil and groundwater sample locations, if applicable.

(E) The locations of nearby buildings, roadways, paved areas, or other structures.

(*vii*) A description of how the release was discovered.

(*viii*) A list of regulated substances the underground storage tank system contained when the release occurred.

(*ix*) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (*viii*).

(*x*) The location of nearby surface waters and wetlands.

(*xi*) The location of nearby underground sewers and utility lines.

(*xii*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(*xiii*) Whether the underground storage tank system was emptied to prevent further release.

(*xiv*) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(*xv*) Whether toxic or explosive vapors or migrating or mobile NAPL was found and what steps were taken to evaluate those conditions and the current levels of toxic or explosive vapors or migrating or mobile NAPL in nearby structures.

(*xvi*) The extent to which all or part of the underground storage tank system or soil, or both, was removed.

(*xvii*) Data from analytical testing of soil and groundwater samples.

(*xviii*) A description of the mobile or migrating NAPL investigation and evaluation conducted pursuant to section 21307(2)(c) and, if the evaluation of NAPL concludes that NAPL is recoverable and removal is necessary under this part to abate an unacceptable risk pursuant to the provisions outlined in RBCA, a description of the removal, including all of the following:

(A) A description of the actions taken to remove any NAPL.

(B) The name of the person or persons responsible for implementing the NAPL removal measures.

(C) The estimated quantity, type, and thickness of NAPL observed or measured in wells, boreholes, and excavations.

(D) The type of NAPL recovery system used.

(E) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located.

(F) The type of treatment applied to, and the effluent quality expected from, any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

(H) The quantity and disposition of the recovered NAPL.

(*xix*) Identification of any other contamination on the site not resulting from the release and the source, if known.

(*xx*) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination exceeding the applicable RBSL for tier I sites or the applicable SSTL for tier II or tier III sites.

(*xxi*) The depth to groundwater.

(*xxii*) An identification of potential migration and exposure pathways and receptors.

(*xxiii*) An estimate of the amount of soil in the vadose zone that is contaminated.

(*xxiv*) If the on-site assessment indicates that off-site soil or groundwater may be affected, report the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release if the contamination exceeds the applicable RBSL or the applicable SSTL.

(*xxv*) Groundwater flow rate and direction.

(*xxvi*) Laboratory analytical data collected. The owner or operator may elect to obtain groundwater samples utilizing a grab sample technique for initial assessment and monitoring purposes that do not represent initial delineation of the limit of contamination or closure verification sampling.

(*xxvii*) The vertical distribution of contaminants that exceed the applicable RBSL or applicable SSTL.

(c) Site classification under section 21314a.

(d) Tier I or tier II evaluation according to the RBCA process.

(e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination that exceeds the applicable RBSL or applicable SSTL as necessary for preparation of the corrective action plan.

(2) If migrating or mobile NAPL is discovered at a site after the submittal of an initial assessment report pursuant to subsection (1), the owner or operator that is liable under section 21323a shall do both of the following:

(a) Perform initial actions identified in section 21307(2)(c).

(b) Submit to the department an amendment to the initial assessment report within 30 days of discovery of the migrating or mobile NAPL that describes response actions taken as a result of the migrating or mobile NAPL discovery.

(3) The department shall not require any additional information beyond that required under this section to be included in an initial assessment report. The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the initial assessment report upon request by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21309 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring report of corrective action and proposed schedule and removal and disposal of contaminated soil.

Popular name: Act 451

Popular name: NREPA

324.21309a Corrective action plan.

Sec. 21309a. (1) If initial actions under section 21307 have not resulted in completion of corrective action, an owner or operator that is liable under section 21323a shall prepare a corrective action plan to address contamination at the site. Corrective action plans submitted as part of a final assessment report shall use the process described in RBCA and shall be based upon the site information and characterization results of the initial assessment report.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the tier I, II, or III evaluation in the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include an analysis of the recoverability of the NAPL and whether the NAPL is mobile or migrating, and a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include information that describes the proposed operation and maintenance actions.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures such as grab sampling procedures for monitoring groundwater, among other procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*x*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*ix*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a, including how those restrictions will be effective in preventing or controlling unacceptable exposures.

(e) A schedule for implementation of the corrective action.

(f) If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation until the lapse or violation is corrected.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property, the owner or operator that is liable under section 21323a shall provide notice to the public by means designed to reach those members of the public directly impacted by the release above a residential RBSL and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21310 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring soil feasibility analysis and soil remedial corrective action plan.

Popular name: Act 451

Popular name: NREPA

324.21310a Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including, but not limited to, the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow this state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated substances may be restricted by a means other than a restrictive covenant in a manner that protects against exposure to regulated substances as defined by the RBSLs and SSTLs, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, any of the following:

(a) Compliance with an ordinance, state law, or rule that limits or prohibits the use of contaminated groundwater above the RBSLs or SSTLs identified in the corrective action plan, prohibits the raising of livestock, prohibits development in certain locations, or restricts property to certain uses. An ordinance under this subdivision shall be filed with the register of deeds on the affected property or shall be filed as an ordinance affecting multiple properties. An ordinance adopted after the effective date of the 2016 amendatory act that amended this section shall include a requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A license or license agreement with the state transportation department if regulated substances are proposed to be left in place within a public highway owned or controlled by the state transportation department. The license or license agreement may include a financial mechanism in an amount calculated to reflect the reasonably estimated increased cost of any activity anticipated to be performed as described in the most recently adopted state 5-year program, that has the potential to disturb or expose the environmental contamination left in place within the public highway, including, but not limited to, 1 of the following:

(*i*) A bond executed by a surety authorized to do business in this state.

(*ii*) Insurance coverage, as evidenced by a proof of insurance.

(*iii*) Eligibility under the underground storage tank cleanup fund created in section 21506b.

(*iv*) A letter of credit.

(*v*) A corporate guarantee.

(*vi*) Self-insurance meeting a financial test approved by the state transportation department.

(c) If the state transportation department fails or refuses to grant a license or enter into a license agreement within 120 days after submission of a request to issue a license or enter into a license agreement, and for public highways owned or controlled by a county road commission or a local unit of government, reliance on the existence of a public highway, if the owner or operator that is liable under section 21323a does all of the following:

(*i*) Provides the department and the person that owns or operates the public highway with the following information related to the release and site:

(A) The site name, address, and facility identification number, and the name and contact information of the person relying on the alternative mechanism.

(B) Identification of the department district office with jurisdiction over the site.

(C) The name of the affected public highway and the nearest intersection.

(D) Identification of known or suspected contaminants.

(E) A statement that residual or mobile NAPL is or is not present at the affected public highway.

(F) The media affected, including depth of contaminated soil, depth of groundwater, and predominate groundwater flow direction.

(G) A scale drawing of the portion of the public highway subject to the alternate mechanism that depicts the area impacted by regulated substances and the location of utilities in the impacted area, including storm water systems and municipal separate storm water systems.

(H) Identification of all ownership and possessory or use property interests related to the public highway and whether they are affected by the contamination and whether they have received notification of the existing conditions as part of a corrective action plan or pursuant to the due care requirements under section 21304c.

(I) Identification of exposure risks from drinking water, direct contact, groundwater, soil excavation, or relocation.

(*ii*) Confirms that there are no current plans to relocate, vacate, or abandon the public highway.

(*iii*) Either provides a certification to the person that owns or operates the public highway that any contamination present as a result of the release from the underground storage tank system does not enter a storm sewer system or provides all information necessary to clearly identify the nature and extent of the contamination that enters or has the potential to enter the storm sewer system.

(4) A person that applies for a permit issued by a county road commission or a local unit of government to excavate, bore, drill, or perform any other intrusive activity within a public highway or right-of-way of a public highway shall identify whether the proposed work will take place within an area being relied upon as an alternative institutional control.

(5) Reliance on a public highway as an alternative mechanism under subsection (3)(b) does not affect an owner's or operator's liability under section 21323a or impose liability for corrective action or any other obligation on the state transportation department, a county road commission, or a local unit of government. Information provided pursuant to section 21310a(3) or (4) to the person that owns or operates a public highway does not create an estoppel, obligation, or liability on the person that owns or operates the public highway. The use of a public highway as an alternative mechanism does not limit or restrict any right or duty of the state transportation department, a county road commission, or a local unit of government to operate, maintain, repair, reconstruct, enlarge, relocate, abandon, vacate, or otherwise exercise its jurisdiction over any public highway or public highway right-of-way or any part thereof, or to permit any utilities or others to use any public highway or public highway right-of-way, or any part thereof.

(6) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21311 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to groundwater contamination and related reports.

Popular name: Act 451

Popular name: NREPA

324.21311a Final assessment report; information; providing supporting documentation upon request.

Sec. 21311a. (1) Within 365 days after a release has been discovered, an owner or operator that is liable under section 21323a shall complete a final assessment report that includes a corrective action plan developed under section 21309a and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A site assessment under the RBCA process, as necessary for determining site classification, and the extent of contamination relative to the applicable RBSLs or applicable SSTLs set forth in the corrective action plan.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions and the applicable RBSL or applicable SSTL:

(*i*) On-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type above the applicable RBSL or applicable SSTL, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances if above the applicable RBSL or applicable SSTL.

(*ii*) An analysis of the recoverability and whether the NAPL is mobile or migrating.

(*iii*) The costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances that are above the applicable RBSL or applicable SSTL.

(*iv*) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria that are above the applicable RBSL or applicable SSTL.

(*v*) The time necessary to implement and complete each corrective action alternative.

(*vi*) The preferred corrective action alternative based upon subparagraphs (*i*) through (*v*) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the final assessment report upon request by the department. The department shall not require any additional information beyond that required under this section to be included in its final assessment report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21312 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to owner or operator of petroleum underground storage tank system, conditions, and corrective action.

Popular name: Act 451

Popular name: NREPA

324.21312a Closure report; information; confirmation of receipt by department; additional information.

Sec. 21312a. (1) Upon completion of the corrective action, the owner or operator that is liable under section 21323a shall complete a closure report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A summary of corrective action activities and documentation of the basis for concluding that corrective

actions have been completed.

(b) Closure verification sampling results. Groundwater samples shall be collected utilizing a low-flow technique for closure verification or other method approved by the department.

(c) The person submitting a closure report shall include a signed affidavit attesting to the fact that the information upon which the closure report is based is complete and true to the best of that person's knowledge. The closure report shall also include a signed affidavit from the consultant who prepared the closure report attesting to the fact that the corrective actions detailed in the closure report comply with all applicable requirements under the applicable RBCA standard and that the information upon which the closure report is based is true and accurate to the best of that consultant's knowledge. In addition, the consultant shall attach a certificate of insurance demonstrating that the consultant has obtained at least all of the insurance required under section 21325.

(d) A person submitting a closure report shall maintain all documents and data prepared, acquired, or relied upon in connection with the closure report for not less than 6 years after the date on which the closure report was submitted. All documents and data required to be maintained under this section shall be made available to the department upon request.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the owner or operator that is liable under section 21323a who submitted the closure report with a confirmation of the department's receipt of the report.

(3) The department shall not require any additional information beyond that required under this section to be included in a closure report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21313 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to Type A or B cleanup.

Popular name: Act 451

Popular name: NREPA

324.21313a Failure to provide required submittal; penalty; computing period of time; extension of reporting deadline; contract provision for payment of fines; disposition of money collected; accrual of penalty.

Sec. 21313a. (1) Beginning on May 1, 2012, except as provided in subsection (6), and except for the confirmation provided in section 21312a(2), if a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than $100.00 per day for the first 7 days that the report is late.

(b) Not more than $500.00 per day for days 8 through 14 that the report is late.

(c) Not more than $1,000.00 per day for each day beyond day 14 that the report is late.

(2) Subject to subsection (6), for purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(4) The owner or operator that is liable under section 21323a may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator that is liable under section 21323a.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507.

(6) A penalty shall not begin to accrue under this section unless the department has first notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21314 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to retaining consultants.

Popular name: Act 451

Popular name: NREPA

324.21314a Classification of sites; corrective action; schedule.

Sec. 21314a. Sites shall be classified consistent with the process outlined in RBCA. If the department determines that no imminent risk to the public health, safety, or welfare or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21315 Audit; final assessment report or closure report.

Sec. 21315. (1) The department shall design and implement a program to selectively audit final assessment reports and closure reports submitted under this part. Upon receipt of a final assessment report or closure report, the department shall have 90 days to determine whether it will audit the report and inform the owner or operator that is liable under section 21323a of its intention to audit the submitted report within 7 days of the determination. If the department does not inform the owner or operator that is liable under section 21323a of its intention to audit the report within the required time limits, the department shall not audit the report. If the department determines that it will conduct an audit, the audit shall be completed within 180 days of the submission. The department shall inform the owner or operator that is liable under section 21323a in writing of the results of the audit within 14 days of the completion of the audit. All audits shall be conducted based on the standards, criteria, and procedures in effect at the time the final assessment report or closure report was submitted.

(2) The department shall have until January 27, 2013 to selectively audit final assessment reports or closure reports that were submitted on or after November 1, 2011 but not later than July 1, 2012.

(3) If the department conducts an audit, the results of the audit shall approve, approve with conditions, or deny the final assessment report or closure report or shall notify the owner or operator that is liable under section 21323a that the report does not contain sufficient information for the department to make a decision. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a report is approved with conditions, the department's approval shall state with specificity the conditions of the approval.

(4) If the department does not perform an audit and provide a written response in accordance with subsection (1) to a final assessment report or closure report submitted after June 15, 2012, the report is considered approved. An owner or operator that is liable under section 21323a may request written confirmation from the department that the report is considered approved under this section, and the department shall provide written confirmation within 14 days of the request.

(5) Any time frame required by this section may be extended by mutual agreement of the department and an owner or operator that is liable under section 21323a submitting a final assessment or closure report. An agreement extending a time frame shall be in writing.

(6) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or does not confirm that applicable RBSLs or SSTLs have been met, the department shall include both of the following in the written response as required in subsection (1):

(a) The specific deficiencies and the section or sections of this part or rules applicable to this part or applicable RBCA standard that support the department's conclusion of noncompliance or that applicable RBSLs or SSTLs have not been met.

(b) Recommendations about corrective actions or documentation that may address the deficiencies identified under subsection (6)(a).

(7) If the department denies a final assessment report or closure report under this section, an owner or operator that is liable under section 21323a shall either revise and resubmit the report for approval, submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e and pay a fee in the amount of $300.00 in lieu of the $3,500.00 fee set forth in section 20114e(7), or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

(8) Notwithstanding section 21312a, after conducting an audit under this section, the department may issue

a closure letter for any site that meets the applicable RBSL or SSTL pursuant to section 21304a.

(9) The department shall only audit a report required under this part 1 time. If the report does not contain sufficient information for the department to make a decision or the department's audit identifies deficiencies as described in subsection (6), the department may audit a revised report if sufficient information is provided for the department to make a decision or, to evaluate whether the identified deficiencies have been corrected, which shall be completed within 90 days of the revised report's submission to the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316 Use of forms.

Sec. 21316. The department may create and require the use of forms containing information specifically required under this part to assist in the reporting requirements provided in this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316a Delivery of regulated substance to underground storage tank as misdemeanor; penalty; notice of violation; placard; tampering with placard as misdemeanor; commencement of criminal actions.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2). A person that knowingly delivers a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. A person is considered to have knowledge if placards have been affixed to the underground storage tank system at the property and are visible at the time of the delivery.

(2) The department, upon discovery of the operation of an underground storage tank system in violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211, shall provide notification prohibiting delivery of regulated substances to the underground storage tank system by affixing a placard providing notice of the violation in plain view to the underground storage tank system. The department shall provide a minimum of 15 days' notice to the owner or operator that is liable under section 21323a prior to affixing a placard for violations of this part or rules promulgated under this part, unless the violation causes an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person that knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21317-324.21319 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to type C cleanup, corrective action plans, and issuance of orders.

Popular name: Act 451

Popular name: NREPA

324.21319a Administrative order.

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator that is liable under section 21323a to take action as

may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator that is liable under section 21323a requiring that person to perform corrective actions relating to a site, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to whom the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day during which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) For exemplary damages in an amount at least equal to the amount of any costs of corrective action incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person to whom an administrative order was issued under this section may appeal the administrative order pursuant to section 21333.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21320 Corrective actions by department.

Sec. 21320. If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare or the environment at sites where persons that are liable are not financially viable or not readily identifiable, at sites where persons that are liable have not implemented corrective action necessary to abate an imminent and substantial endangerment, or to facilitate brownfield redevelopment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21321, 324.21322 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to failure to submit report within required time and liability imposed on owner or operator.

Popular name: Act 451

Popular name: NREPA

324.21323 Commencement of civil action by attorney general; return or retention of federal funds.

Sec. 21323. (1) The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) Declaratory judgment on liability for future corrective action costs.

(e) Subject to section 21313a, a civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

(f) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(g) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county where the release occurred or for the county where the defendant resides.

(3) The state may, when appropriate, return to the United States environmental protection agency any federal funds recovered under this part. The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part, with such use subject to approval of the United States environmental protection agency.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323a Liability under part; burden of proof; compliance.

Sec. 21323a. (1) Notwithstanding any other provision of this act, and except as otherwise provided in this section and section 21323c, the following persons are liable under this part:

(a) The owner or operator if the owner or operator is responsible for an activity causing a release or threat of release.

(b) An owner or operator who became an owner or operator on or after March 6, 1996, unless the owner or operator complies with the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator provides a baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure.

(*iii*) If the owner or operator fails to meet the time frames in subparagraphs (*i*) and (*ii*), the owner or operator requests and receives from the department a determination that its failure to comply with the time frames was inconsequential.

(c) The estate or trust of a person described in subdivisions (a) and (b).

(2) Subject to section 21304c, an owner or operator who complies with subsection (1)(b) is not liable for contamination existing at the property on which an underground storage tank system is located at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination. Subsection (1)(b) does not alter a person's liability with regard to a subsequent release or threat of release from an underground storage tank system if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at property on which an underground storage tank system is located resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) This state, a county road commission, or a local unit of government if it acquired ownership or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a county road commission or a local unit of government to which ownership or control of property is transferred by this state, by a county road commission, or by another local unit of government that is not liable under subsection (1); or this state, a county road commission, or a local unit of government if it acquired ownership or control of property by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) This state, a county road commission, or a local unit of government if it holds or acquires an easement interest in property, holds or acquires an interest in property by dedication in a plat, or by dedication pursuant to the public highways and private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in property for a transportation or utility corridor, including sewers, pipes, and pipelines, or public rights-of-way.

(c) A person that holds an easement interest in property or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person that owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) This state, a county road commission, or a local unit of government if it leases property to a person and is not liable under this part for environmental contamination at the property.

(f) A person that acquires property as a result of the death of the prior owner or operator of the property, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(g) A person that did not know and had no reason to know that the property was contaminated. To establish that the person did not know and did not have a reason to know that the property was contaminated, the

person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this section shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a regulated substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(h) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(i) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's regulated substance use unless the lessee is otherwise liable under this section.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) A lender that engages in or conducts a lawful marshaling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the property.

(b) A person that owns or operates property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(c) A person that owns or operates property on which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person that is liable under this section.

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21315(4). Notwithstanding this subdivision, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the closure report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the closure report and for which the person is otherwise liable under this part.

(*iii*) If the closure report relies on land use or resource use restrictions, a person who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report. However, if the closure report relies on an alternate mechanism as provided for in section 21310a and the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned, the owner or operator that is liable under section 21323a for the environmental contamination addressed in the closure report shall notify the department 30 days before the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned. In such cases, the owner or operator is liable under this part for additional corrective action activities necessary to address any increased risk of exposure to the environmental contamination.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

(*v*) If the corrective actions that were the basis for the closure report fail to meet performance objectives that are identified in the closure report or section 21304a, an owner or operator that is liable under section 21323a for environmental contamination addressed in the closure report is liable under this part for corrective action necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the property is not liable under this part for costs or damages as a result of corrective action taken in response to a release or threat of release. For a lender, this subsection applies only to corrective action undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by this state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) An owner or operator who was in compliance with subsection (1)(b) prior to May 1, 2012 is considered to be in compliance with subsection (1)(b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21323b Joint and several liability; recovery of costs.

Sec. 21323b. (1) Except as provided in section 21323a(2), a person that is liable under section 21323a is jointly and severally liable for all of the following:

(a) All costs of corrective action lawfully incurred by the state relating to the selection and implementation of corrective action under this part.

(b) All costs of corrective action reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of corrective action recoverable under subsection (1) shall also include all costs of corrective action reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of corrective action under this part. A person challenging the recovery of costs under this subsection has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section may include interest, attorney fees, witness fees, and the costs of litigation to the prevailing or substantially prevailing party. The interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake corrective action for a permitted release. Recovery by any person for corrective action costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a regulated substance or for corrective action or the costs of corrective action.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare or to the environment because of an actual or threatened release from an underground storage tank system, the attorney general may bring an action against any person that is liable under section 21323a or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323c Liability of corrective action contractor; "corrective action contract" and "corrective action contractor" defined; liability if act or failure to act consistent with national contingency plan or directed by federal on-scene coordinator or director; damages; definitions; burden of proof.

Sec. 21323c. (1) Except as otherwise provided in this section, a person that is a corrective action contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by

conduct of the corrective action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a corrective action contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a corrective action while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the corrective action contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Corrective action contract" means a contract or agreement entered into by a corrective action contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of community health.

(*iii*) A person that is arranging for corrective action under this part.

(b) "Corrective action contractor" means all of the following:

(*i*) A person that enters into a corrective action contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person that is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a corrective action.

(*iii*) A qualified underground storage tank consultant.

(6) Notwithstanding any other provision of law, a person is not liable for corrective action costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person that is liable under section 21323a that is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person that is liable under section 21323a and that is a responsible party is liable for any corrective action costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct corrective action under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, 33 USC 1321.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323d Basis for division of harm; action for contribution; reallocation of uncollectible amount; effect of consent order.

Sec. 21323d. (1) If 2 or more persons acting independently are liable under section 21323a and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit that person's liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 21323a for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person that is liable under section 21323a during or following a civil action brought under this part. This subsection does not diminish the right of a person to

bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating corrective action costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the regulated substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person that has resolved that person's liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 21323a unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person that is not liable under this part, including a person that was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and that is otherwise in compliance with section 21304c, shall be considered to have resolved that person's liability to the state in an administratively approved settlement under the applicable federal law and shall by operation of law be granted contribution protection under federal law and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person that has resolved that person's liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 21323a that has not resolved that person's liability.

(8) A person that has resolved that person's liability to the state for some or all of a corrective action in an administrative or judicially approved consent order may seek contribution from any person that is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person that has resolved that person's liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323e Effect of indemnification, hold harmless, or similar agreement or conveyance.

Sec. 21323e. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person that is liable under section 21323a to the state for evaluation or corrective action costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323f Costs and damages; limitation.

Sec. 21323f. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of corrective action and fines, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a regulated substance was the result of willful misconduct or gross

negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323g Covenant not to sue; conditions; effect; factors; covenant not to sue concerning future liability; exception; provisions providing for future enforcement action.

Sec. 21323g. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by corrective action, whether that action is on or off the property on which an underground storage tank system is located, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite corrective action consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The corrective action has been approved by the department.

(2) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that corrective action has been completed in accordance with the requirements of this part at the property that is the subject of the covenant.

(3) In assessing the appropriateness of a covenant not to sue and any condition to be included in a covenant not to sue, the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the corrective action, in light of the other alternative corrective actions considered for the property concerned.

(b) The nature of the risks remaining at the property.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the corrective action provides a complete remedy for the property, including a reduction in the hazardous nature of the substances at the property.

(e) The extent to which the technology used in the corrective action is demonstrated to be effective.

(f) Whether corrective action will be carried out, in whole or in significant part, by persons that are liable under section 21323a.

(4) A covenant not to sue under this section is subject to the satisfactory performance by a person of that person's obligations under the agreement concerned.

(5) A covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (2) that corrective action has been completed at the property concerned.

(6) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (3) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (5) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the property.

(7) The state may include any provisions providing for future enforcement action that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, and welfare and the environment.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323h Proposal to redevelop or reuse contaminated property; covenant not to sue; conditions; assertion of claims; irrevocable right of entry to department, its contractors, or other persons performing corrective action.

Sec. 21323h. (1) The state may provide a person that proposes to redevelop or reuse property contaminated by a release from an underground storage tank system, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 21323a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of corrective action.

(c) The covenant not to sue would, when appropriate, expedite corrective action consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the property is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of corrective action.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the property.

(e) The proposal to redevelop or reuse the property has economic development potential.

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the property in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person that is liable under section 21323a for a release or threat of release at the property.

(c) Compliance with section 21304c.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a property and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the property, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any regulated substance resulting from the redevelopment or reuse of the property to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting corrective action.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing corrective action related to the release or threat of release addressed by the covenant not to sue and for monitoring compliance with the covenant not to sue.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323i Consent order; final settlement.

Sec. 21323i. (1) The department and the attorney general may enter into a consent order with a person that is liable under section 21323a or any group of persons that are liable under section 21323a to perform corrective action if the department and the attorney general determine that the persons that are liable under section 21323a will properly implement the corrective action and that the consent order is in the public interest, will expedite effective corrective action, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons that are liable under section 21323a of any portion of corrective action at the property. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the property concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other regulated substances at the property:

(*i*) The amount of the regulated substances contributed by that person to the property.

(*ii*) The toxic or other regulated effects of the substances contributed by that person to the property.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the property on or in which the underground storage tank system is or was located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any regulated substance at the property.

(*iii*) The person did not contribute to the release or threat of release of a regulated substance at the property through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a regulated substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323j Civil action.

Sec. 21323j. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from an underground storage tank system or threat of release from an underground storage tank system, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 21323a for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare or the environment from a release or threatened release in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(b) A person that is liable under section 21323a for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the general fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the underground storage tank system or the property on which the underground storage tank system is located or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

(8) All unpaid costs and damages for which a person is liable under this part constitute a lien in favor of the state upon a property that has been the subject of corrective action by the state and is owned by that

person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for corrective action at the property for which the person is responsible.

(9) If the attorney general determines that the lien provided in subsection (8) is insufficient to protect the interest of the state in recovering corrective action costs at a property, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the property owned by the person described in subsection (8), subject to corrective action that takes priority over all other liens and encumbrances that are or have been recorded on the property.

(b) A lien upon real or personal property or rights to real or personal property, other than the property which was the subject of corrective action, owned by the person described in subsection (8), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subsection:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(10) A petition submitted pursuant to subsection (9) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (3), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interest in the real property subject to corrective action. A lien shall not be granted under subsection (9) against the owner of the property if the owner is not liable under section 21323a.

(11) In addition to the lien provided in subsections (8) and (9), if the state incurs costs for corrective action that increases the market value of real property that is the location of a release or threatened release, the increase in the value caused by the state-funded corrective action, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(12) A lien provided in subsection (8), (9), or (11) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (9) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(13) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in this part.

(14) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (12).

(15) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (14), has made a determination that the person liable under section 21323a has completed all of the corrective action, the department shall execute and file with the notice of release of lien a document stating that all corrective action has been completed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323k Access to property.

Sec. 21323k. (1) A person that is liable under section 21323a or a lender that has a security interest in all or a portion of a property on which contamination from a release of regulated substances from an underground storage tank system may file a petition in the circuit court of the county in which the property is located seeking access to the property in order to conduct corrective action. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the person that owns or operates the property for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the corrective action.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the person that owns or operates the property to

which access is granted is not liable for either of the following:

(a) A release caused by the corrective action for which access is granted unless the person is otherwise liable under section 21323a.

(b) For conditions associated with the corrective action that may present a threat to public health or safety.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323*l* Limitation period for filing actions.

Sec. 21323*l*. The limitation period for filing actions under this part is as follows:

(a) For the recovery of corrective action costs and natural resources damages pursuant to section 21323b(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the corrective action at the property by the person seeking recovery, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of corrective action costs pursuant to section 21323b, at any time during the corrective action, if commenced not later than 3 years after the date of completion of all corrective action at the property.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323m Persons exempt from liability.

Sec. 21323m. (1) Except as provided in section 21323b(5), a person that has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of corrective action under part 17, part 31, or common law.

(2) A person who is exempt from liability under section 21323a is not liable for a claim for corrective action costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination existing on the site or migrating from the site on the earlier of the date of purchase, occupancy, foreclosure or transfer of ownership, or control of the site to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for violation of section 21304c.

(3) This section does not bar any of the following:

(a) Tort claims unrelated to performance of corrective action.

(b) Tort claims for damages which result from corrective action.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 21304c.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323n Documentation of due care.

Sec. 21323n. (1) A person may submit to the department documentation of due care compliance regarding a site. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 21304c prepared by a qualified underground storage tank consultant, and other information required by the department.

(2) Within 45 business days after receipt of documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21324 Submission of false, misleading, or fraudulent information as felony; penalty; civil fine; retroactive application; "fraudulent" and "fraudulent practice" defined; investigation and commencement of action by attorney general or county prosecutor; subpoena; enforcement; order granting immunity; failure to comply with subpoena; prosecution under other laws not precluded; apportionment of fines.

Sec. 21324. (1) Beginning April 25, 1994, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information 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 fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of $50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

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

(a) Representing that services were done or work was provided that was not done or provided.

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

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

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

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.

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

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.

(h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.

(i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this part.

(j) Misrepresenting or falsifying the source of data regarding site conditions.

(k) Misrepresenting or falsifying the date upon which a release occurred.

(*l*) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.

(m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release.

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.

(o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with 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 documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, 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 documents, records, or objects 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 them to appear and be examined under oath or to produce the documents, records, or objects 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) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(10) 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 such 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 entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

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

Popular name: Act 451

Popular name: NREPA

324.21325 Qualified underground tank consultant; requirements.

Sec. 21325. A person shall be considered a qualified underground storage tank consultant if the person meets all of the following requirements:

(a) Has experience in all phases of underground storage tank work, including RBCA, tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure and possesses or employs at least 1 of the following:

(*i*) A professional engineer license with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*ii*) A professional geologist certification or a similar approved designation such as a professional hydrologist or a certified groundwater professional, with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*iii*) A person with a master's degree from an accredited institution of higher education in a discipline of engineering or science and 8 years of full-time relevant experience or a person with a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and 10 years of full-time relevant experience. This experience shall be documented with professional and personal references, past employment references and histories, and documentation that all requirements of the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules promulgated under that act have been met.

(*iv*) A person that was certified by the department as an underground storage tank professional pursuant to section 21543 on May 1, 2012.

(b) Has all of the following insurance policies written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by this state and which are placed with an insurer listed in a.m. best's with a rating of no less than B+ VII:

(*i*) Worker's compensation insurance.

(*ii*) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per occurrence.

(*iii*) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per occurrence, if not included under the professional liability errors and omissions insurance required under subparagraph (*ii*). The insurance requirement under this subparagraph is not required for consultants who do not perform

contracting functions.

(*iv*) Commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

(c) Has demonstrated compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and the regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act, and is able to demonstrate that all such rules and regulations have been complied with during the person's previous corrective action activity.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Compiler's note: Former MCL 324.21325, which pertained to rewards, was repealed by Act 22 of 1995, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21325a Department employees responsible for oversight; training; proficiency.

Sec. 21325a. Department employees who are responsible for the oversight of corrective action or the audits conducted under section 21315 shall be formally trained and demonstrate proficiency in RBCA.

History: Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21326 Furnishing information to department; right of entry; inspections and investigations; powers of attorney general.

Sec. 21326. (1) Upon request of the department for the purpose of conducting an investigation, taking corrective action, or enforcing this part, a person shall furnish the department with all available information about all of the following:

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

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

(c) Any releases and investigations of releases.

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

(a) Inspecting an underground storage tank system.

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

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

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

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

(f) Taking corrective action.

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

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

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

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

(b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21327 Rules; prohibition.

Sec. 21327. (1) Beginning on the effective date of the 2012 amendatory act that amended this section, the department shall not promulgate rules to implement this part.

(2) A guideline, bulletin, interpretive statement, operational memorandum, or form with instructions published under this part shall not be given the force and effect of law by the department and is considered

merely advisory. The department shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to support the department's decision to act or refuse to act. A court shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to uphold the department's decision to act or refusal to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21328 Agreements.

Sec. 21328. The department may enter into an agreement with a local unit of government or a state or federal agency to aid in the implementation or enforcement of this part and to obtain financial assistance.

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

Popular name: Act 451

Popular name: NREPA

324.21329 Coordination and integration.

Sec. 21329. The department shall coordinate and integrate the provisions of this part with appropriate state and federal law for purposes of administration and enforcement. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

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

Popular name: Act 451

Popular name: NREPA

324.21330 Actions taken by state police.

Sec. 21330. This part does not prohibit the department of state police from taking action in any situation in which it is otherwise authorized by law to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21331 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to repeal of part.

Popular name: Act 451

Popular name: NREPA

324.21332 Contested case hearing; petition; hearing.

Sec. 21332. (1) Subject to subsection (2), an owner or operator that is liable under section 21323a may petition the department for a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding any of the following:

(a) Corrective action proposed, commenced, or completed.

(b) The SSTLs proposed for a site.

(c) The imposition of penalties pursuant to section 21313a.

(d) The results of any audit performed under section 21315.

(e) A decision regarding the documentation of due care compliance under section 21323n.

(2) Upon receipt of a petition from an owner or operator that is liable under section 21323a pursuant to this section, the department shall conduct the hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. However, an issue that was addressed as part of the final decision of the director under section 20114e or that is being considered by the response activity review panel under section 20114e is not eligible for review as part of a contested case hearing under this section.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21333 Appeal of final agency decision.

Sec. 21333. An owner or operator that is liable under section 21323a may appeal a final agency decision to affix a placard under section 21316a(2) or issue an administrative order under section 21319a(2) to the circuit court for the county where the underground storage tank system is located or the Ingham county circuit court

in the same manner as and according to the same procedures provided for appeals to the circuit court under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The court shall set aside the final agency decision if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21334 Report to legislative committees.

Sec. 21334. Not later than November 1, 2013 and not later than November 1 of each subsequent year, the department shall submit a report to the standing committees of the senate and house of representatives with jurisdiction primarily pertaining to natural resources and the environment that contains all of the following:

(a) The number of closure reports submitted and approved by the department and the number of closure reports that were approved by operation of law under this part.

(b) The number of closure reports that were submitted to the department and not approved under this part.

(c) The number of contested case hearings held pursuant to section 21332.

(d) The number of issues resolved by the response activity review panel under section 20114e.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

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.