

SENATE BILL No. 1565

November 4, 2010, Introduced by Senator BIRKHOLZ and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21302, 21303, 21311a, 21312a, and 21315 (MCL 324.21302, 324.21303, 324.21311a, 324.21312a, and 324.21315), section 21302 as amended by 1995 PA 22 and sections 21303, 21311a, 21312a, and 21315 as amended by 1996 PA 116, and by adding sections 20114f and 21301c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20114F. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN
2 SECTION 20114E, THE RESPONSE ACTIVITY PANEL CREATED IN SECTION
3 20114E SHALL ADVISE THE DIRECTOR ON TECHNICAL OR SCIENTIFIC
4 DISPUTES, INCLUDING DISPUTES REGARDING ASSESSMENT OF RISK,
5 CONCERNING FINAL ASSESSMENT REPORTS AND CLOSURE REPORTS UNDER PART

1 213. A PERSON WHO SUBMITTED A FINAL ASSESSMENT REPORT OR A CLOSURE
2 REPORT TO THE DEPARTMENT UNDER PART 213 MAY APPEAL A DECISION MADE
3 BY THE DEPARTMENT REGARDING A TECHNICAL OR SCIENTIFIC DISPUTE,
4 INCLUDING A DISPUTE REGARDING ASSESSMENT OF RISK, CONCERNING THE
5 FINAL ASSESSMENT REPORT OR CLOSURE REPORT IN THE SAME MANNER AS
6 OTHER DISPUTES UNDER SECTION 20114E.

7 SEC. 21301C. A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OR
8 OPERATIONAL MEMORANDUM UNDER THIS PART SHALL NOT BE GIVEN THE FORCE
9 AND EFFECT OF LAW. A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT,
10 OR OPERATIONAL MEMORANDUM UNDER THIS PART IS NOT LEGALLY BINDING ON
11 ANY PERSON.

12 Sec. 21302. As used in this part:

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

15 (b) "Consultant" means a person on the list of qualified
16 underground storage tank consultants prepared pursuant to section
17 21542.

18 (c) "Contamination" means the presence of a ~~regulated~~
19 ~~substance in soil or groundwater.~~ ANY OF THE FOLLOWING:

20 (i) A REGULATED SUBSTANCE IN SOIL OR GROUNDWATER THAT WAS
21 RELEASED FROM AN UNDERGROUND STORAGE TANK SYSTEM.

22 (ii) A HAZARDOUS SUBSTANCE IN SOIL OR GROUNDWATER THAT IS
23 COMMINGLED WITH A REGULATED SUBSTANCE RELEASED FROM AN UNDERGROUND
24 STORAGE TANK SYSTEM.

25 (iii) ANY BREAKDOWN PRODUCT OF A REGULATED SUBSTANCE OR
26 HAZARDOUS SUBSTANCE DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

27 (iv) ANY SUBSTANCE THAT WAS CAUSED BY A RELEASE FROM AN

1 **UNDERGROUND STORAGE TANK SYSTEM.**

2 (d) "Corrective action" means the investigation, assessment,
3 cleanup, removal, containment, isolation, treatment, or monitoring
4 of regulated substances released into the environment, or the
5 taking of such other actions as may be necessary to prevent,
6 minimize, or mitigate injury to the public health, safety, or
7 welfare, the environment, or natural resources.

8 (e) "De minimis spill" means a spill of petroleum as that term
9 is described in section 21303(d) (ii) that contaminates not more than
10 20 cubic yards of soil per underground storage tank or 50 cubic
11 yards of soil per location, in which groundwater has not been
12 affected by the spill, and which is abated pursuant to section
13 21306.

14 (f) "Free product" means a regulated substance in a liquid
15 phase equal to or greater than 1/8 inch of measurable thickness,
16 that is not dissolved in water, and that has been released into the
17 environment.

18 (g) "Groundwater" means water below the land surface in the
19 zone of saturation.

20 **(H) "HAZARDOUS SUBSTANCE" MEANS THAT TERM AS IT IS DEFINED IN**
21 **SECTION 20101.**

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

1 (J) ~~(i)~~ "Local unit of government" means a city, village,
2 township, county, fire department, or local health department as
3 defined in section 1105 of the public health code, ~~Act No. 368 of~~
4 ~~the Public Acts of 1978, being section 333.1105 of the Michigan~~
5 ~~Compiled Laws. 1978 PA 368, MCL 333.1105.~~

6 Sec. 21303. As used in this part:

7 (a) "Operator" means a person who is presently, or was at the
8 time of a release, in control of, or responsible for, the operation
9 of an underground storage tank system and who is liable under part
10 201.

11 (b) "Owner" means a person who holds, or at the time of a
12 release who held, a legal, equitable, or possessory interest of any
13 kind in an underground storage tank system or in the property on
14 which an underground storage tank system is located including, but
15 not limited to, a trust, vendor, vendee, lessor, or lessee and who
16 is liable under part 201.

17 (c) "RBCA" means the American society for testing and
18 materials (ASTM) ~~document~~ **DOCUMENTS** entitled standard guide for
19 risk-based corrective action applied at petroleum release sites,
20 designation E 1739-95, **STANDARD GUIDE FOR DEVELOPMENT OF CONCEPTUAL**
21 **SITE MODELS AND REMEDIATION STRATEGIES FOR NON-AQUEOUS-PHASE**
22 **LIQUIDS RELATED TO THE SUBSURFACE, DESIGNATION E 2531-06, AND GUIDE**
23 **FOR RISK-BASED CORRECTIVE ACTION, DESIGNATION E 2801, which is** ~~is~~ **ARE**
24 hereby incorporated by reference.

25 (d) "Regulated substance" means any of the following:

26 (i) A substance defined in section 101(14) of title I of the
27 comprehensive environmental response, compensation, and liability

1 act of 1980, Public Law 96-510, 42 ~~U.S.C.~~**USC** 9601, but not
2 including a substance regulated as a hazardous waste under subtitle
3 C of the solid waste disposal act, title II of Public Law 89-272,
4 42 ~~U.S.C.~~**USC** 6921 to 6939e.

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

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

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

20 (f) "Site" means a location where a release has occurred or a
21 threat of release exists from an underground storage tank system,
22 excluding any location where corrective action was completed which
23 satisfies the cleanup criteria for unrestricted residential use
24 under this part.

25 (g) "Threat of release" or "threatened release" means any
26 circumstance that may reasonably be anticipated to cause a release.

27 (h) "Tier I", "tier II", and "tier III" mean those terms as

1 they are used in RBCA.

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

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

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

14 (iii) A septic tank.

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

17 (A) The natural gas pipeline safety act of 1968, Public Law
18 90-481, 49 ~~U.S.C.~~ **USC** Appx 1671 to 1677, 1679a to 1682, and 1683 to
19 1687.

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

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

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

25 (vii) A flow-through process tank.

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

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

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

6 (xi) An underground storage tank system holding hazardous
7 wastes listed or identified under subtitle C of the solid waste
8 disposal act, title II of Public Law 89-272, 42 ~~U.S.C.~~ **USC** 6921 to
9 6939e, or a mixture of such hazardous waste and other regulated
10 substances.

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

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

18 (xiv) An underground storage tank system that has a capacity of
19 110 gallons or less.

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

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

24 (j) "Vadose zone" means the zone between the land surface and
25 the water table, or zone of saturation. Vadose zone is also known
26 as an unsaturated zone or a zone of aeration.

27 Sec. 21311a. (1) Within 365 days after a release has been

1 discovered, a consultant retained by an owner or operator shall
2 complete a final assessment report that includes a corrective
3 action plan developed under section 21309a and submit the report to
4 the department on a form created pursuant to section 21316. The
5 report shall include, but is not limited to, the following
6 information:

7 (a) The extent of contamination.

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

10 (c) A feasibility analysis. The following shall be included,
11 as appropriate, given the site conditions:

12 (i) On-site and off-site corrective action alternatives to
13 remediate contaminated soil and groundwater for each cleanup type,
14 including alternatives that permanently and significantly reduce
15 the volume, toxicity, and mobility of the regulated substances.

16 (ii) The costs associated with each corrective action
17 alternative including alternatives that permanently and
18 significantly reduce the volume, toxicity, and mobility of the
19 regulated substances.

20 (iii) The effectiveness and feasibility of each corrective
21 action alternative in meeting cleanup criteria.

22 (iv) The time necessary to implement and complete each
23 corrective action alternative.

24 (v) The preferred corrective action alternative based upon
25 subparagraphs (i) through (iv) and an implementation schedule for
26 completion of the corrective action.

27 (d) A corrective action plan.

1 (e) A schedule for corrective action plan implementation.

2 (2) WITHIN 180 DAYS AFTER RECEIPT OF A FINAL ASSESSMENT REPORT
3 UNDER THIS SECTION, THE DEPARTMENT SHALL APPROVE, APPROVE WITH
4 CONDITIONS, OR DENY THE FINAL ASSESSMENT REPORT AND NOTIFY THE
5 SUBMITTER OF ITS DECISION, OR SHALL NOTIFY THE SUBMITTER THAT THE
6 FINAL ASSESSMENT REPORT DOES NOT CONTAIN SUFFICIENT INFORMATION FOR
7 THE DEPARTMENT TO MAKE A DECISION. IF THE DEPARTMENT'S RESPONSE IS
8 THAT THE PLAN DOES NOT INCLUDE SUFFICIENT INFORMATION, THE
9 DEPARTMENT SHALL IDENTIFY THE INFORMATION THAT IS REQUIRED FOR THE
10 DEPARTMENT TO MAKE A DECISION. IF A PLAN IS APPROVED WITH
11 CONDITIONS, THE DEPARTMENT'S APPROVAL SHALL STATE WITH SPECIFICITY
12 THE CONDITIONS OF THE APPROVAL. IF THE PLAN IS DENIED, THE
13 DEPARTMENT'S DENIAL SHALL, TO THE EXTENT PRACTICAL, STATE WITH
14 SPECIFICITY ALL OF THE REASONS FOR DENIAL.

15 (3) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE
16 WITHIN THE TIME FRAME REQUIRED BY SUBSECTION (2), THE FINAL
17 ASSESSMENT REPORT IS CONSIDERED APPROVED. IF THE DEPARTMENT DENIES
18 A FINAL ASSESSMENT REPORT UNDER SUBSECTION (2), A PERSON MAY
19 SUBSEQUENTLY REVISE AND RESUBMIT THE FINAL ASSESSMENT REPORT FOR
20 APPROVAL.

21 (4) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY
22 MUTUAL AGREEMENT OF THE DEPARTMENT AND A PERSON SUBMITTING A FINAL
23 ASSESSMENT REPORT. AN AGREEMENT EXTENDING A TIME FRAME SHALL BE IN
24 WRITING.

25 (5) A PERSON REQUESTING APPROVAL OF A FINAL ASSESSMENT REPORT
26 MAY APPEAL THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SECTIONS
27 20114E AND 20114F, IF APPLICABLE.

1 (6) ~~(2)~~—If the preferred corrective action alternative under
2 subsection (1)(c)(v) is based on the use of institutional controls
3 regarding off-site migration of regulated substances, the
4 corrective action plan shall not be implemented until it is
5 reviewed and determined by the department to be in compliance with
6 this part.

7 Sec. 21312a. (1) Within 30 days following completion of the
8 corrective action, a consultant retained by the owner or operator
9 shall complete a closure report and submit the report to the
10 department on a form created pursuant to section 21316. The report
11 shall include, but is not limited to, the following information:

12 (a) A summary of corrective action activities.

13 (b) Closure verification sampling results.

14 (c) A closure certification prepared by the consultant
15 retained by the owner or operator.

16 (2) Within 60 days after receipt of a closure report under
17 subsection (1), the department shall provide the consultant who
18 submitted the closure report with a confirmation of the
19 department's receipt of the report.

20 (3) **WITHIN 365 DAYS AFTER RECEIPT OF A CLOSURE REPORT**
21 **SUBMITTED UNDER THIS SECTION, THE DEPARTMENT SHALL APPROVE OR DENY**
22 **THE CLOSURE REPORT AND NOTIFY THE SUBMITTER OF ITS DECISION OR**
23 **SHALL NOTIFY THE SUBMITTER THAT THE REPORT DOES NOT CONTAIN**
24 **SUFFICIENT INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION. IF**
25 **THE DEPARTMENT'S RESPONSE IS THAT THE REPORT DOES NOT INCLUDE**
26 **SUFFICIENT INFORMATION, THE DEPARTMENT SHALL IDENTIFY THE**
27 **INFORMATION THAT IS REQUIRED FOR THE DEPARTMENT TO MAKE A DECISION.**

1 IF THE REPORT IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE
2 EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR
3 DENIAL.

4 (4) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE
5 WITHIN THE TIME FRAME REQUIRED BY SUBSECTION (3), THE CLOSURE
6 REPORT IS CONSIDERED APPROVED.

7 (5) A PERSON REQUESTING APPROVAL OF A CLOSURE REPORT UNDER
8 SUBSECTION (3) MAY APPEAL THE DEPARTMENT'S DECISION IN ACCORDANCE
9 WITH SECTIONS 20114E AND 20114F.

10 (6) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY
11 MUTUAL AGREEMENT OF THE DEPARTMENT AND THE PERSON SUBMITTING A
12 CLOSURE REPORT. AN AGREEMENT EXTENDING A TIME FRAME SHALL BE IN
13 WRITING.

14 (7) FOLLOWING APPROVAL OF A CLOSURE REPORT UNDER THIS SECTION,
15 THE OWNER OR OPERATOR OF THE FACILITY ADDRESSED BY THE CLOSURE
16 REPORT MAY SUBMIT TO THE DEPARTMENT AN AMENDED CLOSURE REPORT. THE
17 AMENDED CLOSURE REPORT SHALL INCLUDE THE PROPOSED CHANGES TO THE
18 ORIGINAL CLOSURE REPORT AND AN ACCOMPANYING RATIONALE FOR THE
19 PROPOSED CHANGE. THE PROCESS FOR REVIEW AND APPROVAL OF AN AMENDED
20 CLOSURE REPORT IS THE SAME AS THE PROCESS FOR CLOSURE REPORTS.

21 Sec. 21315. (1) The department shall design and implement a
22 program to selectively audit or oversee all aspects of corrective
23 actions undertaken under this part to assure compliance with this
24 part. The department may audit a site at any time prior to receipt
25 of a closure report pursuant to section 21312a and within 6 months
26 after receipt of the closure report.

27 (2) If the department conducts an audit under this section and

1 the audit confirms that the cleanup criteria have been met, the
2 department shall provide the owner or operator with a letter that
3 describes the audit and its results. Notwithstanding section
4 21312a, after conducting an audit under this section, the
5 department may issue a closure letter for any site that meets the
6 cleanup criteria pursuant to section 21304a.

7 (3) If an audit conducted under this section does not confirm
8 that corrective action has been conducted in compliance with this
9 part or that cleanup criteria have been met, the department may
10 require an owner or operator to do either or both of the following:

11 (a) Provide additional information related to any requirement
12 of this part.

13 (b) Retain a consultant to take additional corrective actions
14 necessary to comply with this part or to protect public health,
15 safety, or welfare, or the environment.

16 **(4) IF AN AUDIT CONDUCTED UNDER THIS SECTION CONFIRMS THAT**
17 **CORRECTIVE ACTION ADDRESSED IN A CLOSURE REPORT HAS BEEN CONDUCTED**
18 **IN COMPLIANCE WITH THIS PART AND THAT THE CLEANUP CRITERIA HAVE**
19 **BEEN MET, THE OWNER OR OPERATOR, OR BOTH, RESPONSIBLE FOR THE**
20 **CORRECTIVE ACTION IS NOT LIABLE UNDER THIS PART OR PART 201 FOR**
21 **ADDITIONAL CORRECTIVE ACTIONS. NOTWITHSTANDING THIS SUBSECTION, A**
22 **PERSON MAY BE LIABLE UNDER THIS PART AND PART 201 FOR THE**
23 **FOLLOWING:**

24 **(A) A SUBSEQUENT RELEASE NOT ADDRESSED IN THE CLOSURE REPORT**
25 **IF THE PERSON IS OTHERWISE LIABLE UNDER THIS PART AND PART 201 FOR**
26 **THAT RELEASE.**

27 **(B) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE**

1 CLOSURE REPORT AND FOR WHICH THE PERSON IS OTHERWISE LIABLE UNDER
2 THIS PART AND PART 201.

3 (C) IF THE CLOSURE REPORT RELIES ON LAND USE OR RESOURCE USE
4 RESTRICTIONS, AN OWNER OR OPERATOR THAT DESIRES TO CHANGE THOSE
5 RESTRICTIONS IS RESPONSIBLE FOR ANY CORRECTIVE ACTIONS NECESSARY TO
6 COMPLY WITH THIS PART AND PART 201 FOR ANY LAND USE OR RESOURCE USE
7 OTHER THAN THE LAND USE OR RESOURCE USE THAT WAS THE BASIS FOR THE
8 CLOSURE REPORT.

9 (D) IF THE CLOSURE REPORT RELIES ON MONITORING NECESSARY TO
10 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE CORRECTIVE ACTION, AN
11 OWNER OR OPERATOR THAT IS OTHERWISE LIABLE FOR ENVIRONMENTAL
12 CONTAMINATION ADDRESSED IN A CLOSURE REPORT IS LIABLE UNDER THIS
13 PART AND PART 201 FOR ADDITIONAL CORRECTIVE ACTIONS NECESSARY TO
14 ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL CONTAMINATION
15 DEMONSTRATED BY THE MONITORING IN EXCESS OF THE LEVELS RELIED ON IN
16 THE CLOSURE REPORT.

17 (E) IF THE CORRECTIVE ACTIONS THAT WERE THE BASIS FOR THE
18 CLOSURE REPORT FAIL TO MEET PERFORMANCE OBJECTIVES THAT ARE
19 IDENTIFIED IN THE CLOSURE REPORT, AN OWNER OR OPERATOR THAT IS
20 OTHERWISE LIABLE FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN THE
21 CLOSURE REPORT IS LIABLE UNDER THIS PART AND PART 201 FOR
22 CORRECTIVE ACTIONS NECESSARY TO SATISFY THE PERFORMANCE OBJECTIVES
23 OR OTHERWISE COMPLY WITH THIS PART AND PART 201.