

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 717

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21303, 21304c, 21310a, 21323a, and 21325 (MCL 324.21303, 324.21304c, 324.21310a, 324.21323a, and 324.21325), sections 21303, 21304c, 21310a, and 21323a as amended by 2012 PA 446 and section 21325 as added by 2012 PA 108, and by adding section 21325a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21303. As used in this part:

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

6 (b) "Operator" means a person who is presently, or was at the

1 time of a release, in control of, or responsible for, the operation
2 of an underground storage tank system.

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

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

11 (E) "PUBLIC HIGHWAY" MEANS A ROAD OR HIGHWAY UNDER THE
12 JURISDICTION OF THE STATE TRANSPORTATION DEPARTMENT, A COUNTY ROAD
13 COMMISSION, OR A LOCAL UNIT OF GOVERNMENT.

14 (F) ~~(e)~~ "Qualified underground storage tank consultant" means
15 a person who meets the requirements established in section 21325.

16 (G) ~~(f)~~ "RBCA" means the American ~~society~~ **SOCIETY** for ~~testing~~
17 **TESTING** and ~~materials~~ **MATERIALS** (ASTM) document entitled standard
18 guide for risk-based corrective action applied at petroleum release
19 sites, designation E 1739-95 (reapproved 2010) E1; standard guide
20 for risk-based corrective action designation E 2081-00 (reapproved
21 2010) E1; and standard guide for development of conceptual site
22 models and remediation strategies for light nonaqueous-phase
23 liquids released to the subsurface designation E 2531-06 E1, all of
24 which are hereby incorporated by reference.

25 (H) ~~(g)~~ "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 USC 9601, but not including a
2 substance regulated as a hazardous waste under subtitle C of the
3 solid waste disposal act, title II of Public Law 89-272, 42 USC
4 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
16 of the clean air act, chapter 360, 84 Stat.—**STAT** 1685, 42 USC 7412.

17 (I) ~~(h)~~—"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 (J) ~~(i)~~—"Residual NAPL saturation" means the range of NAPL
21 saturations greater than zero NAPL saturation up to the NAPL
22 saturation at which NAPL capillary pressure equals pore entry
23 pressure and includes the maximum NAPL saturation, below which NAPL
24 is discontinuous and immobile under the applied gradient.

25 (K) ~~(j)~~—"Risk-based screening level" or "RBSL" means the
26 unrestricted residential and nonresidential generic cleanup
27 criteria developed by the department pursuant to part 201.

1 (I) ~~(k)~~—"Saturated zone" means a soil area where the soil
2 pores are filled with groundwater and can include the presence of
3 LNAPL.

4 (M) ~~(l)~~—"Site" means a location where a release has occurred
5 or a threat of release exists from an underground storage tank
6 system, excluding any location where corrective action was
7 completed which satisfies the applicable RBSL or SSTL.

8 (N) ~~(m)~~—"Surface water" means all of the following, but does
9 not include groundwater or an enclosed sewer, other utility line,
10 storm water retention basin, or drainage ditch:

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

12 (ii) All inland lakes.

13 (iii) Rivers.

14 (iv) Streams.

15 (v) Impoundments.

16 (O) ~~(n)~~—"Site-specific target level" or "SSTL" means an RBCA
17 risk-based remedial action target level for contamination developed
18 for a site under RBCA tier II and tier III evaluations.

19 (P) ~~(o)~~—"Threat of release" or "threatened release" means any
20 circumstance that may reasonably be anticipated to cause a release.
21 Threat of release or threatened release does not include the
22 ownership or operation of an underground storage tank system if the
23 underground storage tank system is operated in accordance with part
24 211 and rules promulgated under that part.

25 (Q) ~~(p)~~—"Tier I", "tier II", and "tier III" mean those terms
26 as they are used in RBCA.

27 (R) ~~(q)~~—"Underground storage tank system" means a tank or

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

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

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

12 (iii) A septic tank.

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

15 (A) The natural gas pipeline safety act of 1968, Public Law
16 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

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

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

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

22 (vii) A flow-through process tank.

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

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

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

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

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

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

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

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

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

21 (S) ~~(r)~~—"Vadose zone" means the soil between the land surface
22 and the top of the capillary fringe. Vadose zone is also known as
23 an unsaturated zone or a zone of aeration.

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

27 (a) Undertake measures as are necessary to prevent

1 exacerbation.

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

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

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

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

22 (f) Not impede the effectiveness or integrity of any
23 **CORRECTIVE ACTION OR** land use or resource use restriction employed
24 at the property in connection with corrective action activities.

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

27 (3) A person that violates subsection (1) that is not

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

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

13 (5) Subsection (1)(a) to (c) **AND (F)** does not apply to ~~the~~
 14 **THIS** state, **A COUNTY ROAD COMMISSION**, or ~~to~~ a local unit of
 15 government ~~that~~ **IF IT** is not liable under section 21323a(3)(a),
 16 (b), (c), or (e) or to ~~the~~ **THIS** state, **A COUNTY ROAD COMMISSION**, or
 17 **A** local unit of government ~~that~~ **IF IT** acquired property by
 18 purchase, gift, transfer, or condemnation or to a person that is
 19 exempt from liability under section 21323a(4)(b). However, if ~~the~~
 20 **THIS** state or **A** local unit of government, ~~other than those~~ **UNLESS**
 21 exempt from liability under section 21323a(4)(b), acting as the
 22 **OWNER OR** operator of a ~~parcel of property that the state or local~~
 23 ~~unit of government has knowledge is contaminated by a release from~~
 24 ~~an underground storage tank system,~~ offers access to ~~that parcel~~
 25 **THE PROPERTY** on a regular or continuous basis ~~pursuant to an~~
 26 ~~express~~ **FOR A** public purpose and invites the ~~general~~ public to use
 27 ~~that~~ **THE** property for the ~~express~~ public purpose, ~~the~~ **THIS** state or

1 **THE** local unit of government is subject to this section but only
2 with respect to that portion of the property that is opened to and
3 used by the ~~general-public~~ for ~~that-express~~**THE PUBLIC** purpose, and
4 not the entire property. ~~Express-public~~**PUBLIC** purpose includes,
5 but is not limited to, activities such as a ~~public-park~~, ~~municipal~~
6 office building, or ~~municipal-public~~ works operation. ~~Express~~
7 ~~public~~**PUBLIC** purpose does not include **A PUBLIC HIGHWAY OR**
8 activities surrounding the acquisition or compilation of parcels
9 for the purpose of future development.

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

13 **(7) SUBSECTION (1) (A) TO (F) APPLIES TO AN OWNER OR OPERATOR**
14 **WHO IS LIABLE UNDER SECTION 21323A WITH RESPECT TO REGULATED**
15 **SUBSTANCES PRESENT WITHIN A PUBLIC HIGHWAY ABOVE APPLICABLE RBSLS**
16 **OR SSTLS.**

17 Sec. 21310a. (1) If the corrective action activities at a site
18 result in a final remedy that relies on a nonresidential RBSL or an
19 SSTL, institutional controls shall be implemented as provided in
20 this subsection. A notice of corrective action shall be recorded
21 with the register of deeds for the county in which the site is
22 located prior to submittal of a closure report under section
23 21312a. A notice shall be filed under this subsection only by the
24 person that owns the property or with the express written
25 permission of the person that owns the property. A notice of
26 corrective action recorded under this subsection shall state the
27 land use that was the basis of the corrective action. The notice

1 shall state that if there is a proposed change in the land use at
2 any time in the future, that change may necessitate further
3 evaluation of potential risks to the public health, safety, and
4 welfare and to the environment and that the department shall be
5 contacted regarding any proposed change in the land use. Additional
6 requirements for monitoring or operation and maintenance shall not
7 apply if contamination levels do not exceed the levels established
8 in the tier I evaluation.

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

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

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

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

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

19 (e) Allow ~~the~~ **THIS** state to enforce restrictions set forth in
20 the covenant by legal action in a court of appropriate
21 jurisdiction.

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

24 (3) If the owner or operator that is liable under section
25 21323a determines that exposure to regulated substances may be
26 ~~reliably~~ restricted by a means other than a restrictive covenant
27 ~~and that imposition of land use or resource use restrictions~~

1 ~~through restrictive covenants is impractical, IN A MANNER THAT~~
2 **PROTECTS AGAINST EXPOSURE TO REGULATED SUBSTANCES AS DEFINED BY THE**
3 **RBSLS AND SSTLS**, the owner or operator that is liable under section
4 21323a may select a corrective action plan that relies on
5 alternative mechanisms. Mechanisms that may be considered under
6 this subsection include, but are not limited to, ~~an ordinance that~~
7 ~~prohibits the use of groundwater in a manner and to a degree that~~
8 ~~protects against unacceptable exposure to a regulated substance as~~
9 ~~defined by the RBSLs or SSTLs identified in the corrective action~~
10 ~~plan. An ordinance that serves as an exposure control under this~~
11 ~~subsection shall include both ANY of the following:~~

12 ~~—— (a) A requirement that the local unit of government notify the~~
13 ~~department 30 days before adopting a modification to the ordinance~~
14 ~~or the lapsing or revocation of the ordinance.~~

15 ~~—— (b) A requirement that the ordinance be filed with the~~
16 ~~register of deeds as an ordinance affecting multiple properties.~~

17 **(A) COMPLIANCE WITH AN ORDINANCE, STATE LAW, OR RULE THAT**
18 **LIMITS OR PROHIBITS THE USE OF CONTAMINATED GROUNDWATER ABOVE THE**
19 **RBSLS OR SSTLS IDENTIFIED IN THE CORRECTIVE ACTION PLAN, PROHIBITS**
20 **THE RAISING OF LIVESTOCK, PROHIBITS DEVELOPMENT IN CERTAIN**
21 **LOCATIONS, OR RESTRICTS PROPERTY TO CERTAIN USES. AN ORDINANCE**
22 **UNDER THIS SUBDIVISION SHALL BE FILED WITH THE REGISTER OF DEEDS ON**
23 **THE AFFECTED PROPERTY OR SHALL BE FILED AS AN ORDINANCE AFFECTING**
24 **MULTIPLE PROPERTIES. AN ORDINANCE ADOPTED AFTER THE EFFECTIVE DATE**
25 **OF THE 2016 AMENDATORY ACT THAT AMENDED THIS SECTION SHALL INCLUDE**
26 **A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY THE**
27 **DEPARTMENT 30 DAYS BEFORE ADOPTING A MODIFICATION TO THE ORDINANCE**

1 OR THE LAPSING OR REVOCATION OF THE ORDINANCE.

2 (B) A LICENSE OR LICENSE AGREEMENT WITH THE STATE
3 TRANSPORTATION DEPARTMENT IF REGULATED SUBSTANCES ARE PROPOSED TO
4 BE LEFT IN PLACE WITHIN A PUBLIC HIGHWAY OWNED OR CONTROLLED BY THE
5 STATE TRANSPORTATION DEPARTMENT. THE LICENSE OR LICENSE AGREEMENT
6 MAY INCLUDE A FINANCIAL MECHANISM IN AN AMOUNT CALCULATED TO
7 REFLECT THE REASONABLY ESTIMATED INCREASED COST OF ANY ACTIVITY
8 ANTICIPATED TO BE PERFORMED AS DESCRIBED IN THE MOST RECENTLY
9 ADOPTED STATE 5-YEAR PROGRAM, THAT HAS THE POTENTIAL TO DISTURB OR
10 EXPOSE THE ENVIRONMENTAL CONTAMINATION LEFT IN PLACE WITHIN THE
11 PUBLIC HIGHWAY, INCLUDING, BUT NOT LIMITED TO, 1 OF THE FOLLOWING:

12 (i) A BOND EXECUTED BY A SURETY AUTHORIZED TO DO BUSINESS IN
13 THIS STATE.

14 (ii) INSURANCE COVERAGE, AS EVIDENCED BY A PROOF OF INSURANCE.

15 (iii) ELIGIBILITY UNDER THE UNDERGROUND STORAGE TANK CLEANUP
16 FUND CREATED IN SECTION 21506B.

17 (iv) A LETTER OF CREDIT.

18 (v) A CORPORATE GUARANTEE.

19 (vi) SELF-INSURANCE MEETING A FINANCIAL TEST APPROVED BY THE
20 STATE TRANSPORTATION DEPARTMENT.

21 (C) IF THE STATE TRANSPORTATION DEPARTMENT FAILS OR REFUSES TO
22 GRANT A LICENSE OR ENTER INTO A LICENSE AGREEMENT WITHIN 120 DAYS
23 AFTER SUBMISSION OF A REQUEST TO ISSUE A LICENSE OR ENTER INTO A
24 LICENSE AGREEMENT, AND FOR PUBLIC HIGHWAYS OWNED OR CONTROLLED BY A
25 COUNTY ROAD COMMISSION OR A LOCAL UNIT OF GOVERNMENT, RELIANCE ON
26 THE EXISTENCE OF A PUBLIC HIGHWAY, IF THE OWNER OR OPERATOR THAT IS
27 LIABLE UNDER SECTION 21323A DOES ALL OF THE FOLLOWING:

1 (i) PROVIDES THE DEPARTMENT AND THE PERSON THAT OWNS OR
2 OPERATES THE PUBLIC HIGHWAY WITH THE FOLLOWING INFORMATION RELATED
3 TO THE RELEASE AND SITE:

4 (A) THE SITE NAME, ADDRESS, AND FACILITY IDENTIFICATION
5 NUMBER, AND THE NAME AND CONTACT INFORMATION OF THE PERSON RELYING
6 ON THE ALTERNATIVE MECHANISM.

7 (B) IDENTIFICATION OF THE DEPARTMENT DISTRICT OFFICE WITH
8 JURISDICTION OVER THE SITE.

9 (C) THE NAME OF THE AFFECTED PUBLIC HIGHWAY AND THE NEAREST
10 INTERSECTION.

11 (D) IDENTIFICATION OF KNOWN OR SUSPECTED CONTAMINANTS.

12 (E) A STATEMENT THAT RESIDUAL OR MOBILE NAPL IS OR IS NOT
13 PRESENT AT THE AFFECTED PUBLIC HIGHWAY.

14 (F) THE MEDIA AFFECTED, INCLUDING DEPTH OF CONTAMINATED SOIL,
15 DEPTH OF GROUNDWATER, AND PREDOMINATE GROUNDWATER FLOW DIRECTION.

16 (G) A SCALE DRAWING OF THE PORTION OF THE PUBLIC HIGHWAY
17 SUBJECT TO THE ALTERNATE MECHANISM THAT DEPICTS THE AREA IMPACTED
18 BY REGULATED SUBSTANCES AND THE LOCATION OF UTILITIES IN THE
19 IMPACTED AREA, INCLUDING STORM WATER SYSTEMS AND MUNICIPAL SEPARATE
20 STORM WATER SYSTEMS.

21 (H) IDENTIFICATION OF ALL OWNERSHIP AND POSSESSORY OR USE
22 PROPERTY INTERESTS RELATED TO THE PUBLIC HIGHWAY AND WHETHER THEY
23 ARE AFFECTED BY THE CONTAMINATION AND WHETHER THEY HAVE RECEIVED
24 NOTIFICATION OF THE EXISTING CONDITIONS AS PART OF A CORRECTIVE
25 ACTION PLAN OR PURSUANT TO THE DUE CARE REQUIREMENTS UNDER SECTION
26 21304C.

27 (I) IDENTIFICATION OF EXPOSURE RISKS FROM DRINKING WATER,

1 DIRECT CONTACT, GROUNDWATER, SOIL EXCAVATION, OR RELOCATION.

2 (ii) CONFIRMS THAT THERE ARE NO CURRENT PLANS TO RELOCATE,
3 VACATE, OR ABANDON THE PUBLIC HIGHWAY.

4 (iii) EITHER PROVIDES A CERTIFICATION TO THE PERSON THAT OWNS
5 OR OPERATES THE PUBLIC HIGHWAY THAT ANY CONTAMINATION PRESENT AS A
6 RESULT OF THE RELEASE FROM THE UNDERGROUND STORAGE TANK SYSTEM DOES
7 NOT ENTER A STORM SEWER SYSTEM OR PROVIDES ALL INFORMATION
8 NECESSARY TO CLEARLY IDENTIFY THE NATURE AND EXTENT OF THE
9 CONTAMINATION THAT ENTERS OR HAS THE POTENTIAL TO ENTER THE STORM
10 SEWER SYSTEM.

11 ~~(4) Notwithstanding subsections (1), (2), and (3), if a~~
12 ~~mechanism other than a notice of corrective action, an ordinance,~~
13 ~~or a restrictive covenant is requested by an owner or operator that~~
14 ~~is liable under section 21323a and the department determines that~~
15 ~~the alternative mechanism is appropriate, the department may~~
16 ~~approve of the alternate mechanism.~~ A PERSON THAT APPLIES FOR A
17 PERMIT ISSUED BY A COUNTY ROAD COMMISSION OR A LOCAL UNIT OF
18 GOVERNMENT TO EXCAVATE, BORE, DRILL, OR PERFORM ANY OTHER INTRUSIVE
19 ACTIVITY WITHIN A PUBLIC HIGHWAY OR RIGHT-OF-WAY OF A PUBLIC
20 HIGHWAY SHALL IDENTIFY WHETHER THE PROPOSED WORK WILL TAKE PLACE
21 WITHIN AN AREA BEING RELIED UPON AS AN ALTERNATIVE INSTITUTIONAL
22 CONTROL.

23 (5) RELIANCE ON A PUBLIC HIGHWAY AS AN ALTERNATIVE MECHANISM
24 UNDER SUBSECTION (3) (B) DOES NOT AFFECT AN OWNER'S OR OPERATOR'S
25 LIABILITY UNDER SECTION 21323A OR IMPOSE LIABILITY FOR CORRECTIVE
26 ACTION OR ANY OTHER OBLIGATION ON THE STATE TRANSPORTATION
27 DEPARTMENT, A COUNTY ROAD COMMISSION, OR A LOCAL UNIT OF

1 GOVERNMENT. INFORMATION PROVIDED PURSUANT TO SECTION 21310A(3) OR
2 (4) TO THE PERSON THAT OWNS OR OPERATES A PUBLIC HIGHWAY DOES NOT
3 CREATE AN ESTOPPEL, OBLIGATION, OR LIABILITY ON THE PERSON THAT
4 OWNS OR OPERATES THE PUBLIC HIGHWAY. THE USE OF A PUBLIC HIGHWAY AS
5 AN ALTERNATIVE MECHANISM DOES NOT LIMIT OR RESTRICT ANY RIGHT OR
6 DUTY OF THE STATE TRANSPORTATION DEPARTMENT, A COUNTY ROAD
7 COMMISSION, OR A LOCAL UNIT OF GOVERNMENT TO OPERATE, MAINTAIN,
8 REPAIR, RECONSTRUCT, ENLARGE, RELOCATE, ABANDON, VACATE, OR
9 OTHERWISE EXERCISE ITS JURISDICTION OVER ANY PUBLIC HIGHWAY OR
10 PUBLIC HIGHWAY RIGHT-OF-WAY OR ANY PART THEREOF, OR TO PERMIT ANY
11 UTILITIES OR OTHERS TO USE ANY PUBLIC HIGHWAY OR PUBLIC HIGHWAY
12 RIGHT-OF-WAY, OR ANY PART THEREOF.

13 (6) ~~(5)~~—A person that implements corrective action activities
14 that relies on land use restrictions shall provide notice of the
15 land use restrictions that are part of the corrective action plan
16 to the local unit of government in which the site is located within
17 30 days of filing of the land use restrictions with the county
18 register of deeds.

19 Sec. 21323a. (1) Notwithstanding any other provision of this
20 act, and except as otherwise provided in this section and section
21 21323c, the following persons are liable under this part:

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

24 (b) An owner or operator who became an owner or operator on or
25 after March 6, 1996, unless the owner or operator complies with
26 ~~both of~~ the following:

27 (i) A baseline environmental assessment is conducted prior to

1 or within 45 days after the earlier of the date of purchase,
2 occupancy, or foreclosure. For purposes of this section, assessing
3 property to conduct a baseline environmental assessment does not
4 constitute occupancy.

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

9 (iii) IF THE OWNER OR OPERATOR FAILS TO MEET THE TIME FRAMES
10 IN SUBPARAGRAPHS (i) AND (ii), THE OWNER OR OPERATOR REQUESTS AND
11 RECEIVES FROM THE DEPARTMENT A DETERMINATION THAT ITS FAILURE TO
12 COMPLY WITH THE TIME FRAMES WAS INCONSEQUENTIAL.

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

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

25 (3) Notwithstanding subsection (1), the following persons are
26 not liable under this part with respect to contamination at
27 property on which an underground storage tank system is located

1 resulting from a release or threat of release unless the person is
2 responsible for an activity causing that release or threat of
3 release:

4 (a) ~~The~~**THIS** state, **A COUNTY ROAD COMMISSION**, or a local unit
5 of government ~~that~~**IF IT** acquired ownership or control of the
6 property involuntarily through bankruptcy, tax delinquency,
7 abandonment, a transfer from a lender or other circumstances in
8 which the government involuntarily acquires title or control by
9 virtue of its governmental function or as provided in this part; ~~;~~
10 **A COUNTY ROAD COMMISSION OR** a local unit of government to which
11 ownership or control of property is transferred by ~~the~~**THIS** state,
12 **BY A COUNTY ROAD COMMISSION**, or by another local unit of government
13 that is not liable under subsection (1); ~~;~~ or ~~the~~**THIS** state, **A**
14 **COUNTY ROAD COMMISSION**, or a local unit of government ~~that~~**IF IT**
15 acquired ownership or control of property by seizure, receivership,
16 or forfeiture pursuant to the operation of law or by court order.

17 (b) ~~A~~**THIS** state, **A COUNTY ROAD COMMISSION**, or **A** local unit of
18 government ~~that~~**IF IT** holds or acquires an easement interest in
19 property, holds or acquires an interest in property by dedication
20 in a plat, or by dedication pursuant to the public highways and
21 private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise
22 holds or acquires an interest in property for a transportation or
23 utility corridor, including sewers, pipes, and pipelines, or public
24 rights-of-way.

25 (c) A person that holds an easement interest in property or
26 holds a utility franchise to provide service, for the purpose of
27 conveying or providing goods or services, including, but not

1 limited to, utilities, sewers, roads, railways, and pipelines; or a
2 person that acquires access through an easement.

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

6 (e) ~~The~~**THIS** state, **A COUNTY ROAD COMMISSION**, or a local unit
7 of government ~~that~~**IF IT** leases property to a person ~~if the state~~
8 ~~or the local unit of government~~**AND** is not liable under this part
9 for environmental contamination at the property.

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

14 (g) A person that did not know and had no reason to know that
15 the property was contaminated. To establish that the person did not
16 know and did not have a reason to know that the property was
17 contaminated, the person shall have undertaken at the time of
18 acquisition all appropriate inquiry into the previous ownership and
19 uses of the property consistent with good commercial or customary
20 practice. A determination of liability under this section shall
21 take into account any specialized knowledge or experience on the
22 part of the person, the relationship of the purchase price to the
23 value of the property if uncontaminated by a regulated substance,
24 commonly known or reasonable ascertainable information about the
25 property, the obviousness of the presence or likely presence of a
26 release or threat of release at the property, and the ability to
27 detect a release or threat of release by appropriate inspection.

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

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

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

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

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

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

22 (i) An act of God.

23 (ii) An act of war.

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

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

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

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

10 (iii) If the closure report relies on land use or resource use
11 restrictions, a person who desires to change those restrictions is
12 responsible for any corrective action necessary to comply with this
13 part for any land use or resource use other than the land use or
14 resource use that was the basis for the closure report. **HOWEVER, IF**
15 **THE CLOSURE REPORT RELIES ON AN ALTERNATE MECHANISM AS PROVIDED FOR**
16 **IN SECTION 21310A AND THE ORDINANCE, STATE LAW, OR RULE IS**
17 **MODIFIED, LAPSES, OR IS REVOKED OR THE PUBLIC HIGHWAY IS RELOCATED,**
18 **VACATED, OR ABANDONED, THE OWNER OR OPERATOR THAT IS LIABLE UNDER**
19 **SECTION 21323A FOR THE ENVIRONMENTAL CONTAMINATION ADDRESSED IN THE**
20 **CLOSURE REPORT SHALL NOTIFY THE DEPARTMENT 30 DAYS BEFORE THE**
21 **ORDINANCE, STATE LAW, OR RULE IS MODIFIED, LAPSES, OR IS REVOKED OR**
22 **THE PUBLIC HIGHWAY IS RELOCATED, VACATED, OR ABANDONED. IN SUCH**
23 **CASES, THE OWNER OR OPERATOR IS LIABLE UNDER THIS PART FOR**
24 **ADDITIONAL CORRECTIVE ACTION ACTIVITIES NECESSARY TO ADDRESS ANY**
25 **INCREASED RISK OF EXPOSURE TO THE ENVIRONMENTAL CONTAMINATION.**

26 (iv) If the closure report relies on monitoring necessary to
27 assure the effectiveness and integrity of the corrective action, an

1 owner or operator that is liable under section 21323a for
2 environmental contamination addressed in a closure report is liable
3 under this part for additional corrective action activities
4 necessary to address any potential exposure to the environmental
5 contamination demonstrated by the monitoring in excess of the
6 levels relied on in the closure report.

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

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

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

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

1 subsection (1) (b) .

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

5 (a) ~~Experience~~**HAS EXPERIENCE** in all phases of underground
6 storage tank work, including **RBCA**, tank removal oversight, site
7 assessment, soil removal, feasibility, design, remedial system
8 installation, remediation management activities, and site closure
9 and possesses or employs at least 1 of the following:

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

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

18 (iii) A person with a master's degree from an accredited
19 institution of higher education in a discipline of engineering or
20 science and 8 years of full-time relevant experience or a person
21 with a baccalaureate degree from an accredited institution of
22 higher education in a discipline of engineering or science and 10
23 years of full-time relevant experience. This experience shall be
24 documented with professional and personal references, past
25 employment references and histories, and documentation that all
26 requirements of the occupational safety and health act of 1970,
27 Public Law 91-596, 84 Stat. ~~Stat~~**STAT** 1590, and regulations promulgated

1 under that act, and the Michigan occupational safety and health
2 act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules promulgated
3 under that act have been met.

4 (iv) A person that was certified by the department as an
5 underground storage tank professional pursuant to section 21543 ~~at~~
6 ~~the time of the effective date of the amendatory act that added~~
7 ~~this subparagraph.~~ **ON MAY 1, 2012.**

8 (b) ~~The person has~~ **HAS** all of the following insurance policies
9 written by carriers authorized to write such business, or approved
10 as an eligible surplus lines insurer, by ~~the~~ **THIS** state and which
11 are placed with an insurer listed in a.m. best's with a rating of
12 no less than B+ VII:

13 (i) Worker's compensation insurance.

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

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

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

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

1 (c) Has demonstrated compliance with the occupational safety
2 and health act of 1970, Public Law 91-596, 84 Stat.—**STAT** 1590, and
3 the regulations promulgated under that act, and the Michigan
4 occupational safety and health act, 1974 PA 154, MCL 408.1001 to
5 408.1094, and the rules promulgated under that act, and is able to
6 demonstrate that all such rules and regulations have been complied
7 with during the person's previous corrective action activity.

8 **SEC. 21325A. DEPARTMENT EMPLOYEES WHO ARE RESPONSIBLE FOR THE**
9 **OVERSIGHT OF CORRECTIVE ACTION OR THE AUDITS CONDUCTED UNDER**
10 **SECTION 21315 SHALL BE FORMALLY TRAINED AND DEMONSTRATE PROFICIENCY**
11 **IN RBCA.**

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.