

**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
7 time of a release, in control of, or responsible for, the operation
8 of an underground storage tank system.

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

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

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

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

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

23 (H) ~~(g)~~—"Regulated substance" means any of the following:

24 (i) A substance defined in section 101(14) of title I of the
25 comprehensive environmental response, compensation, and liability
26 act of 1980, Public Law 96-510, 42 USC 9601, but not including a
27 substance regulated as a hazardous waste under subtitle C of the

1 solid waste disposal act, title II of Public Law 89-272, 42 USC
2 6921 to 6939e.

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

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

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

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

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

26 (L) ~~(k)~~—"Saturated zone" means a soil area where the soil
27 pores are filled with groundwater and can include the presence of

1 LNAPL.

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

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

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

10 (ii) All inland lakes.

11 (iii) Rivers.

12 (iv) Streams.

13 (v) Impoundments.

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

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

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

25 (R) ~~(q)~~—"Underground storage tank system" means a tank or
26 combination of tanks, including underground pipes connected to the
27 tank or tanks, which is, was, or may have been used to contain an

1 accumulation of regulated substances, and the volume of which,
2 including the volume of the underground pipes connected to the tank
3 or tanks, is 10% or more beneath the surface of the ground. An
4 underground storage tank system does not include any of the
5 following:

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

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

10 (iii) A septic tank.

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

13 (A) The natural gas pipeline safety act of 1968, Public Law
14 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

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

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

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

20 (vii) A flow-through process tank.

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) Exercise due care by undertaking corrective action

1 necessary to mitigate unacceptable exposure to regulated
2 substances, mitigate fire and explosion hazards due to regulated
3 substances, and allow for the intended use of the property in a
4 manner that protects the public health and safety.

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

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

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

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

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

25 (3) A person that violates subsection (1) that is not
26 otherwise liable under this part for the release at the property is
27 liable for corrective action activity costs and natural resource

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

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

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

1 **PUBLIC** purpose includes, but is not limited to, activities such as
2 a ~~public park, municipal office building, or municipal public works~~
3 operation, **OR A PUBLIC HIGHWAY**. ~~Express public~~**PUBLIC** purpose does
4 not include activities surrounding the acquisition or compilation
5 of parcels for the purpose of future development.

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

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

13 Sec. 21310a. (1) If the corrective action activities at a site
14 result in a final remedy that relies on a nonresidential RBSL or an
15 SSTL, institutional controls shall be implemented as provided in
16 this subsection. A notice of corrective action shall be recorded
17 with the register of deeds for the county in which the site is
18 located prior to submittal of a closure report under section
19 21312a. A notice shall be filed under this subsection only by the
20 person that owns the property or with the express written
21 permission of the person that owns the property. A notice of
22 corrective action recorded under this subsection shall state the
23 land use that was the basis of the corrective action. The notice
24 shall state that if there is a proposed change in the land use at
25 any time in the future, that change may necessitate further
26 evaluation of potential risks to the public health, safety, and
27 welfare and to the environment and that the department shall be

1 contacted regarding any proposed change in the land use. Additional
2 requirements for monitoring or operation and maintenance shall not
3 apply if contamination levels do not exceed the levels established
4 in the tier I evaluation.

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

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

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

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

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

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

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

19 (3) If the owner or operator that is liable under section
20 21323a determines that exposure to regulated substances may be
21 ~~reliably~~ restricted by a means other than a restrictive covenant
22 ~~and that imposition of land use or resource use restrictions~~
23 ~~through restrictive covenants is impractical, **IN A MANNER THAT**~~
24 **PROTECTS AGAINST EXPOSURE TO REGULATED SUBSTANCES AS DEFINED BY THE**
25 **RBSLS AND SSTLS**, the owner or operator that is liable under section
26 21323a may select a corrective action plan that relies on
27 alternative mechanisms. Mechanisms that may be considered under

1 this subsection include, but are not limited to, ~~an ordinance that~~
2 ~~prohibits the use of groundwater in a manner and to a degree that~~
3 ~~protects against unacceptable exposure to a regulated substance as~~
4 ~~defined by the RBSLs or SSTLs identified in the corrective action~~
5 ~~plan. An ordinance that serves as an exposure control under this~~
6 ~~subsection shall include both ANY of the following:~~

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

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

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

24 (B) A LICENSE OR LICENSE AGREEMENT WITH THE STATE
25 TRANSPORTATION DEPARTMENT IF REGULATED SUBSTANCES ARE PROPOSED TO
26 BE LEFT IN PLACE WITHIN A PUBLIC HIGHWAY OWNED OR CONTROLLED BY THE
27 STATE TRANSPORTATION DEPARTMENT.

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

8 (i) PROVIDES THE PERSON THAT OWNS OR OPERATES THE PUBLIC
9 HIGHWAY WITH THE FOLLOWING INFORMATION RELATED TO THE RELEASE AND
10 SITE:

11 (A) THE SITE NAME, ADDRESS, AND FACILITY IDENTIFICATION
12 NUMBER, AND THE NAME AND CONTACT INFORMATION OF THE PERSON RELYING
13 ON THE ALTERNATIVE MECHANISM.

14 (B) IDENTIFICATION OF THE DEPARTMENT DISTRICT OFFICE WITH
15 JURISDICTION OVER THE SITE.

16 (C) THE NAME OF THE AFFECTED PUBLIC HIGHWAY AND THE NEAREST
17 INTERSECTION.

18 (D) IDENTIFICATION OF KNOWN OR SUSPECTED CONTAMINANTS.

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

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

23 (G) A SCALE DRAWING OF THE PORTION OF THE PUBLIC HIGHWAY
24 SUBJECT TO THE ALTERNATE MECHANISM THAT DEPICTS THE AREA IMPACTED
25 BY REGULATED SUBSTANCES AND THE LOCATION OF UTILITIES IN THE
26 IMPACTED AREA, INCLUDING STORM WATER SYSTEMS AND MUNICIPAL SEPARATE
27 STORM WATER SYSTEMS.

1 (H) IDENTIFICATION OF ALL OWNERSHIP AND POSSESSORY OR USE
2 PROPERTY INTERESTS RELATED TO THE PUBLIC HIGHWAY AND WHETHER THEY
3 ARE AFFECTED BY THE CONTAMINATION AND WHETHER THEY HAVE RECEIVED
4 NOTIFICATION OF THE EXISTING CONDITIONS AS PART OF A CORRECTIVE
5 ACTION PLAN OR PURSUANT TO THE DUE CARE REQUIREMENTS UNDER SECTION
6 21304C.

7 (I) IDENTIFICATION OF EXPOSURE RISKS FROM DRINKING WATER,
8 DIRECT CONTACT, GROUNDWATER, SOIL EXCAVATION, OR RELOCATION.

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

11 (iii) EITHER PROVIDES A CERTIFICATION TO THE PERSON THAT OWNS
12 OR OPERATES THE PUBLIC HIGHWAY THAT ANY CONTAMINATION PRESENT AS A
13 RESULT OF THE RELEASE FROM THE UNDERGROUND STORAGE TANK SYSTEM DOES
14 NOT ENTER A STORM SEWER SYSTEM OR PROVIDES ALL INFORMATION
15 NECESSARY TO CLEARLY IDENTIFY THE NATURE AND EXTENT OF THE
16 CONTAMINATION THAT ENTERS OR HAS THE POTENTIAL TO ENTER THE STORM
17 SEWER SYSTEM.

18 ~~———— (4) Notwithstanding subsections (1), (2), and (3), if a~~
19 ~~mechanism other than a notice of corrective action, an ordinance,~~
20 ~~or a restrictive covenant is requested by an owner or operator that~~
21 ~~is liable under section 21323a and the department determines that~~
22 ~~the alternative mechanism is appropriate, the department may~~
23 ~~approve of the alternate mechanism.~~

24 (4) A PERSON THAT OWNS OR OPERATES A PUBLIC HIGHWAY THAT IS
25 BEING USED AS AN ALTERNATIVE MECHANISM PURSUANT TO SECTION
26 21310A(B) OR (C) SHALL NOTIFY THE OWNER OR OPERATOR THAT IS LIABLE
27 UNDER SECTION 21312A THAT IS RELYING ON AN ALTERNATE MECHANISM

1 UNDER THIS SECTION AT LEAST 30 DAYS BEFORE ANY ACTIVITY IS
2 PERFORMED THAT HAS THE POTENTIAL TO DISTURB OR EXPOSE THE
3 ENVIRONMENTAL CONTAMINATION LEFT IN PLACE WITHIN THE PUBLIC
4 HIGHWAY.

5 (5) RELIANCE ON A PUBLIC HIGHWAY AS AN ALTERNATIVE MECHANISM
6 UNDER SUBSECTION (3) (B) DOES NOT AFFECT AN OWNER'S OR OPERATOR'S
7 LIABILITY UNDER SECTION 21323A OR IMPOSE LIABILITY FOR CORRECTIVE
8 ACTION ON EITHER THE STATE TRANSPORTATION DEPARTMENT OR A LOCAL
9 UNIT OF GOVERNMENT.

10 (6) ~~(5)~~—A person that implements corrective action activities
11 that relies on land use restrictions shall provide notice of the
12 land use restrictions that are part of the corrective action plan
13 to the local unit of government in which the site is located within
14 30 days of filing of the land use restrictions with the county
15 register of deeds.

16 Sec. 21323a. (1) Notwithstanding any other provision of this
17 act, and except as otherwise provided in this section and section
18 21323c, the following persons are liable under this part:

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

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

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

1 constitute occupancy.

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

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

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

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

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

1 (a) The state or a local unit of government that acquired
2 ownership or control of the property involuntarily through
3 bankruptcy, tax delinquency, abandonment, a transfer from a lender
4 or other circumstances in which the government involuntarily
5 acquires title or control by virtue of its governmental function or
6 as provided in this part, a local unit of government to which
7 ownership or control of property is transferred by the state or by
8 another local unit of government that is not liable under
9 subsection (1), or the state or a local unit of government that
10 acquired ownership or control of property by seizure, receivership,
11 or forfeiture pursuant to the operation of law or by court order.

12 (b) A state or local unit of government that holds or acquires
13 an easement interest in property, holds or acquires an interest in
14 property by dedication in a plat, or by dedication pursuant to the
15 public highways and private roads act, 1909 PA 283, MCL 220.1 to
16 239.6, or otherwise holds or acquires an interest in property for a
17 transportation or utility corridor, including sewers, pipes, and
18 pipelines, or public rights-of-way.

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

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

27 (e) The state or a local unit of government that leases

1 property to a person if the state or the local unit of government
2 is not liable under this part for environmental contamination at
3 the property.

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

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

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

26 (i) A lessee who uses the leased property for a retail,
27 office, or commercial purpose regardless of the level of the

1 lessee's regulated substance use unless the lessee is otherwise
2 liable under this section.

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

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

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

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

16 (i) An act of God.

17 (ii) An act of war.

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

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

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

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

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

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

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

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

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

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

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

26 (a) ~~Experience~~ **HAS EXPERIENCE** in all phases of underground
27 storage tank work, including **RBCA**, tank removal oversight, site

1 assessment, soil removal, feasibility, design, remedial system
2 installation, remediation management activities, and site closure
3 and possesses or employs at least 1 of the following:

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

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

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

25 (iv) A person that was certified by the department as an
26 underground storage tank professional pursuant to section 21543 ~~at~~
27 ~~the time of the effective date of the amendatory act that added~~

1 ~~this subparagraph.~~ **ON MAY 1, 2012.**

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

7 (i) Worker's compensation insurance.

8 (ii) Professional liability errors and omissions insurance.

9 This policy may not exclude bodily injury, property damage, or
10 claims arising out of pollution for environmental work and shall be
11 issued with a limit of not less than \$1,000,000.00 per occurrence.

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

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

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

22 (c) Has demonstrated compliance with the occupational safety
23 and health act of 1970, Public Law 91-596, 84 Stat.—**STAT** 1590, and
24 the regulations promulgated under that act, and the Michigan
25 occupational safety and health act, 1974 PA 154, MCL 408.1001 to
26 408.1094, and the rules promulgated under that act, and is able to
27 demonstrate that all such rules and regulations have been complied

1 with during the person's previous corrective action activity.

2 **SEC. 21325A. DEPARTMENT EMPLOYEES WHO ARE RESPONSIBLE FOR THE**
3 **OVERSIGHT OF CORRECTIVE ACTION OR THE AUDITS CONDUCTED UNDER**
4 **SECTION 21315 SHALL BE FORMALLY TRAINED AND DEMONSTRATE PROFICIENCY**
5 **IN RBCA.**

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