

# HOUSE BILL NO. 6023

October 15, 2024, Introduced by Rep. Pohutsky and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21502, 21503, 21506a, 21506b, 21510, 21510a, 21510d, 21515, 21516, 21518, 21519, 21519a, 21521, 21524, and 21548 (MCL 324.21502, 324.21503, 324.21506a, 324.21506b, 324.21510, 324.21510a, 324.21510d, 324.21515, 324.21516, 324.21518, 324.21519, 324.21519a, 324.21521, 324.21524, and 324.21548), sections 21502, 21503, 21510, 21510a, 21515, 21516, and 21521 as amended by 2016 PA 380, sections 21506a and 21510d as amended and section 21519a as added by 2017 PA 134, and section 21506b as added and sections

21518, 21519, 21524, and 21548 as amended by 2014 PA 416; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 21502. As used in this part:

2           (a) "Administrator" means the administrator of the authority  
3 as provided for in section 21525.

4           (b) "Affiliate" means a person that directly, or indirectly  
5 through 1 or more intermediaries, controls the person specified.

6           (c) "Approved claim" means a claim that is approved ~~pursuant~~  
7 ~~to~~**under** section 21510.

8           (d) "Authority" means the underground storage tank authority  
9 created in section 21523.

10           (e) "Board of directors" or "board" means the board of  
11 directors of the authority.

12           (f) "Bond proceeds account" means the account within the fund  
13 to which proceeds of bonds or notes issued under this part have  
14 been credited.

15           (g) "Bonds or notes" means the bonds, notes, commercial paper,  
16 other obligations of indebtedness, or any combination of these,  
17 issued by the finance authority ~~pursuant to~~**in accordance with** this  
18 part.

19           (h) "Bulk transfer" means a transfer of refined petroleum or a  
20 refined petroleum product from, or purchase for resale by, a  
21 refiner, pipeline terminal operator, supplier, or marine terminal  
22 operator to or from another refiner, pipeline terminal operator,  
23 supplier, or marine terminal operator through pipeline tender or  
24 marine delivery, including pipeline movements of refined petroleum  
25 or a refined petroleum product from 1 or more marine vessel  
26 movements of refined petroleum or a refined petroleum product.

1 Refined petroleum or a refined petroleum product in a refinery,  
 2 pipeline, terminal, or marine vessel transporting refined petroleum  
 3 or a refined petroleum product to a refinery or terminal is in the  
 4 bulk transfer terminal system. Notwithstanding anything to the  
 5 contrary in this subdivision, refined petroleum or a refined  
 6 petroleum product transferred or purchased for resale by a refiner,  
 7 pipeline terminal operator, supplier, or marine terminal operator  
 8 must be delivered to or otherwise remain within the bulk transfer  
 9 terminal system ~~prior to~~ **before** removal across the rack in order to  
 10 constitute a bulk transfer.

11 (i) "Bulk transfer terminal system" means the refined  
 12 petroleum or refined petroleum product distribution system  
 13 consisting of refineries, pipelines, marine vessels, and terminals  
 14 and includes refined petroleum or refined petroleum product storage  
 15 tanks and refined petroleum or refined petroleum product storage  
 16 facilities that are part of a refinery, boat terminal transfer, or  
 17 terminal owned, operated, or controlled by a refiner, marine  
 18 terminal operator, or pipeline terminal operator.

19 (j) "Claim" means the submission by the owner or operator or  
 20 ~~his~~ **the owner's** or ~~her~~ **operator's** representative of documentation  
 21 on an application requesting payment by the authority. A claim  
 22 ~~shall~~ **must** include, at a minimum, a completed and signed claim form  
 23 and the name, address, and telephone number of the owner or  
 24 operator.

25 (k) "Claimant" means a person to whom an approved claim is  
 26 assigned or transferred.

27 (l) ~~(k)~~ "Claims" **Claim** limit" means \$1,000,000.00 ~~per release.~~  
 28 ~~Two or more claims arising out of the same, interrelated,~~  
 29 ~~associated, repeated, or continuous releases or a series of related~~

1 ~~releases shall be subject to 1 claims limit. Any claim that takes~~  
2 ~~place over 2 or more claim periods shall be subject to 1 claims~~  
3 ~~limit.~~ **minus the appropriate deductible amount.**

4 **(m)** ~~(l)~~ "Claim period" means a 1-year period ~~commencing on~~  
5 **beginning** October 1 ~~of~~ each year and ending ~~on~~ September 30 the  
6 following year.

7 **(n)** ~~(m)~~ "Claim period aggregate limit" means the following  
8 aggregate claims limit for all releases discovered during a claim  
9 period:

10 **(i)** For owners, operators, and affiliates of 1 to 100 refined  
11 petroleum underground storage tanks **located in this state,**  
12 \$1,000,000.00.

13 **(ii)** For owners, operators, and affiliates of more than 100  
14 refined petroleum underground storage tanks **located in this state,**  
15 \$2,000,000.00.

16 **(o)** "Closure" means department approval of a closure report  
17 for a release covered by an approved claim in accordance with  
18 section 21315. Closure includes approval of a closure report with  
19 conditions after the conditions are met.

20 **(p)** "Confirmed release" means a release of refined petroleum  
21 that is reported to the department of licensing and regulatory  
22 affairs on a form created by the department of licensing and  
23 regulatory affairs and designated on the form as a confirmed  
24 release.

25 **(q)** ~~(n)~~ "Controls" means the possession or the contingent or  
26 noncontingent right to acquire possession, direct or indirect, of  
27 the power to direct or cause the direction of the management and  
28 policies of a person, whether through the ownership of voting  
29 securities or interests, by contract, other than a commercial

1 contract for goods or nonmanagement services, by pledge of  
2 securities, or otherwise, unless the power is the result of an  
3 official position with or corporate office held by the person.

4 (r) ~~(e)~~—"Corrective action" means that term as ~~it is~~ defined  
5 in section 21302.

6 (s) ~~(p)~~—"Deductible amount" means the amount of corrective  
7 action costs or indemnification costs that are required to be paid  
8 by ~~an owner or operator~~ **a claimant** as provided in section 21510a.

9 (t) ~~(q)~~—"Department" means the department of ~~environmental~~  
10 ~~quality~~ **environment, Great Lakes, and energy**.

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

13 ~~(s) "Excluded liquid" means that term as defined in 26 CFR~~  
14 ~~48.4081-1.~~

15 (v) **"Federally recognized tribe" means a Native American**  
16 **tribal entity that is recognized as having a government-to-**  
17 **government relationship with the United States, that has the**  
18 **responsibilities, powers, limitations, and obligations attached to**  
19 **that designation, and that is eligible for funding and services**  
20 **from the federal government.**

21 (w) ~~(t)~~—"Finance authority" means the Michigan finance  
22 authority created by Executive Reorganization Order No. 2010-2, MCL  
23 12.194.

24 (x) ~~(u)~~—"Financial responsibility requirements" means the  
25 financial responsibility for taking corrective action and for  
26 compensating third parties for bodily injury and property damage  
27 caused by a release from a refined petroleum underground storage  
28 tank system that the owner or operator of a refined petroleum  
29 underground storage tank system must demonstrate under part 211 and

1 the rules promulgated under that part.

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

5 (z) ~~(w)~~ "Indemnification" means indemnification of ~~an owner or~~  
6 ~~operator~~ **a claimant** for a legally enforceable judgment entered  
7 against the ~~owner or operator~~ **claimant** by a third party, or a  
8 legally enforceable settlement entered between the ~~owner or~~  
9 ~~operator~~ **claimant** and a third party, compensating that third party  
10 for bodily injury or property damage, or both, caused by an  
11 accidental release. ~~as~~ **As used in this subdivision, "accidental**  
12 **release", "bodily injury", and "property damage" mean** those terms  
13 ~~are~~ **as** defined in R 29.2163 of the Michigan Administrative Code.

14 (aa) ~~(x)~~ "Location" means a parcel of property where refined  
15 petroleum underground storage tank systems are registered ~~pursuant~~  
16 ~~to~~ **in accordance with** part 211.

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

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

23 (dd) ~~(aa)~~ "Owner" means that term as ~~it is~~ defined in section  
24 21303.

25 ~~(bb) "Oxygenate" means an organic compound containing oxygen~~  
26 ~~and having properties as a fuel that are compatible with petroleum,~~  
27 ~~including, but not limited to, ethanol, methanol, or methyl~~  
28 ~~tertiary butyl ether (MTBE).~~

29 Sec. 21503. As used in this part:

1 (a) "Person" means an individual, partnership, corporation,  
2 association, governmental entity, or other legal entity.

3 (b) "Pipeline terminal operator" means a person that receives  
4 and stores refined petroleum or a refined petroleum product in  
5 tanks and other equipment used in receiving and storing refined  
6 petroleum or a refined petroleum product from interstate and  
7 intrastate pipelines, pending wholesale bulk reshipment.

8 ~~(c) "Qualifying expenditures" means an expenditure for a~~  
9 ~~specific activity that does not exceed the allowable payment for~~  
10 ~~that activity as detailed on the schedule of costs.~~

11 (c) ~~(d)~~"Rack" means a mechanism for delivering refined  
12 petroleum or a refined petroleum product from a refiner, a pipeline  
13 terminal operator, or a marine terminal operator into a railroad  
14 tank car, a transport truck, a tank wagon, or the fuel supply tank  
15 of a marine vessel.

16 (d) ~~(e)~~"Refined petroleum" means ~~aviation gasoline, middle~~  
17 ~~distillates, jet fuel, kerosene, gasoline, residual oils, and any~~  
18 ~~oxygenates that have been blended with any of these. Refined~~  
19 ~~petroleum includes refined petroleum products and transmix. Refined~~  
20 ~~petroleum does not include excluded liquids.~~**any liquid subject to**  
21 **the regulatory fee.**

22 (e) ~~(f)~~"Refined petroleum fund" means the refined petroleum  
23 fund established under section 21506a.

24 (f) ~~(g)~~"Refined petroleum underground storage tank" means an  
25 underground storage tank system used for the storage of refined  
26 petroleum.

27 (g) ~~(h)~~"Refiner" means a person that meets both of the  
28 following:

29 (i) Manufactures or produces refined petroleum or a refined

1 petroleum product at a refinery.

2 (ii) Is a taxable fuel registrant that is a refiner for  
3 purposes of 26 CFR 48.4081-1.

4 (h) ~~(i)~~—"Refinery" means a facility used by a refiner to  
5 produce refined petroleum or a refined petroleum product from crude  
6 oil, unfinished oils, natural gas liquids, or other hydrocarbons by  
7 any process involving substantially more than the blending of  
8 refined petroleum and from which refined petroleum or a refined  
9 petroleum product may be removed by pipeline or marine vessel or at  
10 a rack.

11 (i) ~~(j)~~—"Regulated financial institution" means a state or  
12 nationally chartered bank, savings and loan association or savings  
13 bank, credit union, or other state or federally chartered lending  
14 institution or a regulated affiliate or regulated subsidiary of any  
15 of these entities.

16 (j) ~~(k)~~—"Regulatory fee" means the environmental protection  
17 regulatory fee imposed under section 21508.

18 (k) ~~(l)~~—"Release" means that term as ~~it is~~ defined in section  
19 21303.

20 (l) ~~(m)~~—"Removal" or "removed" means a physical transfer other  
21 than by evaporation, loss, or destruction of refined petroleum or a  
22 refined petroleum product from a refiner, pipeline terminal  
23 operator, or marine terminal operator.

24 (m) ~~(n)~~—"Schedule of costs" means the list of allowable  
25 reimbursement amounts that may be paid on a claim, as established  
26 in section 21510b.

27 (n) ~~(o)~~—"Site" means that term as ~~it is~~ defined in section  
28 21303.

29 (o) ~~(p)~~—"Supplier" means a supplier or permissive supplier

1 licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to  
2 207.1170.

3 (p) ~~(q)~~—"Tank wagon" means a straight truck having 1 or more  
4 compartments other than the fuel supply tank designed or used to  
5 carry fuel.

6 (q) ~~(r)~~—"Terminal" means a refined petroleum or refined  
7 petroleum products storage and distribution facility that meets all  
8 of the following requirements:

9 (i) Is registered as a qualified terminal by the ~~internal~~  
10 ~~revenue service.~~ **Internal Revenue Service.**

11 (ii) Is supplied by a pipeline or a marine vessel.

12 (iii) Has a rack from which refined petroleum or refined  
13 petroleum products may be removed.

14 ~~(s) "Transmix" means the mixed product that results from the~~  
15 ~~buffer or interface of 2 different products in a pipeline shipment,~~  
16 ~~or a mixture of 2 different products within a refinery or terminal~~  
17 ~~that results in an off-grade mixture.~~

18 (r) ~~(t)~~—"Transport truck" means a semitrailer combination rig  
19 designed or used for the purpose of transporting refined petroleum  
20 or a refined petroleum product over the public roads or highways.

21 (s) ~~(u)~~—"Two-party exchange" means a transaction, including a  
22 book transfer, in which refined petroleum or a refined petroleum  
23 product is transferred from 1 supplier to another supplier and to  
24 which all of the following apply:

25 (i) The transaction includes a transfer of refined petroleum or  
26 a refined petroleum product from the person that holds the original  
27 inventory position for the refined petroleum or refined petroleum  
28 product in storage tanks as reflected in the records of the  
29 refiner, pipeline terminal operator, or marine terminal operator.

1           (ii) The exchange transaction is completed before removal  
2 across the rack by the receiving supplier.

3           (iii) The refiner, pipeline terminal operator, or marine  
4 terminal operator in its books and records treats the receiving  
5 exchange party as the supplier that removes the refined petroleum  
6 or refined petroleum product across a rack for purposes of  
7 reporting the transaction to the department under the motor fuel  
8 tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

9           (t) ~~(v)~~ "Underground storage tank system" means that term as  
10 ~~it is~~ defined in section 21303.

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

14           Sec. 21506a. (1) The refined petroleum fund is created within  
15 the state treasury.

16           (2) The state treasurer may receive money or other assets from  
17 any source for deposit into the refined petroleum fund. The state  
18 treasurer shall direct the investment of the refined petroleum fund  
19 ~~. The state treasurer shall~~ **and** credit to the refined petroleum  
20 fund interest and earnings from refined petroleum fund investments.

21           (3) Money in the refined petroleum fund at the close of the  
22 fiscal year remains in the refined petroleum fund and does not  
23 lapse to the general fund.

24           (4) Money from the refined petroleum fund ~~shall~~ **must** be  
25 expended, ~~upon~~ **on** appropriation, only for 1 or more of the  
26 following purposes:

27           (a) Corrective actions performed by the department ~~pursuant to~~  
28 **in accordance with** section 21320.

29           (b) The legacy release program created in section 21519a.

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

3 (d) Not more than \$5,000,000.00 annually for petroleum product  
4 inspection programs under both of the following:

5 (i) The weights and measures act, 1964 PA 283, MCL 290.601 to  
6 290.635.

7 (ii) The motor fuels quality act, 1984 PA 44, MCL 290.641 to  
8 290.650d.

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

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

19 (i) The local unit of government or county road commission has  
20 submitted to the authority a **public highway cleanup** claim for  
21 reimbursement on a form created by the authority.

22 (ii) The **public highway cleanup** claim for reimbursement is for  
23 reasonable and necessary eligible corrective action costs  
24 determined by the administrator ~~pursuant to~~**in accordance with**  
25 section 21515(2) to ~~(10)~~**(11)**.

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

28 (iv) **An institutional control addressing impacted media within**  
29 **the public highway in accordance with section 21310a must be in**

1 place before initiation of corrective actions and the submission of  
 2 a public highway cleanup claim. The department may determine, in  
 3 writing, that an institutional control is not necessary under this  
 4 subparagraph.

5 (v) The public highway cleanup claim is for corrective actions  
 6 completed after January 24, 2018.

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

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

19 Sec. 21506b. (1) The underground storage tank cleanup fund is  
 20 created within the state treasury. The state treasurer shall  
 21 establish a bond proceeds account within the fund and may establish  
 22 procedures for accounting for deposits and expenditures from the  
 23 bond proceeds account.

24 (2) The state treasurer may receive money or other assets from  
 25 any source for deposit into the fund. The state treasurer shall  
 26 direct the investment of the fund. ~~The state treasurer shall~~**and**  
 27 credit to the fund interest and earnings from fund investments.

28 (3) Money in the fund at the close of the fiscal year ~~shall~~  
 29 ~~remain~~**remains** in the fund and ~~shall~~**does** not lapse to the general

1 fund.

2 (4) The authority ~~shall be~~ **is** the administrator of the fund  
3 for auditing purposes.

4 (5) The authority and the finance authority shall expend money  
5 from the fund, ~~upon~~ **on** appropriation, only for the following  
6 purposes:

7 (a) As a first priority, to pay principal and interest due on  
8 bonds or notes issued by the finance authority ~~pursuant to~~ **in**  
9 **accordance with** this part, plus any amount necessary to maintain a  
10 fully funded debt reserve or other reserve intended to secure the  
11 principal and interest on the bonds or notes as may be required by  
12 resolution, indenture, or other agreement of the finance authority.

13 (b) For the reasonable administrative cost of implementing  
14 this part incurred by the department, the department of treasury,  
15 the department of attorney general, and the finance authority.  
16 Administrative costs include the actual and necessary expenses  
17 incurred by the finance authority and its members in carrying out  
18 the duties imposed by this part. Total administrative costs  
19 expended under this subdivision ~~shall~~ **must** not exceed ~~7%~~ **12%** of the  
20 fund's projected revenues in any year. Costs incurred by the  
21 finance authority for the issuance of bonds or notes, which may  
22 also be payable from the proceeds of the bonds or notes, ~~shall~~ **are**  
23 not ~~be~~ considered administrative costs.

24 (c) To pay approved claims as provided for in this part.

25 Sec. 21510. (1) An owner or operator is eligible to receive  
26 money from the authority for corrective action or indemnification  
27 due to a **confirmed** release from a refined petroleum underground  
28 storage tank system only if all of the following requirements are  
29 satisfied and the owner or operator otherwise complies with this

1 part:

2 (a) The release from which the corrective action or  
3 indemnification arose was discovered and reported on or after  
4 December 30, 2014.

5 (b) The refined petroleum underground storage tank from which  
6 the release occurred was, at the time of discovery of the release ~~and is presently,~~ in compliance with the registration and fee  
7 requirements of part 211. **The refined petroleum underground storage  
8 tank owned by a federally recognized tribe from which the release  
9 occurred was, at the time of discovery of the release, in  
10 compliance with federal registration and fee requirements.**

11 (c) The owner or operator reported the **confirmed** release  
12 within 24 hours after ~~its~~ discovery ~~as required by part 211 and the~~  
13 ~~rules promulgated under that part.~~ **of the confirmed release.**

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

15 (e) The claim is not for a release from a refined petroleum  
16 underground storage tank closed ~~prior to~~ **before** January 1, 1974, in  
17 compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to  
18 29.33, and the rules promulgated under that act.

19 (f) The owner or operator was in compliance with the financial  
20 responsibility requirements of part 211 and the rules promulgated  
21 under that part at the time of the discovery of the release or  
22 releases for which the claim is filed. **An underground storage tank  
23 owned by a federally recognized tribe was in compliance with  
24 federal financial responsibility requirements at the time of the  
25 discovery of the release. The financial responsibility requirements  
26 may be waived for previously unknown refined petroleum underground  
27 storage tanks with written consent from the administrator.**

28 (g) The owner or operator is otherwise eligible to receive  
29

1 money from the authority under this part.

2 ~~(h) The total amount of expenditures, including the deductible~~  
 3 ~~amount, does not exceed the claims limit or the claim period~~  
 4 ~~aggregate limit applicable to the claim.~~ **The claim is filed within**  
 5 **24 months after the date the confirmed release is reported.**

6 **(i) The claim is not for a release discovered after a refined**  
 7 **petroleum underground storage tank system from which the release**  
 8 **occurred was closed or considered permanently closed in compliance**  
 9 **with part 211 and the rules promulgated under that part.**

10 **(j) The owner or operator is otherwise in compliance with this**  
 11 **part.**

12 **(k) The administrator and the board may consider substantial**  
 13 **compliance when making eligibility determinations under this**  
 14 **subsection.**

15 ~~(2) The owner or operator may receive money from the authority~~  
 16 ~~for corrective action or indemnification due to a release that~~  
 17 ~~originates from an aboveground piping and dispensing portion of a~~  
 18 ~~refined petroleum underground storage tank system if all of the~~  
 19 ~~following requirements are satisfied:~~

20 ~~(a) The owner or operator is otherwise in compliance with this~~  
 21 ~~part and the rules promulgated under this part.~~

22 ~~(b) The release is sudden and immediate.~~

23 ~~(c) The release is of a quantity exceeding 25 gallons and is~~  
 24 ~~released into groundwater, surface water, or soils.~~

25 ~~(d) The owner or operator reported the release to the~~  
 26 ~~department within 24 hours after its discovery.~~

27 **(2) (3) Either the owner or the operator may receive money**  
 28 **from the authority under this part for an occurrence, but not both.**

29 **(3) (4) An owner or operator that is a public utility with**

1 more than 500,000 customers in this state is ineligible to receive  
2 money from the authority for corrective action or indemnification  
3 associated with a release from a refined petroleum underground  
4 storage tank system used to supply refined petroleum for the  
5 generation of steam electricity.

6 ~~(5) If an owner or operator has received money from the~~  
7 ~~authority under this part for a release at a location, the owner~~  
8 ~~and operator are not eligible to receive money from the authority~~  
9 ~~for a subsequent release at the same location unless the owner or~~  
10 ~~operator has done either or both of the following:~~

11 ~~(a) Discovered the subsequent release pursuant to corrective~~  
12 ~~action being taken on a confirmed release and included this~~  
13 ~~subsequent release as part of the corrective action for the~~  
14 ~~confirmed release.~~

15 ~~(b) Upgraded, replaced, removed, or properly closed in place~~  
16 ~~all refined petroleum underground storage tank systems at the~~  
17 ~~location of the release so as to meet the requirements of part 211~~  
18 ~~and the rules promulgated under that part.~~

19 ~~(6) An owner or operator that discovers a subsequent release~~  
20 ~~at the same location as an initial release pursuant to subsection~~  
21 ~~(5)(a) may receive money from the authority to perform corrective~~  
22 ~~action on the subsequent release, if the owner or operator~~  
23 ~~otherwise complies with the requirements of this part and the rules~~  
24 ~~promulgated under this part. However, the subsequent release shall~~  
25 ~~be considered as part of the claim for the initial release for~~  
26 ~~purposes of determining the total amount of expenditures for~~  
27 ~~corrective action and indemnification under subsection (1)(h).~~

28 ~~(7) An owner or operator that discovers a subsequent release~~  
29 ~~at the same location as an initial release following compliance~~

1 ~~with subsection (5) (b) may receive money from the authority to~~  
2 ~~perform corrective action on the subsequent release, if there have~~  
3 ~~been not more than 2 releases at the location, and if the owner or~~  
4 ~~operator otherwise complies with the requirements of this part and~~  
5 ~~the rules promulgated under this part. The subsequent release shall~~  
6 ~~be considered a separate claim for purposes of determining the~~  
7 ~~total amount of expenditures for corrective action and~~  
8 ~~indemnification under subsection (1) (h).~~

9 (4) An approved claim must cover corrective actions related to  
10 the release for which approval was granted. A subsequent release  
11 discovered at the location before closure of a release currently  
12 covered by the claim may receive money from the fund for corrective  
13 actions in accordance with the following:

14 (a) A request for additional release coverage is submitted on  
15 a form created by the authority.

16 (b) If approved by the authority, the additional release is  
17 considered part of the most recently approved claim and is subject  
18 to the most recently approved claim's deductible, claims limit, and  
19 claim period aggregate limits.

20 (5) An owner or operator may receive an additional claim for a  
21 release at a location in accordance with the following:

22 (a) The release covered by the most recently approved claim  
23 achieved closure.

24 (b) A new claim form, created by the authority, is submitted  
25 and approved.

26 (6) An additional claim described under subsection (5) is  
27 subject to the eligibility requirements of an initial claim under  
28 this section, and is subject to the deductible, claims limit, and  
29 claim period aggregate limit.

1           (7) ~~(8)~~—An owner or operator that seeks to receive money from  
2 the authority for corrective action **related to a release** shall  
3 submit to the administrator the cleanup fund claim submittal form  
4 created by the authority ~~containing~~**that contains** the information  
5 required by the administrator to determine compliance with this  
6 part. The administrator shall determine whether the claim complies  
7 with this part and shall notify the owner or operator. The  
8 administrator may consult with the department of licensing and  
9 regulatory affairs to make the determination required in this  
10 subsection.

11           (8) **The authority shall not approve a claim for any of the**  
12 **following:**

13           (a) **A release that was expected or intended by an owner or**  
14 **operator or an employee of an owner or operator.**

15           (b) **A release caused by, based on, resulting from, or**  
16 **attributable to the owner's or operator's intentional, knowing,**  
17 **willful, or deliberate noncompliance with a statute, regulation,**  
18 **ordinance, administrative complaint, notice of violation, notice**  
19 **letter, executive order, or instruction of any governmental agency**  
20 **or body.**

21           (c) **A release arising from the ownership, maintenance, use, or**  
22 **entrustment to others of an aircraft, an automobile, rolling stock,**  
23 **or a watercraft, including loading and unloading.**

24           (d) **A release arising from a consequence, whether direct or**  
25 **indirect, of war, invasion, act of a foreign enemy, act of**  
26 **terrorists, hostilities, whether war has been declared or not,**  
27 **civil war, rebellion, revolution, insurrection, usurpation of**  
28 **power, strike, riot, or civil commotion.**

29           (e) **A claim is filed more than 2 calendar years after the date**

1 **the confirmed release was reported.**

2 Sec. 21510a. (1) ~~An owner or operator~~ **A claimant** is  
3 responsible for a deductible amount as follows:

4 (a) If the ~~owner or operator~~ **claimant**, or its affiliate, owns  
5 or operates fewer than 8 refined petroleum underground storage  
6 tanks **located in this state**, \$2,000.00 per claim.

7 (b) If the ~~owner or operator~~ **claimant**, or its affiliate, owns  
8 or operates 8 or more refined petroleum underground storage tanks  
9 **located in this state**, \$10,000.00 per claim.

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

13 (2) The deductible amount **described in subsection (1)** applies  
14 to each **approved** claim. ~~However, 2 or more claims arising out of~~  
15 ~~the same, interrelated, associated, repeated, or continuous~~  
16 ~~releases or a series of related releases shall be considered a~~  
17 ~~single claim and are subject to 1 deductible amount. Any claim that~~  
18 ~~takes place over 2 or more claim periods is subject to 1 deductible~~  
19 ~~amount.~~

20 (3) ~~An owner or operator~~ **A claimant** that submits a work  
21 invoice under section 21515 is responsible for the deductible  
22 amount described in subsection (1). The expenses toward meeting the  
23 deductible amount ~~shall~~ **must** be documented and ~~shall~~ comply with  
24 the following:

25 (a) Expenses for items listed in the schedule of costs ~~shall~~  
26 **must** be at or below the allowable reimbursement amount listed in  
27 the schedule of costs.

28 (b) Expenses for items that are not listed in the schedule of  
29 costs ~~shall~~ **must** be reasonable and necessary considering conditions

1 at the site based ~~upon~~**on** a competitive bidding process established  
2 by the authority **or as otherwise determined necessary by the**  
3 **authority.**

4 Sec. 21510d. If an owner or operator intends to rely on the  
5 fund to meet financial responsibility requirements, the owner or  
6 operator shall submit to the authority a request for a  
7 determination that the owner or operator would be eligible for  
8 funding under this part in the event of a release from a refined  
9 petroleum underground storage tank system. ~~Upon~~**On** receipt of a  
10 request under this subsection, the authority shall make a  
11 determination and provide **written** notice of that determination ~~, in~~  
12 ~~writing,~~ to the owner or operator. The notice may contain  
13 conditions for maintenance of that eligibility. A determination  
14 under this section is based ~~upon~~**on** a demonstration of all of the  
15 following:

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

18 (b) The refined petroleum underground storage tank or tanks  
19 are presently in compliance with the registration and fee  
20 requirements of part 211. **The refined petroleum underground storage**  
21 **tank owned by a federally recognized tribe is under federal**  
22 **jurisdiction and is presently in compliance with federal financial**  
23 **responsibility requirements.**

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

25 (d) The owner or operator has financial responsibility for the  
26 deductible amount. In order to demonstrate that the owner or  
27 operator has financial responsibility for the deductible amount  
28 under this section and section 21510(1)(f), the owner or operator  
29 may rely ~~upon any~~**on a** financial assurance mechanism listed in 40

1 CFR 280.95 to 280.107 or either of the following:

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

8 (ii) A deposit account in the amount of the deductible amount  
9 required under this part in a financial institution, as **that term**  
10 **is** defined in section 1202 of the banking code of 1999, 1999 PA  
11 276, MCL 487.11202, if access to the deposit account is restricted  
12 by a deposit account control agreement or similar restriction as  
13 approved by the authority that requires the approval of the  
14 administrator for a withdrawal from the deposit account.

15 Sec. 21515. (1) To receive money from the authority for  
16 corrective action, ~~an owner or operator~~ **a claimant** that has  
17 ~~received~~ **receives** notice from the administrator that its claim has  
18 been approved ~~pursuant to~~ **in accordance with** section ~~21510(8)~~ **21510**  
19 shall follow the procedures outlined in this section and ~~shall~~  
20 submit work invoices to the administrator ~~containing~~ **that contain**  
21 **the** information required by the administrator relevant to  
22 determining compliance with this part.

23 (2) Within ~~45~~ **60** days ~~of~~ **after** receipt of work invoices  
24 submitted ~~pursuant to~~ **in accordance with** subsection (1) using forms  
25 created by the authority, the administrator shall make all of the  
26 following determinations:

27 (a) Whether the ~~owner or operator~~ **claimant** is eligible to  
28 receive funding under this part.

29 (b) Whether the work performed or proposed to be performed is

1 consistent with part 213, and whether those activities are  
2 consistent with achieving site closure.

3 (c) Whether the ~~owner or operator~~ **claimant** has paid the  
4 deductible amount.

5 (d) Whether the corrective action performed is reasonable and  
6 necessary considering conditions at the site of the release.

7 (e) Whether the cost of performing the corrective action work  
8 is at or below the allowable reimbursement amount in the schedule  
9 of costs. ~~or, if~~ **If** the corrective action work is not ~~a~~ **an item**  
10 ~~listed item, whether the cost is in the schedule of costs, the~~  
11 **corrective action work must be** reasonable and necessary, ~~and~~  
12 ~~whether the cost was~~ **considering conditions at the site**, based ~~upon~~  
13 **on** a competitive bidding process established by the authority, **or**  
14 **otherwise determined to be reasonable and necessary by the**  
15 **authority.**

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

19 (4) If the administrator determines under subsection (2) that  
20 the work invoice is reasonable and necessary considering conditions  
21 at the site of the release and reasonable in terms of cost and the  
22 ~~owner or operator~~ **claimant** is eligible for funding under this part,  
23 the administrator shall approve the work invoice and notify the  
24 ~~owner or operator~~ **claimant** that submitted the work invoice of the  
25 approval. If the administrator determines that the work described  
26 on the work invoices submitted was not reasonable and necessary or  
27 the cost of the work is not reasonable, or that the ~~owner or~~  
28 ~~operator~~ **claimant** is not eligible for funding under this part, the  
29 administrator shall deny the work invoice or any portion of the

1 work invoice submitted and give notice of the denial to the ~~owner~~  
2 ~~or operator~~ **claimant** that submitted the work invoice.

3 (5) The owner or operator may submit work invoices to the  
4 administrator that are related to a claim only after initial  
5 approval of the claim under section ~~21510(8)~~ **21510** and if the  
6 aggregate amount of work invoices in the submission is \$5,000.00 or  
7 more, **or 120 days or more have passed since the most recent work**  
8 **invoice was submitted.** This limitation does not apply to the final  
9 work invoice submission related to the approved claim. **A work**  
10 **invoice must be submitted within 365 days after the completion of**  
11 **the services for which reimbursement is being requested and must**  
12 **not be submitted within 14 days after the most recent work invoice**  
13 **was submitted.**

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

19 (7) The administrator shall approve a reimbursement for a work  
20 invoice that was submitted by ~~an owner or operator~~ **a claimant** for  
21 corrective action taken if the work invoice meets the requirements  
22 of this part for an approved claim and an approved work invoice.

23 (8) Except as provided in subsection (9) and section 21519,  
24 the authority shall make a joint payment to the ~~owner or operator~~  
25 **claimant** and the contractor that performed the work listed in the  
26 approved work invoices within 45 days after the date of the  
27 administrator's approval under subsection (4) if sufficient money  
28 exists in the fund. Once payment has been made under this section,  
29 the authority is not liable for any claim on the basis of that

1 payment.

2 (9) The authority may withhold partial payment of money on  
3 payment vouchers if there is reasonable cause to suspect that there  
4 are violations of section 21548 or if necessary to ~~assure~~**ensure**  
5 acceptable completion of the proposed work.

6 (10) The authority shall prepare and make available to ~~owners~~  
7 ~~and operators~~**a claimant** standardized claim and work invoice forms.

8 (11) **The authority shall not approve reimbursement for costs**  
9 **related to any of the following:**

10 (a) Costs arising from corrective actions that are not related  
11 to the release for which the claim was approved.

12 (b) Punitive, exemplary, or multiplied damages, fines, taxes,  
13 penalties, assessments, punitive or statutory assessments, or any  
14 civil, administrative, or criminal fines, sanctions, or penalties.

15 (c) Legal or civil claims made by a claimant against another  
16 owner or operator of the refined petroleum underground storage tank  
17 system.

18 (d) Costs, charges, or expenses incurred by the claimant for  
19 goods supplied by the claimant or services performed by the staff  
20 or employees of the claimant, or its parent, subsidiary, or  
21 affiliate, unless the costs, charges, or expenses are incurred with  
22 the prior written approval of the authority.

23 (e) Costs arising from the testing, repair, reconstruction, or  
24 upgrading of a refined petroleum underground storage tank system,  
25 or any other improvements and site enhancements or routine  
26 maintenance on, within, or under a location.

27 (f) Costs arising from removing, replacing, or recycling a  
28 refined petroleum underground storage tank system, including  
29 removal and disposal of tank contents, removal and replacement of

1 pavement over the underground storage tank system footprint, or  
2 backfilling and compacting void space left by the removal of an  
3 underground storage tank system.

4 (g) Costs incurred more than 1 calendar day before the  
5 reporting of the confirmed release for which a claim is approved.

6 (h) Costs related to the injury of an employee of the claimant  
7 or its affiliate arising from and in the course of employment or  
8 while performing duties related to the conduct of the business of  
9 the claimant or its affiliate by a spouse, child, parent, brother,  
10 or sister of that employee. This subdivision applies whether the  
11 claimant may be liable as an employer or in any other capacity and  
12 to any obligation to share damages with or repay someone else that  
13 must pay damages because of the injury.

14 (i) Any obligation of the claimant under worker's  
15 compensation, unemployment compensation, or disability benefits law  
16 or a similar law.

17 (j) Any liability or claim for liability of others assumed by  
18 the claimant under a contract or agreement, unless the claimant  
19 would have been liable in the absence of the contract or agreement.

20 (k) Costs that have been or will be submitted to or that have  
21 been paid in accordance with a third-party agreement or an  
22 insurance policy.

23 (l) Costs arising from corrective actions that are not  
24 necessary to obtain a restricted closure based on the land use at  
25 the time and location the release was discovered. A restricted  
26 closure can be achieved utilizing 1 or more institutional controls,  
27 including, but not limited to, restrictive covenants, an  
28 environmental license agreement with the department of  
29 transportation, public highway as an alternative mechanism, or an

1 ordinance or state law or rule. Reimbursement of corrective actions  
2 conducted in place of an institutional control may be considered  
3 eligible if any of the following conditions are met and approved in  
4 writing by the administrator before the corrective actions take  
5 place:

6 (i) The corrective action will eliminate the need for  
7 installation and long-term operation, maintenance, and monitoring  
8 of mitigation measures that would otherwise be necessary to prevent  
9 unacceptable exposures.

10 (ii) The corrective action will result in closure of the  
11 release in a more expeditious manner and will provide a higher  
12 level of confidence that closure of the release will remain  
13 protective.

14 (iii) The corrective action is necessary to achieve closure of  
15 off-site impact to properties that are not owned, operated, or  
16 controlled by the claimant or the claimant's affiliate that is  
17 liable under part 213.

18 (m) Costs incurred after the closure date of the release for  
19 which the claim was filed, except for costs for monitoring well  
20 abandonment, remediation system decommissioning, or related to  
21 requirements recorded in an approved restrictive covenant or  
22 institutional control, performed within 1 year after the closure  
23 date. The administrator may grant an exception to the costs  
24 described under this subdivision.

25 (n) Litigation costs.

26 (o) Any form of interest, late payment penalties, or carrying  
27 charges.

28 (p) Shipping or postage charges related to the delivery of  
29 soil, liquid, or vapor samples.

1           (q) Administrative costs, such as bookkeeping or form  
2 preparation, including, but not limited to, eligibility requests,  
3 claims, invoices, proposals, and change orders, and purchase orders  
4 between claimant and consultant or claimant and contractor.

5           (r) Environmental liability insurance premiums.

6           (s) Replacement or repair of pavement, landscaping, fences,  
7 utilities, or structures; property upgrades; or raze and rebuild  
8 activities, unless directly associated with eligible and necessary  
9 corrective actions.

10          (t) Costs incurred due to lost income, property loss, or  
11 reduced property values unless part of an indemnification request  
12 approved under section 21518.

13          (u) Fines or penalties imposed by local, state, or federal  
14 government agencies.

15          (v) Punitive or exemplary damages.

16          (w) Costs related to the excavation, transport, and disposal  
17 of more than 1,500 tons of soil without prior written authorization  
18 from the administrator.

19          (x) Laboratory rates for rapid turnaround sample analysis that  
20 exceed the maximum allowable rates on the schedule of costs, unless  
21 preapproved by the administrator.

22          (y) Charges for equipment not used on the date of the charge.

23          (z) Costs incurred if a non-low bidder performs required  
24 competitively bid services, unless preapproved by the  
25 administrator.

26          (aa) Corrective action activities, labor, laboratory testing,  
27 drilling, or other work that exceeds actual costs as demonstrated  
28 by submitted invoices.

29          (bb) Potentially refundable costs to the claimant, including,

1 but not limited to, permit inspection fees and cash bonds, until  
2 the cost is actually incurred.

3 (cc) Consultant markup of items listed on the schedule of  
4 costs, not including subcontractor invoices and schedule-of-cost  
5 items included on a subcontractor invoice.

6 Sec. 21516. (1) ~~An owner or operator~~ **A claimant** with a claim  
7 approved pursuant to ~~in accordance with~~ section 21510 for which  
8 corrective action is in progress ~~who~~ **that** sells or transfers to  
9 **another person** the property that is the subject of the approved  
10 claim ~~to another person~~ may assign or transfer the approved claim  
11 to ~~that~~ **the** other person. The person to whom the assignment or  
12 transfer is made is eligible to receive money from the authority.  
13 ~~as an owner or operator for the release which is the subject of the~~  
14 ~~approved claim.~~ Allowable, outstanding approved or paid work  
15 invoices of the ~~owner or operator~~ making **claimant that make** the  
16 assignment or transfer may be counted toward the deductible amount  
17 of the person to whom the assignment or transfer is made. **The**  
18 **person to whom the assignment or transfer is made has a claim limit**  
19 **equal to the balance of the claim limit initially assigned to the**  
20 **claimant that made the assignment or transfer, and the claim period**  
21 **aggregate limit includes only reimbursements made to the person to**  
22 **whom the assignment or transfer is made.**

23 (2) ~~An owner or operator assigning or transferring an approved~~  
24 ~~claim pursuant to this section shall notify the administrator of~~  
25 ~~the proposed assignment or transfer at least 10 days before the~~  
26 ~~effective date of the assignment or transfer.~~ **A claim that has**  
27 **reached its claim limit or the original claim period aggregate**  
28 **limit may not be transferred under this section.**

29 Sec. 21518. (1) To receive money from the authority for

1 indemnification, the ~~owner or operator~~ **claimant** shall submit to the  
2 administrator a request for indemnification ~~containing that~~  
3 **contains** the information required by the administrator, including a  
4 **all of the following:**

5 (a) A copy of the judgment obtained by a third party from a  
6 court of law against the ~~owner or operator~~ **claimant** or the  
7 settlement entered into between the ~~owner or operator~~ **claimant** and  
8 the third party, ~~all as applicable.~~

9 (b) **All** documentation ~~supporting that supports~~ the  
10 reasonableness of and justification for the judgment or settlement.  
11 ~~, and work~~

12 (c) **Work** invoices which conform to the requirements of this  
13 part.

14 (2) If the administrator determines that the ~~owner or operator~~  
15 **claimant** is eligible for funding under this part, is eligible for  
16 the amount requested, has paid the deductible amount, and has not  
17 exceeded the allowable amount of expenditure provided in section  
18 ~~21510(1)(i),~~ **21502**, and that the work invoices are payable under  
19 this part, the administrator shall forward a copy of the request  
20 for indemnification along with all supporting documentation to the  
21 attorney general. The attorney general shall approve the request  
22 for indemnification if there is a legally enforceable judgment  
23 against, or settlement with, the ~~owner or operator~~ **claimant** that  
24 was caused by an accidental release and that is reasonable and  
25 consistent with the purposes of this part. The attorney general may  
26 raise as a defense to the request any rights or defenses that were  
27 or are available to the ~~owner or operator~~ **claimant** and, in the case  
28 of a judgment, that were not heard and ruled ~~upon on~~ by the court.  
29 If a request for indemnification is approved by the attorney

1 general, the authority shall pay the indemnification amount.

2 (3) ~~(2)~~—The administrator shall keep records of all approved  
3 requests for indemnification.

4 (4) ~~(3)~~—The authority shall make a payment to an ~~owner or~~  
5 ~~operator~~ **a claimant** for an approved indemnification request within  
6 30 days if sufficient money is available to make the payment.

7 Sec. 21519. (1) The authority shall make payments on ~~claims~~  
8 **work invoices** in the order in which they are received. However, if  
9 there is insufficient money available to make payments on all  
10 approved claims, the authority shall give notice to each ~~owner~~  
11 **claimant** that is eligible to submit a ~~claim~~ **work invoice** under this  
12 part advising the ~~owners~~ **claimant** of the financial situation and  
13 the authority shall prioritize payments based ~~upon~~ **on** the risks at  
14 the site to the public health, safety, or welfare or the  
15 environment. Payments on claims that are not funded ~~shall~~ **must** be  
16 paid if revenues subsequently become available.

17 (2) The authority and ~~the~~ **this** state are not liable for **the**  
18 **reimbursement of** work invoices or requests for indemnification if  
19 revenues of the authority are insufficient to meet these claims.

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

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

1 (b) The release ~~upon~~**on** which the request for reimbursement is  
2 based has not been closed ~~pursuant to~~**in accordance with** part 213  
3 ~~prior to~~**before** December 30, 2014.

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

8 **(c)** ~~(d)~~The request for reimbursement does not include  
9 reimbursement for money that was reimbursed from any other source,  
10 including insurance policies.

11 **(d)** ~~(e)~~A claim submitted to the legacy release program ~~shall~~  
12 **must** not be approved by the authority for any of the prohibitions  
13 listed under section ~~21510e~~**21510 (8)**.

14 **(e)** ~~(f)~~The request for reimbursement is for corrective action  
15 performed on or after December 30, 2014.

16 (2) An eligible person that seeks to be reimbursed under the  
17 legacy release program established under this section shall submit  
18 to the authority a request for reimbursement on a form provided by  
19 the authority ~~containing~~**and provide** the documentation required by  
20 the authority.

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

23 (a) The amount approved for reimbursement ~~shall be~~**is** 50% of  
24 the aggregate indemnification and corrective action costs incurred,  
25 but not more than 50% of the reasonable and necessary eligible  
26 costs as determined by the administrator ~~pursuant to~~**in accordance**  
27 **with** section 21515(2) to ~~(10)~~**(11)**.

28 (b) The total amount approved for reimbursement ~~shall~~**does** not  
29 exceed a total of \$50,000.00 for all releases from refined

1 petroleum underground storage tank systems at a single location.

2 (c) An owner or operator may request a review of a denied  
3 claim or work invoice ~~per~~ **in accordance with** section 21521.

4 **(4) To be considered for reimbursement, work invoices must be**  
5 **submitted to the administrator within 180 days after the effective**  
6 **date of the amendatory act that amended this subsection.**

7 **(5)** ~~(4)~~—As used in this section, "eligible person" means the  
8 owner or operator of a refined petroleum underground storage tank  
9 system at the time of the reporting of the release.

10 Sec. 21521. (1) If the administrator denies a claim, work  
11 invoice, request for indemnification, or request for an eligibility  
12 determination, ~~under section 21510(8),~~ the owner or operator, ~~who~~  
13 **or claimant, that** submitted the claim, work invoice, request for  
14 indemnification, or request for an eligibility determination ~~under~~  
15 ~~section 21510(8)~~ may, within 14 **business** days following the denial,  
16 request review by the board. However, if the administrator believes  
17 the dispute may be able to be resolved without the board's review,  
18 the administrator may contact the owner or operator, **or claimant,**  
19 regarding the issues in dispute and may negotiate a resolution of  
20 the dispute ~~prior to~~ **before** the board's review. The board shall  
21 conduct a review of the denial to determine whether the claim, work  
22 invoice, or request for indemnification is payable under this part.

23 (2) A person ~~who~~ **that** is denied approval by the board after  
24 review under subsection (1) may appeal the decision directly to the  
25 circuit court.

26 Sec. 21524. (1) The authority shall be governed by a board of  
27 directors consisting of the director of the department and 6  
28 residents of ~~the~~ **this** state, appointed by the governor with the  
29 advice and consent of the senate, as follows:

1 (a) An individual representing petroleum refiners.

2 (b) An individual representing independent petroleum  
3 marketers.

4 (c) An individual from a statewide motor fuel retail  
5 association.

6 (d) An individual ~~from a statewide business association that~~  
7 ~~includes owners or operators of refined petroleum underground~~  
8 ~~storage tanks.~~ **representing qualified underground storage tank**  
9 **consultants with considerable experience in the remediation of**  
10 **leaking underground storage tank systems.**

11 (e) An individual from a statewide environmental organization.

12 (f) A member of the general public.

13 (2) The 6 appointed members of the board **of directors** shall  
14 serve terms of 3 years. However, in making the initial  
15 appointments, the governor shall designate 2 appointed members to  
16 serve for 3 years, 2 appointed members to serve for 2 years, and 2  
17 appointed members to serve for 1 year.

18 (3) ~~Upon~~ **On** appointment to the board of directors under  
19 subsection (1), and ~~upon~~ **on** the taking and filing of the  
20 constitutional oath of office, a member of the board of directors  
21 shall enter office and exercise the duties of the office to which  
22 ~~he or she~~ **the member** is appointed.

23 (4) A vacancy on the board of directors ~~shall~~ **must** be filled  
24 in the same manner as the original appointment. A vacancy ~~shall~~  
25 **must** be filled for the balance of the unexpired term. A member of  
26 the board of directors shall hold office until a successor is  
27 appointed and qualified.

28 (5) Members of the board of directors and officers and  
29 employees of the authority are subject to 1968 PA 317, MCL 15.321

1 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310, as applicable. A  
2 member of the board of directors or an officer, employee, or agent  
3 of the authority shall discharge the duties of ~~his or her~~ **the**  
4 position in a nonpartisan manner, with good faith, and with the  
5 degree of diligence, care, and skill that an ordinarily prudent  
6 person would exercise under similar circumstances in a like  
7 position. In discharging ~~his or her~~ duties, a member of the board  
8 of directors or an officer, employee, or agent of the authority,  
9 when acting in good faith, may rely ~~upon~~ **on** any of the following:

10 (a) The opinion of counsel for the authority.

11 (b) The report of an independent appraiser selected with  
12 reasonable care by the board of directors.

13 (c) Financial statements of the authority represented to the  
14 member of the board of directors, officer, employee, or agent to be  
15 correct by the officer of authority having charge of its books or  
16 account, or stated in a written report by the auditor general or a  
17 certified public accountant or the firm of the accountant to fairly  
18 reflect the financial condition of the authority.

19 (6) The board of directors shall organize and make its own  
20 policies and procedures. The board of directors shall conduct all  
21 business at public meetings held in compliance with the open  
22 meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of  
23 the time, date, and place of each meeting ~~shall~~ **must** be given in  
24 the manner required by **the open meetings act**, 1976 PA 267, MCL  
25 15.261 to 15.275. Four members of the board of directors constitute  
26 a quorum for the transaction of business. An action of the board of  
27 directors ~~shall~~ **must** be by a majority of the votes cast. The  
28 director of the department may designate a representative from ~~his~~  
29 ~~or her~~ **the** department to serve as a voting member of the board of

1 directors for 1 or more meetings.

2 (7) The board of directors shall elect a chairperson from  
3 among its members and may elect any other officers the board of  
4 directors considers appropriate.

5 Sec. 21548. (1) A person ~~who~~**that** makes or submits or causes  
6 to be made or submitted either directly or indirectly ~~any~~**a**  
7 statement, report, affidavit, application, claim, bid, work  
8 invoice, or other request for payment or indemnification under this  
9 part ~~knowing~~**that knows** that the statement, report, application,  
10 claim, bid, work invoice, or other request for payment or  
11 indemnification is false or misleading, is guilty of a felony  
12 punishable by imprisonment for not more than 5 years or a fine of  
13 not more than \$50,000.00, or both. In addition to ~~any~~**a** penalty  
14 imposed under this subsection, a person convicted under this  
15 subsection shall pay restitution to the authority for the amount  
16 received in violation of this subsection.

17 (2) A person ~~who~~**that** makes or submits or causes to be made or  
18 submitted either directly or indirectly ~~any~~**a** statement, report,  
19 application, claim, bid, work invoice, or other request for payment  
20 or indemnification under this part ~~knowing~~**that knows** that the  
21 statement, report, affidavit, application, claim, bid, work  
22 invoice, or other request for payment or indemnification is false,  
23 misleading, or fraudulent, or ~~who~~**that** commits a fraudulent  
24 practice, is subject to a civil fine of not more than \$50,000.00 or  
25 twice the amount submitted, whichever is greater. In addition to  
26 ~~any~~**a** civil fine imposed under this subsection, a person found  
27 responsible under this subsection shall pay restitution to the  
28 authority for the amount received in violation of this subsection.  
29 The legislature intends that this subsection be given retroactive

1 application.

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

4 (a) Submitting a work invoice for the excavation, hauling,  
5 disposal, or provision of soil, sand, or backfill for an amount  
6 greater than the legal capacity of the carrying vehicle or greater  
7 than was actually carried, excavated, disposed, or provided.

8 (b) Submitting paperwork for services or work provided that  
9 was not in fact provided or that was not directly provided by the  
10 individual indicated on the paperwork.

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

13 (d) Returning any load of contaminated soil to its original  
14 site for reasons other than remediation of the soil.

15 (e) Causing damage intentionally or as the result of gross  
16 negligence to a refined petroleum underground storage tank system,  
17 which damage results in a release at a site.

18 (f) Placing a refined petroleum underground storage tank  
19 system at a contaminated site where no refined petroleum  
20 underground storage tank system previously existed for purposes of  
21 disguising the source of contamination or to obtain funding under  
22 this part.

23 (g) Submitting a work invoice for the excavation of soil from  
24 a site that was removed for reasons other than removal of the  
25 refined petroleum underground storage tank system or remediation.

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

28 (i) Registration of a nonexistent refined petroleum  
29 underground storage tank system with the department.

1           (j) Loaning to ~~an owner or operator~~ **a claimant** the deductible  
2 amount and then submitting or causing to be submitted inflated  
3 claims or invoices designed to recoup the deductible amount.

4           (k) Confirming a release without simultaneously providing  
5 notice to the owner or operator.

6           (l) Inflating bills or work invoices, or both, by adding  
7 charges for work that was not performed.

8           (m) Submitting a false or misleading laboratory report.

9           (n) Submitting bills or work invoices, or both, for sampling,  
10 testing, monitoring, or excavation that are not justified by the  
11 site condition.

12           (o) Falsely characterizing the contents of a refined petroleum  
13 underground storage tank system for purposes of obtaining funding  
14 under this part.

15           (p) Submitting or causing to be submitted bills or work  
16 invoices by or from a person ~~who~~ **that** did not directly provide the  
17 service.

18           (q) Characterizing legal services as consulting services for  
19 purposes of obtaining funding under this part.

20           (r) Misrepresenting or concealing the identity, credentials,  
21 affiliation, or qualifications of principals or persons seeking,  
22 either directly or indirectly, funding or approval for  
23 participation under this part.

24           (s) Falsifying a signature on a claim application or a work  
25 invoice.

26           (t) Failing to accurately disclose the actual amount and  
27 carrier of unencumbered insurance coverage available for new  
28 environmental impairment or professional liability claims.

29           (u) Any other act or omission of a false, fraudulent, or

1 misleading nature undertaken in order to obtain funding under this  
2 part.

3 (4) The attorney general or county prosecutor may conduct an  
4 investigation of an alleged violation of this section and bring an  
5 action for a violation of this section.

6 (5) If the attorney general or county prosecutor has  
7 reasonable cause to believe that a person has information or is in  
8 possession, custody, or control of any document or records, however  
9 stored or embodied, or tangible object which is relevant to an  
10 investigation of a violation or attempted violation of this part or  
11 a crime or attempted crime against the fund, the attorney general  
12 or county prosecutor may, before bringing any action, make an ex  
13 parte request to a magistrate for issuance of a subpoena requiring  
14 that person to appear and be examined under oath or to produce the  
15 document, records, or object for inspection and copying, or both.  
16 Service may be accomplished by any means described in the Michigan  
17 court rules. Requests made by the attorney general may be brought  
18 in Ingham county.

19 (6) If a person objects to or otherwise fails to comply with a  
20 subpoena served under subsection (5), an action may be brought in  
21 district court to enforce the demand. Actions filed by the attorney  
22 general may be brought in Ingham county.

23 (7) The attorney general or county prosecutor may apply to the  
24 district court for an order granting immunity to any person ~~who~~  
25 **that** refuses to provide or objects to providing information,  
26 documents, records, or objects sought ~~pursuant to~~ **under** this  
27 section. If the judge is satisfied that it is in the interest of  
28 justice that immunity be granted, ~~he or she~~ **the judge** shall enter  
29 an order granting immunity to the person and requiring the person

1 to appear and be examined under oath or to produce the document,  
2 records, or object for inspection and copying, or both.

3 (8) A person ~~who~~**that** fails to comply with a subpoena issued  
4 ~~pursuant to~~**under** subsection (5) or a requirement to appear and be  
5 examined ~~pursuant to~~**under** subsection (7) is subject to a civil  
6 fine of not more than \$25,000.00 for each day of continued  
7 noncompliance.

8 (9) In addition to any civil fines or criminal penalties  
9 imposed under this part or the criminal laws of this state, the  
10 person found responsible shall repay any money obtained directly or  
11 indirectly under this part. Money owed ~~pursuant to~~**under** this  
12 section constitutes a claim and lien by the authority upon any real  
13 or personal property owned either directly or indirectly by the  
14 person. This lien ~~shall attach~~**attaches** regardless of whether the  
15 person is insolvent and may not be extinguished or avoided by  
16 bankruptcy. The lien imposed by this section has the force and  
17 effect of a first in time and right judgment lien.

18 (10) Subsection (1) does not preclude prosecutions under other  
19 laws of ~~the~~**this** state including, but not limited to, section 157a,  
20 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328,  
21 MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

22 (11) All civil fines collected ~~pursuant to~~**under** this section  
23 ~~shall~~**must** be apportioned in the following manner:

24 (a) Fifty percent ~~shall~~**must** be deposited in the general fund  
25 and ~~shall be~~ used by the department to fund fraud investigations  
26 under this part.

27 (b) Twenty-five percent ~~shall~~**must** be paid to the office of  
28 the county prosecutor or attorney general, whichever office brought  
29 the action.

1           (c) Twenty-five percent ~~shall~~**must** be paid to a local police  
2 department or sheriff's office, or a city or county health  
3 department, if investigation by that office or department led to  
4 the bringing of the action. If more than 1 office or department is  
5 eligible for payment under this subsection, division of payment  
6 ~~shall~~**must** be on an equal basis. If there is not a local office or  
7 department that is entitled to payment under this subdivision, the  
8 money ~~shall~~**must** be forwarded to the state treasurer for deposit  
9 into the refined petroleum fund.

10           Enacting section 1. Section 21510c of the natural resources  
11 and environmental protection act, 1994 PA 451, MCL 324.21510c, is  
12 repealed.