

**SUBSTITUTE FOR
HOUSE BILL NO. 5115**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 21510a, 21510d, 21515, 21516, 21518, 21519,
21519a, 21521, 21524, and 21548 (MCL 324.21510a, 324.21510d,
324.21515, 324.21516, 324.21518, 324.21519, 324.21519a, 324.21521,
324.21524, and 324.21548), sections 21510a, 21515, 21516, and 21521
as amended by 2016 PA 380, section 21510d as amended and section
21519a as added by 2017 PA 134, and sections 21518, 21519, 21524,
and 21548 as amended by 2014 PA 416.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 21510a. (1) ~~An owner or operator~~ **A claimant** is
2 responsible for a deductible amount as follows:
3 (a) ~~If the owner or operator or its affiliate owns or operates~~



~~fewer than 8 refined petroleum underground storage tanks, For a~~
first approved claim at the facility, \$2,000.00. per claim.

~~(b) If the owner or operator or its affiliate owns or operates~~
~~8 or more refined petroleum underground storage tanks, For a second~~
approved claim at the facility, \$10,000.00. per claim.

~~(c) The deductible amount under subdivisions (a) and (b) is~~
~~retroactive to all claims filed for releases discovered and~~
~~reported on or after December 30, 2014. For a third or subsequent~~
approved claim at the facility, \$20,000.00.

~~(2) The deductible amount applies to each claim. However, 2 or~~
~~more claims arising out of the same, interrelated, associated,~~
~~repeated, or continuous releases or a series of related releases~~
~~shall be considered a single claim and are subject to 1 deductible~~
~~amount. Any claim that takes place over 2 or more claim periods is~~
~~subject to 1 deductible amount.~~

~~(2) (3) An owner or operator~~ **A claimant** that submits a work
 invoice under section 21515 is responsible for the deductible
 amount described in subsection (1). The expenses toward meeting the
 deductible amount ~~shall~~ **must** be documented and ~~shall~~ comply with
 the following:

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

(b) Expenses for items that are not listed in the schedule of
 costs ~~shall~~ **must** be reasonable and necessary considering conditions
 at the site based ~~upon~~ **on** a competitive bidding process established
 by the authority **or as otherwise determined necessary by the**
authority.

Sec. 21510d. If an owner or operator intends to rely on the



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

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

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

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

21 (d) The owner or operator has financial responsibility for the
 22 deductible amount. In order to demonstrate that the owner or
 23 operator has financial responsibility for the deductible amount
 24 under this section and section 21510(1)(f), the owner or operator
 25 may rely ~~upon any~~**on a** financial assurance mechanism listed in 40
 26 CFR 280.95 to 280.107 or either of the following:

27 (i) A financial test of self-insurance. To pass the financial
 28 test of self-insurance, the owner or operator must submit, on a
 29 form developed by the authority, financial information certified as



accurate by the chief financial officer, or **an individual in a** comparable position, that demonstrates a tangible net worth of at least 3 times the deductible amount required under this part.

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

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

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

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

(b) Whether the work performed or proposed to be performed is consistent with part 213, and whether those activities are consistent with achieving site closure.

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



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

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

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

(4) If the administrator determines under subsection (2) that the work invoice is reasonable and necessary considering conditions at the site of the release and reasonable in terms of cost and the ~~owner or operator~~ **claimant** is eligible for funding under this part, the administrator shall approve the work invoice and notify the ~~owner or operator~~ **claimant** that submitted the work invoice of the approval. If the administrator determines that the work described on the work invoices submitted was not reasonable and necessary or the cost of the work is not reasonable, or that the ~~owner or operator~~ **claimant** is not eligible for funding under this part, the administrator shall deny the work invoice or any portion of the work invoice submitted and give notice of the denial to the ~~owner or operator~~ **claimant** that submitted the work invoice.

(5) The ~~owner or operator~~ **claimant** may submit work invoices to the administrator that are related to a claim only after initial



approval of the claim under section ~~21510(8)~~**21510** and if the aggregate amount of work invoices in the submission is \$5,000.00 or more, **or 120 days or more have passed since the most recent work invoice was submitted.** This limitation does not apply to the final work invoice submission related to the approved claim. **A work invoice must be submitted within 365 days after the completion of the services for which reimbursement is being requested and must not be submitted within 14 days after the most recent work invoice was submitted.**

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

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

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

(9) The authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that there are violations of section 21548 or if necessary to ~~assure~~ **ensure**



1 acceptable completion of the proposed work.

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

4 (11) The authority shall not approve reimbursement for costs
5 related to any of the following:

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

8 (b) Punitive, exemplary, or multiplied damages, fines, taxes,
9 penalties, assessments, punitive or statutory assessments, or any
10 civil, administrative, or criminal fines, sanctions, or penalties.

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

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

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

23 (f) Costs arising from a closure in place or from removing,
24 replacing, or recycling a refined petroleum underground storage
25 tank system, including removal and disposal of tank contents,
26 removal and replacement of pavement over the underground storage
27 tank system footprint, or backfilling and compacting void space
28 left by the removal of an underground storage tank system.

29 (g) Costs incurred more than 1 calendar day before the



1 reporting of the confirmed release for which a claim is approved.

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

10 (i) Any obligation of the claimant under worker's
11 compensation, unemployment compensation, or disability benefits law
12 or a similar law.

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

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

19 (l) Costs arising from corrective actions that are not
20 necessary to obtain a restricted closure based on the land use at
21 the time and location the release was discovered. A restricted
22 closure can be achieved utilizing 1 or more institutional controls,
23 including, but not limited to, restrictive covenants, an
24 environmental license agreement with the department of
25 transportation, public highway as an alternative mechanism, or an
26 ordinance or state law or rule. Reimbursement of corrective actions
27 conducted in place of an institutional control may be considered
28 eligible if any of the following conditions are met and approved in
29 writing by the administrator before the corrective actions take

1 place:

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

6 (ii) The corrective action will result in closure of the
7 release in a more expeditious manner and will provide a higher
8 level of confidence that closure of the release will remain
9 protective.

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

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

21 (n) Litigation costs.

22 (o) Any form of interest, late payment penalties, or carrying
23 charges.

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

26 (q) Shipping charges for equipment listed on the schedule of
27 costs, unless the total for the equipment and shipping charges is
28 less than the schedule of costs equipment rate.

29 (r) Administrative costs, such as bookkeeping or form



1 preparation, including, but not limited to, eligibility requests,
2 claims, invoices, proposals, and change orders, and purchase orders
3 between claimant and consultant or claimant and contractor.

4 (s) Environmental liability insurance premiums.

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

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

12 (v) Fines or penalties imposed by local, state, or federal
13 government agencies.

14 (w) Punitive or exemplary damages.

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

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

21 (z) Charges for equipment not used on the date of the charge.

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

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

28 (cc) Potentially refundable costs to the claimant, including,
29 but not limited to, permit inspection fees and cash bonds, until



1 the cost is actually incurred.

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

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

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

28 Sec. 21518. (1) To receive money from the authority for
29 indemnification, the ~~owner or operator~~ **claimant** shall submit to the



1 administrator a request for indemnification ~~containing that~~
 2 **contains** the information required by the administrator, including a
 3 **all of the following:**

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

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

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

13 (2) If the administrator determines that the ~~owner or operator~~
 14 **claimant** is eligible for funding under this part, is eligible for
 15 the amount requested, has paid the deductible amount, ~~and~~ has not
 16 exceeded ~~the allowable amount of expenditure provided in section~~
 17 ~~21510(1)(i),~~ **the claim limit or the claim period aggregate limit,**
 18 and that the work invoices are payable under this part, the
 19 administrator shall forward a copy of the request for
 20 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.



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

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

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

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

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

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

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

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

(b) The total amount approved for reimbursement ~~shall~~**does** not 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 2025 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:



(a) An individual representing petroleum refiners.

(b) An individual representing independent petroleum marketers.

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

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

(e) An individual from a statewide environmental organization.

(f) A member of the general public.

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

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

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

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



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. This amendatory act does not take effect
11 unless House Bill No. 4940 of the 103rd Legislature is enacted into
12 law.