

# HOUSE BILL No. 5365

September 15, 2009, Introduced by Reps. Mayes, Polidori, LeBlanc, Sheltroun, Horn, Hansen, Neumann, Crawford, Kowall, Genetski, Schuitmaker, Moore, Daley, Opsommer, Rick Jones, Gonzales, Slezak, Roy Schmidt, Liss, Huckleberry, Wayne Schmidt, Haase and Cushingberry and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 21101, 21102, 21103, 21104, 21105, 21106,  
21108, 21109, and 21111 (MCL 324.21101, 324.21102, 324.21103,  
324.21104, 324.21105, 324.21106, 324.21108, 324.21109, and  
324.21111).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 21101. As used in this part:

2       ~~— (a) "Department" means the department of natural resources,~~  
3       ~~underground storage tank division.~~

4       **(A)** ~~(b)~~ "Fund" means the underground storage tank regulatory

1 enforcement fund created in section 21104.

2 (B) ~~(e)~~—"Local unit of government" means a municipality,  
3 county, or governmental authority or any combination of  
4 municipalities, counties, or governmental authorities.

5 (C) ~~(d)~~—"Natural gas" means natural gas, synthetic gas, ~~and~~ OR  
6 manufactured gas.

7 (D) ~~(e)~~—"Operator" means a person who is presently, or was at  
8 the time of a release, in control of or responsible for the  
9 operation of an underground storage tank system.

10 (E) ~~(f)~~—"Owner" means a person who holds, or at the time of a  
11 release ~~who~~ held, a legal, equitable, or possessory interest of any  
12 kind in an underground storage tank system or in the property on  
13 which an underground storage tank system is located, including, but  
14 not limited to, a trust, vendor, vendee, lessor, or lessee.

15 However, owner does not include a person or a regulated financial  
16 institution who, without participating in the management of an  
17 underground storage tank system and ~~who is not~~ **WITHOUT BEING**  
18 otherwise engaged in petroleum production, refining, or marketing  
19 relating to the underground storage tank system, is acting in a  
20 fiduciary capacity or who holds indicia of ownership primarily to  
21 protect the person's or the regulated financial institution's  
22 security interest in the underground storage tank system or the  
23 property on which it is located. This exclusion does not apply to a  
24 grantor, beneficiary, remainderman, or other person who could  
25 directly or indirectly benefit financially from the exclusion other  
26 than by the receipt of payment for fees and expenses related to the  
27 administration of a trust.

1 (F) ~~(g)~~ "Regulated substance" means any of the following:

2 (i) A **HAZARDOUS** substance **AS THAT TERM IS** defined in section  
3 101(14) of title I of the comprehensive environmental response,  
4 compensation, and liability act of 1980, ~~Public Law 96-510, 42~~  
5 ~~U.S.C. 42 USC~~ 9601, but not including a substance regulated as a  
6 hazardous waste under subtitle C of the solid waste disposal act,  
7 ~~title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to~~  
8 ~~6939b~~ **42 USC 6921 TO 6939E.**

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

19 (iii) A substance listed in section 112 of part A of title I of  
20 the clean air act, ~~chapter 360, 84 Stat. 1685, 42 U.S.C. 42 USC~~  
21 7412.

22 (G) ~~(h)~~ "Release" means any spilling, leaking, emitting,  
23 discharging, escaping, leaching, or disposing from an underground  
24 storage tank system into groundwater, surface water, or subsurface  
25 soils.

26 (H) **"STATE FIRE MARSHAL" MEANS THAT TERM AS DEFINED IN SECTION**  
27 **1 OF THE FIRE PREVENTION CODE, 1941 PA 207, MCL 29.1.**

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

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

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

(iii) A septic tank.

(iv) A pipeline facility, including gathering lines regulated under either of the following: **49 USC 60101 TO 60137.**

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

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

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

(vi) A storm water or wastewater collection system.

(vii) A flow-through process tank.

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

(ix) A storage tank situated in an underground area, such as a

basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

~~Any pipes connected to a tank that is described in subparagraphs (i) to (xvi).~~

(x) ~~(xi)~~ An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, ~~title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b~~ **42 USC 6921 TO 6939E**, or a mixture of such hazardous waste and other regulated substances.

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

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

(xiii) ~~(xiv)~~ An underground storage tank system with a capacity of 110 gallons or less.

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

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

(xvi) **ANY PIPES CONNECTED TO A TANK THAT IS DESCRIBED IN SUBPARAGRAPHS (i) TO (xv).**

Sec. 21102. (1) A person who is the owner of an underground storage tank system shall register and annually renew the

1 registration ~~en~~ **OF** the underground storage tank system with the  
2 ~~department~~ **STATE FIRE MARSHAL**. However, the owner or operator of an  
3 underground storage tank closed prior to January 1, 1974 in  
4 compliance with the fire prevention code, ~~Act No. 207 of the Public~~  
5 ~~Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled~~  
6 ~~Laws 1941 PA 207, MCL 29.1 TO 29.33~~, and the rules promulgated  
7 under that act, is exempt from the registration requirements of  
8 this section.

9 (2) A person who is the owner of an underground storage tank  
10 system shall register the underground storage tank system with the  
11 ~~department~~ **STATE FIRE MARSHAL** prior to bringing the underground  
12 storage tank system into use. Additionally, an installation  
13 registration form containing the information required by the  
14 ~~department~~ **STATE FIRE MARSHAL** shall be submitted to the department  
15 at least 45 days prior to the installation of the underground  
16 storage tank system.

17 (3) The ~~department~~ **STATE FIRE MARSHAL** shall accept the  
18 registration or renewal of registration of an underground storage  
19 tank system under this section only if the owner of the underground  
20 storage tank system pays the registration fee specified in  
21 subsection (8).

22 (4) Except as otherwise provided in subsections (5) and (6), a  
23 person who is the owner of an underground storage tank system  
24 registered under subsection (1) or (2) shall notify the ~~department~~  
25 **STATE FIRE MARSHAL** of any change in the information required **ON THE**  
26 **REGISTRATION FORM** under section ~~3-21103~~ or of the removal of an  
27 underground storage tank system from service.

1 (5) A person who is the owner of an underground storage tank  
2 system, the contents of which are changed routinely, may indicate  
3 all the materials that are stored in the underground storage tank  
4 system on the registration form described in section 21103. A  
5 person providing the information described in this subsection is  
6 not required to notify the ~~department~~**STATE FIRE MARSHAL** of changes  
7 in the contents of the underground storage tank system unless the  
8 material to be stored in the system differs from the information  
9 provided on the registration form.

10 (6) Except as otherwise provided in section 21103(2), a person  
11 who is the owner of an underground storage tank system registered  
12 under subsection (1) or (2) is not required to notify the  
13 ~~department~~**STATE FIRE MARSHAL** of a test conducted on the tank  
14 system but shall furnish this information upon the request of the  
15 ~~department~~**STATE FIRE MARSHAL**.

16 (7) Upon the request of a local unit of government ~~in which~~  
17 **WHERE** an underground storage tank system is located, the ~~department~~  
18 **STATE FIRE MARSHAL** shall forward a copy of registration or  
19 notification of change to the local unit of government where the  
20 underground storage tank system is located.

21 (8) Except as provided in section 21104(3), the owner of an  
22 underground storage tank system shall, upon registration or renewal  
23 of registration, pay a registration fee of \$100.00 for each  
24 underground storage tank included in that underground storage tank  
25 system. The ~~department~~**STATE FIRE MARSHAL** shall deposit all  
26 registration fees it collects **UNDER THIS SUBSECTION** into the fund.

27 (9) The ~~department~~**STATE FIRE MARSHAL** may promulgate rules

1 that require proof of registration under this part to be attached  
2 to the underground storage tank system or to the property where the  
3 underground storage tank system is located.

4 (10) Except as otherwise provided in this subsection, an  
5 underground storage tank system or an underground storage tank that  
6 is part of the system that has been closed or removed pursuant to  
7 rules promulgated under this part is exempt from the requirements  
8 of this section. However, the owner of an underground storage tank  
9 system or an underground storage tank that is part of the system  
10 that has been closed or removed shall notify the ~~department~~**STATE**  
11 **FIRE MARSHAL** of the closure or removal pursuant to rules  
12 promulgated by the ~~department~~**STATE FIRE MARSHAL**. The owner of an  
13 underground storage tank system shall continue to pay registration  
14 fees on underground storage tanks that have been closed or removed  
15 until notification of the closure or removal is provided on the  
16 required form pursuant to these rules.

17 Sec. 21103. (1) The registration required by section 21102(1)  
18 and (2) shall be provided either:

19 (a) On a form provided by the ~~department~~**STATE FIRE MARSHAL**  
20 and in compliance with section 9002 of the solid waste disposal  
21 act, 42 U.S.C. ~~USC~~ 6991a.

22 (b) On a form approved by the ~~department~~**STATE FIRE MARSHAL**  
23 and in compliance with section 9002 of the solid waste disposal  
24 act, **42 USC 6991A**.

25 (2) If there is a suspected or confirmed release from an  
26 underground storage tank system, the owner or operator of the  
27 underground storage tank system shall notify the ~~department~~**STATE**

1 **FIRE MARSHAL** within 24 hours and if requested by the ~~department~~  
2 **STATE FIRE MARSHAL** shall file the following supplementary  
3 information if known:

4 (a) The owner of the property where the underground storage  
5 tank system is located.

6 (b) A history of the current and previous contents of the  
7 underground storage tank system, including the generic chemical  
8 name, chemical abstract service number, or trade name, whichever is  
9 most descriptive of the contents, and including the date or dates  
10 on which the contents were changed or removed.

11 (c) A history of the monitoring procedures and leak detection  
12 tests and methods employed with respect to the underground storage  
13 tank system and the resulting findings.

14 Sec. 21104. (1) The underground storage tank regulatory  
15 enforcement fund is created in the state treasury. The fund may  
16 receive money as provided in this part and as otherwise provided by  
17 law. The state treasurer shall direct the investment of the fund.  
18 Interest and earnings of the fund shall be credited to the fund.  
19 Money in the fund at the close of the fiscal year shall remain in  
20 the fund and shall not revert to the general fund.

21 (2) Money in the fund shall be used only by the ~~department~~  
22 **STATE FIRE MARSHAL** to enforce this part and the rules promulgated  
23 under this part and the rules promulgated under the fire prevention  
24 code, ~~Act No. 207 of the Public Acts of 1941, being sections 29.1~~  
25 ~~to 29.33 of the Michigan Compiled Laws 1941 PA 207, MCL 29.1 TO~~  
26 **29.33**, pertaining to the delivery and dispensing operations of  
27 regulated substances.

1           (3) Notwithstanding section 21102(8), if at the close of any  
2 fiscal year the amount of money in the fund exceeds \$8,000,000.00,  
3 the ~~department~~**STATE FIRE MARSHAL** shall not collect a registration  
4 fee for the following year from existing underground storage tank  
5 systems. After the registration fee has been suspended under this  
6 subsection, it shall only be reinstated if, at the close of any  
7 succeeding fiscal year, the amount of money in the fund is less  
8 than \$4,000,000.00.

9           (4) The department of treasury shall, before November 1 of  
10 each year, notify the ~~department~~**STATE FIRE MARSHAL** of the balance  
11 in the fund at the close of the preceding fiscal year.

12           Sec. 21105. The ~~department~~**STATE FIRE MARSHAL** shall collect  
13 and evaluate the information obtained through the registration of  
14 underground storage tanks required by section 21102. ~~Not later than~~  
15 ~~September 30, 1987, the department shall provide to the legislature~~  
16 ~~a report containing a compilation of the underground storage tank~~  
17 ~~registration data and an assessment of the actual and potential~~  
18 ~~environmental hazard posed by the tanks.~~

19           Sec. 21106. The ~~department~~**STATE FIRE MARSHAL** shall promulgate  
20 rules relating to underground storage tank systems that are at  
21 least as stringent as the rules promulgated by the United States  
22 environmental protection agency under subtitle I of title II of  
23 ~~Public Law 89-272~~**THE SOLID WASTE DISPOSAL ACT, 42 U.S.C. USC 6991**  
24 ~~to 6991i-6991m~~**1M**. These rules shall include a requirement that the  
25 owner or operator of an underground storage tank system provide  
26 financial responsibility in the event of a release from the  
27 underground storage tank system.

1           Sec. 21108. (1) The ~~department~~**STATE FIRE MARSHAL** shall  
2   enforce this part and the rules promulgated under this part.

3           (2) The ~~department~~**STATE FIRE MARSHAL** may delegate the  
4   authority to enforce this part and the rules promulgated under this  
5   part to a local unit of government that has sufficient employees  
6   who are certified by the ~~department~~**STATE FIRE MARSHAL** under  
7   subsection (3) as underground storage tank system inspectors. A  
8   local unit of government may apply for delegation under this  
9   section by submitting a resolution of the governing body of the  
10   local unit of government and an application containing the  
11   information required by the ~~department~~**STATE FIRE MARSHAL**. The  
12   ~~department~~**STATE FIRE MARSHAL** may revoke a delegation under this  
13   section for a violation of this part, the rules promulgated under  
14   this part, or a contract entered between the ~~department~~**STATE FIRE**  
15   **MARSHAL** and the local unit of government.

16          (3) The ~~department~~**STATE FIRE MARSHAL** may certify individuals  
17   who are qualified to enforce this part and the rules promulgated  
18   under this part as underground storage tank system inspectors. The  
19   ~~department~~**STATE FIRE MARSHAL** may revoke an individual's  
20   certification under this section for violating this part or rules  
21   promulgated under this part.

22          (4) If the ~~department~~**STATE FIRE MARSHAL** elects to delegate  
23   enforcement authority under subsection (2), the ~~department~~**STATE**  
24   **FIRE MARSHAL** shall promulgate rules that do both of the following:

25           (a) Establish criteria for delegation under subsection (2).

26           (b) Establish qualifications for certification of individuals  
27   as underground storage tank system inspectors under subsection (3).

1           (5) The ~~department~~**STATE FIRE MARSHAL** may contract with a  
2 local unit of government for the purpose of enforcing this part and  
3 the rules promulgated under this part.

4           (6) The ~~department~~**STATE FIRE MARSHAL** or a certified  
5 underground storage tank system inspector within his or her  
6 jurisdiction, at the discretion of the ~~department~~**STATE FIRE**  
7 **MARSHAL** or inspector and without a complaint and without restraint  
8 or liability for trespass, may, at an hour reasonable under the  
9 circumstances involved, enter into and upon real property including  
10 a building or premises where regulated substances may be stored for  
11 the purpose of inspecting and examining the property, buildings, or  
12 premises, and their occupancies and contents to determine  
13 compliance with this part and the rules promulgated under this  
14 part.

15           (7) The ~~department~~**STATE FIRE MARSHAL** shall enhance its audit  
16 and inspection program to monitor the installation and operation of  
17 new underground storage tank systems or components to ensure that  
18 equipment meets minimum quality standards, that the installation is  
19 done properly, and that the monitoring systems are properly  
20 utilized.

21 ~~—— (8) The department shall conduct a study regarding the causes~~  
22 ~~of underground storage tank leaks and prepare a report making~~  
23 ~~recommendations regarding upgrading underground storage tank system~~  
24 ~~standards, establishing timetables for the replacement of~~  
25 ~~equipment, and instituting any other practices or procedures which~~  
26 ~~will minimize releases of regulated substances into the~~  
27 ~~environment. The report shall be submitted by July 1, 1995 to the~~

~~members of the legislature who are members of committees dealing with natural resource issues.~~

Sec. 21109. (1) The ~~department~~**STATE FIRE MARSHAL** may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered **BY THE UNDERGROUND STORAGE TANK SYSTEM.**

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

Sec. 21111. The following are deferred from regulation under this part until such time as the ~~department~~**STATE FIRE MARSHAL** determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat —919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R.—**CFR**

1 part 50, appendix A. ~~to part 50 of title 10 of the code of federal~~  
2 ~~regulations.~~

3 (d) Airport hydrant fuel distribution systems.

4 (e) Underground storage tank systems with field-constructed  
5 tanks.

6 Enacting section 1. (1) The transfer of powers and duties from  
7 the department of environmental quality or the director of the  
8 department of environmental quality to the state fire marshal under  
9 this amendatory act does not abate an action or other proceeding  
10 commenced by or against the department of environmental quality or  
11 the director of the department of environmental quality in his or  
12 her official capacity under part 211 of the natural resources and  
13 environmental protection act, 1994 PA 451, MCL 324.21101 to  
14 324.21113. However, the court may allow the action or other  
15 proceeding to be maintained by or against the state fire marshal.

16 (2) This amendatory act does not abate a criminal action  
17 commenced by this state.

18 (3) Any order, registration, delegation of enforcement  
19 authority, certification, or contract issued or entered by the  
20 department of environmental quality or the director of the  
21 department of environmental quality before the effective date of  
22 this amendatory act under part 211 of the natural resources and  
23 environmental protection act, 1994 PA 451, MCL 324.21101 to  
24 324.21113, shall continue in effect until it expires or is amended,  
25 suspended, or revoked by the state fire marshal pursuant to law.

26 (4) Subject to subsection (1), all records, personnel, and  
27 unexpended balances of appropriations or other funds associated

- 1 with a power or duty transferred by this amendatory act are
- 2 transferred with that power or duty.