Act No. 108
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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senators Casperson, Proos, Kowall, Pappageorge, Marleau and Walker

ENROLLED SENATE BILL No. 528

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 21301a, 21304a, 21304b, 21307, 21307a, 21309a, 21310a, 21314a, 21315, 21316, 21316a, and 21320 (MCL 324.21301a, 324.21304a, 324.21304b, 324.21307, 324.21307a, 324.21309a, 324.21310a, 324.21314a, 324.21315, 324.21316, 324.21316a, and 324.21320), sections 21301a, 21304a, 21309a, 21310a, and 21315 as amended and section 21304b as added by 1996 PA 116 and section 21307 as amended and sections 21307a, 21314a, and 21316a as added by 1995 PA 22, and by adding sections 21304c, 21304d, 21323a, 21323b, 21323c, 21323d, 21323e, 21323f, 21323g, 21323h, 21323i, 21323j, 21323k, 21323*l*, 21323m, 21325, and 21334.

The People of the State of Michigan enact:

Sec. 21301a. (1) This part is intended to provide remedies using a process and procedures separate and distinct from the process, procedures, and criteria established under part 201 for sites posing a threat to the public health, safety, or welfare, or to the environment, as a result of releases from underground storage tank systems, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, 1988 PA 478, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in this part only apply to violations of this part that occur after April 13, 1995.

(2) The liability provisions that are provided for in this part shall be given retroactive application.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment. Corrective action activities that involve a discharge into air or groundwater as defined in section 21302 or surface water as defined in section 21303 shall be consistent with parts 31 and 55.

(2) The tier I risk-based screening levels for regulated substances are the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201 and shall be utilized in accordance with the process outlined in RBCA as screening levels only.

(3) If a regulated substance poses a carcinogenic risk to humans, the tier I RBSLs derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If the applicable RBSL or SSTL for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the SSTL shall be the more stringent of (a) or (b) unless the owner or operator determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank system is regulated exclusively under this part. Notwithstanding any other provision of this part, if a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system may choose to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

Sec. 21304b. (1) A person shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation under parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the tier I RBSLs established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) A person shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being relocated in a manner not addressed by this section, the person that owns or operates the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(6) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(7) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

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

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

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

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

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall

be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

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

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the property in connection with corrective action activities.

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

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

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

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 21323a(3)(a), (b), (c), or (e) or to the state or local unit of government that acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(c). However, if the state or local unit of government, other than those exempt from liability under section 21323a(4)(b), acting as the operator of a parcel of property that the state or local unit of government has knowledge is or was a site, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the general public for that express purpose, and not the entire property. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

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

Sec. 21304d. (1) If the owner of a parcel of real property has knowledge or information or is on notice through a recorded instrument that the real property is a site, the owner shall not transfer an interest in that real property unless the owner provides written notice to the transferee that the real property is a site and of the general nature and extent of the release.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of all corrective action activities for the site as approved by the department, record with the register of deeds for the appropriate county a certification that all corrective action activity required in an approved final assessment report has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of corrective action that has been or is being implemented in compliance with section 21304a.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator shall report the release to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator shall immediately begin and expeditiously perform all of the following initial actions:

(a) Identify and mitigate immediate fire, explosion hazards, and acute vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Using the process outlined by RBCA regarding NAPL, take steps necessary and feasible under this part to address unacceptable immediate risks.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(3) Immediately following initiation of initial response actions under this section, the owner or operator shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional immediate fire and safety hazards posed by vapors or NAPL that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

Sec. 21307a. (1) Following initiation of initial actions under section 21307, the owner or operator shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, the owner or operator shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, the owner or operator shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

Sec. 21309a. (1) If initial actions under section 21307 have not resulted in completion of corrective action, an owner or operator shall prepare a corrective action plan to address contamination at the site. Corrective action plans submitted as part of a final assessment report shall use the process described in RBCA and shall be based upon the site information and characterization results of the initial assessment report.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the tier I, II, or III evaluation in the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include an analysis of the recoverability of the NAPL and whether the NAPL is mobile or migrating, and a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include information that describes the proposed operation and maintenance actions.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures such as grab sampling procedures for monitoring groundwater, among other procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*x*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*ix*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a, including how those restrictions will be effective in preventing or controlling unacceptable exposures.

(e) A schedule for implementation of the corrective action.

(f) If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation until the lapse or violation is corrected.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property, the owner or operator shall provide notice to the public by means designed to reach those members of the public directly impacted by the release above a residential RBSL and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the property owner or with the express written permission of the property owner. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

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

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

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

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

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

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

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

(3) If the owner or operator determines that exposure to regulated substances may be reliably restricted by a means other than a restrictive covenant and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the owner or operator may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the RBSLs or SSTLs identified in the corrective action plan. An ordinance that serves as an exposure control under this subsection shall include both of the following:

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

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

(4) Notwithstanding subsections (1), (2), and (3), if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested by an owner or operator and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.

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

Sec. 21314a. Sites shall be classified consistent with the process outlined in RBCA. If the department determines that no imminent risk to the public health, safety, or welfare or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department.

Sec. 21315. (1) The department shall design and implement a program to selectively audit final assessment reports and closure reports submitted under this part. Upon receipt of a final assessment report or closure report, the department shall have 90 days to determine whether it will audit the report and inform the owner or operator of its intention to audit the submitted report within 7 days of the determination. If the department does not inform the owner or operator of its intention to audit the report within the required time limits, the department shall not audit the report. If the department determines that it will conduct an audit, the audit shall be completed within 180 days of the submission. The department shall inform the owner or operator in writing of the results of the audit within 14 days of the completion of the audit. All audits shall be conducted based on the standards, criteria, and procedures in effect at the time the final assessment report or closure report was submitted.

(2) The department shall have 270 days from the effective date of the 2012 amendatory act that amended this section to selectively audit final assessment reports or closure reports that were submitted within the time period beginning 6 months prior to and ending 60 days after the effective date of the 2012 amendatory act that amended this section.

(3) If the department conducts an audit, the results of the audit shall approve, approve with conditions, or deny the final assessment report or closure report or shall notify the owner or operator that the report does not contain sufficient information for the department to make a decision. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a report is approved with conditions, the department's approval shall state with specificity the conditions of the approval.

(4) If the department does not perform an audit and provide a written response in accordance with subsection (1) to a final assessment report or closure report submitted after June 15, 2012, the report is considered approved. An owner or operator may request written confirmation from the department that the report is considered approved under this section, and the department shall provide written confirmation within 14 days of the request.

(5) Any time frame required by this section may be extended by mutual agreement of the department and an owner or operator submitting a final assessment or closure report. An agreement extending a time frame shall be in writing.

(6) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or does not confirm that applicable RBSLs or SSTLs have been met, the department shall include both of the following in the written response as required in subsection (1):

(a) The specific deficiencies and the section or sections of this part or rules applicable to this part or applicable RBCA standard that support the department's conclusion of noncompliance or that applicable RBSLs or SSTLs have not been met.

(b) Recommendations about corrective actions or documentation that may address the deficiencies identified under subsection (6)(a).

(7) If the department denies a final assessment report or closure report under this section, an owner or operator shall either revise and resubmit the report for approval, submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e and pay a fee in the amount of $300.00 in lieu of the $3,500.00 fee set forth in section 20114e(7), or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

(8) Notwithstanding section 21312a, after conducting an audit under this section, the department may issue a closure letter for any site that meets the applicable RBSL or SSTL pursuant to section 21304a.

(9) The department shall only audit a report required under this part 1 time. If the department's audit identifies deficiencies as described in subsection (6), the department may audit a revised report to evaluate whether the identified deficiencies have been corrected, which shall be completed within 90 days of the revised report's submission to the department.

Sec. 21316. The department may create and require the use of forms containing information specifically required under this part to assist in the reporting requirements provided in this part.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2). A person that knowingly delivers a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. A person is considered to have knowledge if placards have been affixed to the underground storage tank system at the property and are visible at the time of the delivery.

(2) The department, upon discovery of the operation of an underground storage tank system in violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211, shall provide notification prohibiting delivery of regulated substances to the underground storage tank system by affixing a placard providing notice of the violation in plain view to the underground storage tank system. The department shall provide a minimum of 15 days' notice to the liable owner or operator prior to affixing a placard for violations of this part or rules promulgated under this part, unless the violation causes an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person that knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

Sec. 21320. If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare or the environment at sites where persons that are liable are not financially viable or not readily identifiable, at sites where persons that are liable have not implemented corrective action necessary to abate an imminent and substantial endangerment, or to facilitate brownfield redevelopment.

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

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

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

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

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

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

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

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

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

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

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

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

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

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

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

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

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

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

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

(b) The owner or operator of property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

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

(*i*) An act of God.

(*ii*) An act of war.

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

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21312a. Notwithstanding this subdivision, a person may be liable under this part for the following:

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

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

(*iii*) If the closure report relies on land use or resource use restrictions, an owner or operator who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator who is otherwise liable for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

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

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the property is not liable under this part for costs or damages as a result of corrective action taken in response to a release or threat of release. For a lender, this subsection applies only to

corrective action undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

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

(7) An owner or operator who was in compliance with subsection (1)(b) prior to the effective date of the amendatory act that added this subsection is considered to be in compliance with subsection (1)(b).

Sec. 21323b. (1) Except as provided in section 21323a(2), a person that is liable under section 21323a is jointly and severally liable for all of the following:

(a) All costs of corrective action lawfully incurred by the state relating to the selection and implementation of corrective action under this part.

(b) All costs of corrective action reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of corrective action recoverable under subsection (1) shall also include all costs of corrective action reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of corrective action under this part. A person challenging the recovery of costs under this subsection has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section may include interest, attorney fees, witness fees, and the costs of litigation to the prevailing or substantially prevailing party. The interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake corrective action for a permitted release. Recovery by any person for corrective action costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a regulated substance or for corrective action or the costs of corrective action.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare or to the environment because of an actual or threatened release from an underground storage tank system, the attorney general may bring an action against any person that is liable under section 21323a or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

Sec. 21323c. (1) Except as otherwise provided in this section, a person that is a corrective action contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the corrective action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a corrective action contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a corrective action while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the corrective action contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Corrective action contract" means a contract or agreement entered into by a corrective action contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of community health.

(*iii*) A person that is arranging for corrective action under this part.

(b) "Corrective action contractor" means all of the following:

(*i*) A person that enters into a corrective action contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person that is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a corrective action.

(*iii*) A qualified underground storage tank consultant.

(6) Notwithstanding any other provision of law, a person is not liable for corrective action costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person that is liable under section 21323a that is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person that is liable under section 21323a and that is a responsible party is liable for any corrective action costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct corrective action under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, 33 USC 1321.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

Sec. 21323d. (1) If 2 or more persons acting independently are liable under section 21323a and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit that person's liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 21323a for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person that is liable under section 21323a during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating corrective action costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the regulated substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable

persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person that has resolved that person's liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 21323a unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person that is not liable under this part, including a person that was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and that is otherwise in compliance with section 21304c, shall be considered to have resolved that person's liability to the state in an administratively approved settlement under the applicable federal law and shall by operation of law be granted contribution protection under federal law and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person that has resolved that person's liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 21323a that has not resolved that person's liability.

(8) A person that has resolved that person's liability to the state for some or all of a corrective action in an administrative or judicially approved consent order may seek contribution from any person that is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person that has resolved that person's liability to the state is subordinate to the rights of the state, if the state files an action under this part.

Sec. 21323e. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person that is liable under section 21323a to the state for evaluation or corrective action costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

Sec. 21323f. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of corrective action and fines, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a regulated substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

Sec. 21323g. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by corrective action, whether that action is on or off the property on which an underground storage tank system is located, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite corrective action consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The corrective action has been approved by the department.

(2) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that corrective action has been completed in accordance with the requirements of this part at the property that is the subject of the covenant.

(3) In assessing the appropriateness of a covenant not to sue and any condition to be included in a covenant not to sue, the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the corrective action, in light of the other alternative corrective actions considered for the property concerned.

(b) The nature of the risks remaining at the property.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the corrective action provides a complete remedy for the property, including a reduction in the hazardous nature of the substances at the property.

(e) The extent to which the technology used in the corrective action is demonstrated to be effective.

(f) Whether corrective action will be carried out, in whole or in significant part, by persons that are liable under section 21323a.

(4) A covenant not to sue under this section is subject to the satisfactory performance by a person of that person's obligations under the agreement concerned.

(5) A covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (2) that corrective action has been completed at the property concerned.

(6) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (3) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (5) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the property.

(7) The state may include any provisions providing for future enforcement action that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, and welfare and the environment.

Sec. 21323h. (1) The state may provide a person that proposes to redevelop or reuse property contaminated by a release from an underground storage tank system, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 21323a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of corrective action.

(c) The covenant not to sue would, when appropriate, expedite corrective action consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the property is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of corrective action.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the property.

(e) The proposal to redevelop or reuse the property has economic development potential.

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the property in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person that is liable under section 21323a for a release or threat of release at the property.

(c) Compliance with section 21304c.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a property and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the property, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any regulated substance resulting from the redevelopment or reuse of the property to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting corrective action.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing corrective action related to the release or threat of release addressed by the covenant not to sue and for monitoring compliance with the covenant not to sue.

Sec. 21323i. (1) The department and the attorney general may enter into a consent order with a person that is liable under section 21323a or any group of persons that are liable under section 21323a to perform corrective action if the department and the attorney general determine that the persons that are liable under section 21323a will properly implement the corrective action and that the consent order is in the public interest, will expedite effective corrective action, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons that are liable under section 21323a of any portion of corrective action at the property. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the property concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other regulated substances at the property:

(*i*) The amount of the regulated substances contributed by that person to the property.

(*ii*) The toxic or other regulated effects of the substances contributed by that person to the property.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the property on or in which the underground storage tank system is or was located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any regulated substance at the property.

(*iii*) The person did not contribute to the release or threat of release of a regulated substance at the property through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a regulated substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

Sec. 21323j. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from an underground storage tank system or threat of release from an underground storage tank system, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 21323a for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare or the environment from a release or threatened release in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(b) A person that is liable under section 21323a for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the general fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the underground storage tank system or the property on which the underground storage tank system is located or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

(8) All unpaid costs and damages for which a person is liable under this section constitute a lien in favor of the state upon a property that has been the subject of corrective action by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for corrective action at the property for which the person is responsible.

(9) If the attorney general determines that the lien provided in subsection (8) is insufficient to protect the interest of the state in recovering corrective action costs at a property, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the property owned by the person described in subsection (8), subject to corrective action that takes priority over all other liens and encumbrances that are or have been recorded on the property.

(b) A lien upon real or personal property or rights to real or personal property, other than the property which was the subject of corrective action, owned by the person described in subsection (8), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subsection:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(10) A petition submitted pursuant to subsection (9) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (3), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interest in the real property subject to corrective action. A lien shall not be granted under subsection (3) against the owner of the property if the owner is not liable under section 21323a.

(11) In addition to the lien provided in subsections (8) and (9), if the state incurs costs for corrective action that increases the market value of real property that is the location of a release or threatened release, the increase in the value caused by the state-funded corrective action, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(12) A lien provided in subsection (8), (9), or (11) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (9) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(13) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in this part.

(14) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (12).

(15) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (14), has made a determination that the person liable under section 21323a has completed all of the corrective action, the department shall execute and file with the notice of release of lien a document stating that all corrective action has been completed.

Sec. 21323k. (1) A person that is liable under section 21323a or a lender that has a security interest in all or a portion of a property on which contamination from a release of regulated substances from an underground storage tank system may file a petition in the circuit court of the county in which the property is located seeking access to the property in

order to conduct corrective action. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the person that owns or operates the property for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the corrective action.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the person that owns or operates the property to which access is granted is not liable for either of the following:

(a) A release caused by the corrective action for which access is granted unless the person is otherwise liable under section 21323a.

(b) For conditions associated with the corrective action that may present a threat to public health or safety.

Sec. 21323*l*. The limitation period for filing actions under this part is as follows:

(a) For the recovery of corrective action costs and natural resources damages pursuant to section 21323b(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the corrective action at the property by the person seeking recovery, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of corrective action costs pursuant to section 21323b, at any time during the corrective action, if commenced not later than 3 years after the date of completion of all corrective action at the property.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

Sec. 21323m. (1) Except as provided in section 21323b(5), a person that has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of corrective action under part 17, part 31, or common law.

(2) This section does not bar any of the following:

(a) Tort claims unrelated to performance of corrective action.

(b) Tort claims for damages which result from corrective action.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 21304c.

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

(a) Experience in all phases of underground storage tank work, including tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure and possesses or employs at least 1 of the following:

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

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

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

(*iv*) A person that was certified by the department as an underground storage tank professional pursuant to section 21543 at the time of the effective date of the amendatory act that added this subparagraph.

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

(*i*) Worker's compensation insurance.

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

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

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

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

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

Sec. 21334. Not later than November 1, 2013 and not later than November 1 of each subsequent year, the department shall submit a report to the standing committees of the senate and house of representatives with jurisdiction primarily pertaining to natural resources and the environment that contains all of the following:

(a) The number of closure reports submitted and approved by the department and the number of closure reports that were approved by operation of law under this part.

(b) The number of closure reports that were submitted to the department and not approved under this part.

(c) The number of contested case hearings held pursuant to section 21332.

(d) The number of issues resolved by the response activity review panel under section 20114e.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) Senate Bill No. 529.

(b) Senate Bill No. 530.

(c) Senate Bill No. 531.

(d) Senate Bill No. 532.

(e) Senate Bill No. 533.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Clerk of the House of Representatives

Approved .....

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Governor