

HOUSE BILL No. 5599

April 26, 2016, Introduced by Rep. LaFontaine and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21502, 21503, 21508, 21510, 21510a, 21510c, 21515, 21516, 21521, and 21526 (MCL 324.21502, 324.21503, 324.21508, 324.21510, 324.21510a, 324.21510c, 324.21515, 324.21516, 324.21521, and 324.21526), sections 21502, 21503, 21508, 21510, 21515, 21516, 21521, and 21526 as amended and sections 21510a and 21510c as added by 2014 PA 416, and by adding section 21510d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 21502. As used in this part:
- 2 (a) "Administrator" means the administrator of the authority
- 3 as provided for in section 21525.
- 4 (b) "Affiliate" means a person that directly, or indirectly

1 through 1 or more intermediaries, controls the person specified.

2 (c) "Approved claim" means a claim that is approved pursuant
3 to section ~~21515~~-21510.

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

6 (e) "Board of directors" or "board" means the board of
7 directors of the authority.

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

11 (g) "Bonds or notes" means the bonds, notes, commercial paper,
12 other obligations of indebtedness, or any combination of these,
13 issued by the finance authority pursuant to this part.

14 (h) "Bulk transfer" means a transfer of refined petroleum or a
15 refined petroleum product from, or purchase for resale by, a
16 refiner, pipeline terminal operator, supplier, or marine terminal
17 operator to or from another refiner, pipeline terminal operator,
18 supplier, or marine terminal operator through pipeline tender or
19 marine delivery, including pipeline movements of refined petroleum
20 or a refined petroleum product from 1 or more marine vessel
21 movements of refined petroleum or a refined petroleum product.
22 Refined petroleum or a refined petroleum product in a refinery,
23 pipeline, terminal, or marine vessel transporting refined petroleum
24 or a refined petroleum product to a refinery or terminal is in the
25 bulk transfer terminal system. Notwithstanding anything to the
26 contrary in this subdivision, refined petroleum or a refined
27 petroleum product transferred or purchased for resale by a refiner,

1 pipeline terminal operator, supplier, or marine terminal operator
2 must be delivered to or otherwise remain within the bulk transfer
3 terminal system prior to removal across the rack in order to
4 constitute a bulk transfer.

5 (i) "Bulk transfer terminal system" means the refined
6 petroleum or refined petroleum product distribution system
7 consisting of refineries, pipelines, marine vessels, and terminals
8 and includes refined petroleum or refined petroleum product storage
9 tanks and refined petroleum or refined petroleum product storage
10 facilities that are part of a refinery, boat terminal transfer, or
11 terminal owned, operated, or controlled by a refiner, marine
12 terminal operator, or pipeline terminal operator.

13 (j) "Claim" means the submission by the owner or operator or
14 his or her representative of documentation on an application
15 requesting payment by the authority. A claim shall include, at a
16 minimum, a completed and signed claim form and the name, address,
17 **AND** telephone number ~~, and federal tax identification number~~ of the
18 owner or operator.

19 (k) ~~"Claim"~~ **"CLAIMS** limit" means \$1,000,000.00 ~~for all claims~~
20 ~~of owners or operators and their affiliates during a claim period~~
21 ~~for owners and operators of 1 to 100 refined petroleum underground~~
22 ~~storage tanks or \$2,000,000.00 for all claims of owners or~~
23 ~~operators and their affiliates during a claim period for owners or~~
24 ~~operators of more than 100 refined petroleum underground storage~~
25 ~~tanks.~~ **PER RELEASE. TWO OR MORE CLAIMS ARISING OUT OF THE SAME,**
26 **INTERRELATED, ASSOCIATED, REPEATED, OR CONTINUOUS RELEASES OR A**
27 **SERIES OF RELATED RELEASES SHALL BE SUBJECT TO 1 CLAIMS LIMIT. ANY**

1 CLAIM THAT TAKES PLACE OVER 2 OR MORE CLAIM PERIODS SHALL BE
2 SUBJECT TO 1 CLAIMS LIMIT.

3 (l) "Claim period" means a 1-year period commencing on October
4 1 of each year and ending on September 30 the following year.

5 (M) "CLAIM PERIOD AGGREGATE LIMIT" MEANS THE FOLLOWING
6 AGGREGATE CLAIMS LIMIT FOR ALL RELEASES DISCOVERED DURING A CLAIM
7 PERIOD:

8 (i) FOR OWNERS, OPERATORS, AND AFFILIATES OF 1 TO 100 REFINED
9 PETROLEUM UNDERGROUND STORAGE TANKS, \$1,000,000.00.

10 (ii) FOR OWNERS, OPERATORS, AND AFFILIATES OF MORE THAN 100
11 REFINED PETROLEUM UNDERGROUND STORAGE TANKS, \$2,000,000.00.

12 (N) ~~(m)~~ "Controls" means the possession or the contingent or
13 noncontingent right to acquire possession, direct or indirect, of
14 the power to direct or cause the direction of the management and
15 policies of a person, whether through the ownership of voting
16 securities or interests, by contract, other than a commercial
17 contract for goods or nonmanagement services, by pledge of
18 securities, or otherwise, unless the power is the result of an
19 official position with or corporate office held by the person.

20 (O) ~~(n)~~ "Corrective action" means that term as it is defined
21 in section 21302.

22 (P) ~~(e)~~ "Deductible amount" means the amount of corrective
23 action costs or indemnification costs that are required to be paid
24 by an owner or operator as provided in section 21510a. ~~before the~~
25 ~~owner or operator is eligible to submit a claim under this part.~~

26 (Q) ~~(p)~~ "Department" means the department of environmental
27 quality.

1 (R) ~~(q)~~—"Eligible person" means an owner or operator who meets
2 the eligibility requirements under this part to submit a claim.

3 (S) ~~(r)~~—"Excluded liquid" means that term as defined in 26 CFR
4 48.4081-1.

5 (T) ~~(s)~~—"Finance authority" means the Michigan finance
6 authority created by Executive Reorganization Order No. 2010-2, MCL
7 12.194.

8 (U) ~~(t)~~—"Financial responsibility requirements" means the
9 financial responsibility for taking corrective action and for
10 compensating third parties for bodily injury and property damage
11 caused by a release from a refined petroleum underground storage
12 tank system that the owner or operator of a refined petroleum
13 underground storage tank system must demonstrate under part 211 and
14 the rules promulgated under that part.

15 (V) ~~(u)~~—"Fund" means the underground storage tank cleanup fund
16 created in section 21506b and includes the bond proceeds account
17 established within the fund.

18 (W) ~~(v)~~—"Indemnification" means indemnification of an owner or
19 operator for a legally enforceable judgment entered against the
20 owner or operator by a third party, or a legally enforceable
21 settlement entered between the owner or operator and a third party,
22 compensating that third party for bodily injury or property damage,
23 or both, caused by an accidental release as those terms are defined
24 in R 29.2163 of the Michigan ~~administrative code~~. **ADMINISTRATIVE**
25 **CODE.**

26 (X) ~~(w)~~—"Location" means a parcel of property where refined
27 petroleum underground storage tank systems are registered pursuant

1 to part 211.

2 (Y) ~~(x)~~—"Marine terminal operator" means a person that stores
3 refined petroleum or a refined petroleum product at a boat terminal
4 transfer.

5 (Z) ~~(y)~~—"Operator" means that term as it is defined in section
6 21303 or a person to whom an approved claim has been assigned or
7 transferred.

8 (AA) ~~(z)~~—"Owner" means that term as it is defined in section
9 21303.

10 (BB) ~~(aa)~~—"Oxygenate" means an organic compound containing
11 oxygen and having properties as a fuel that are compatible with
12 petroleum, including, but not limited to, ethanol, methanol, or
13 methyl tertiary butyl ether (MTBE).

14 Sec. 21503. As used in this part:

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

17 (b) "Pipeline terminal operator" means a person that receives
18 and stores refined petroleum or a refined petroleum product in
19 tanks and other equipment used in receiving and storing refined
20 petroleum or a refined petroleum product from interstate and
21 intrastate pipelines, pending wholesale bulk reshipment.

22 (c) "Qualifying expenditures" means an expenditure for a
23 specific activity that does not exceed the allowable payment for
24 that activity as detailed on the schedule of costs.

25 (d) "Rack" means a mechanism for delivering refined petroleum
26 or a refined petroleum product from a refiner, a pipeline terminal
27 operator, or a marine terminal operator into a railroad tank car, a

1 transport truck, a tank wagon, or the fuel supply tank of a marine
2 vessel.

3 (e) "Refined petroleum" means aviation gasoline, middle
4 distillates, jet fuel, kerosene, gasoline, residual oils, and any
5 oxygenates that have been blended with any of these. Refined
6 petroleum includes refined petroleum products and transmix. Refined
7 petroleum does not include excluded liquids.

8 (f) "Refined petroleum fund" means the refined petroleum fund
9 established under section 21506a.

10 (g) "Refined petroleum underground storage tank" means an
11 underground storage tank system used for the storage of refined
12 petroleum.

13 (h) "Refiner" means a person that meets both of the following:

14 (i) Manufactures or produces refined petroleum or a refined
15 petroleum product at a refinery.

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

18 (i) "Refinery" means a facility used by a refiner to produce
19 refined petroleum or a refined petroleum product from crude oil,
20 unfinished oils, natural gas liquids, or other hydrocarbons by any
21 process involving substantially more than the blending of refined
22 petroleum and from which refined petroleum or a refined petroleum
23 product may be removed by pipeline or marine vessel or at a rack.

24 (j) "Regulated financial institution" means a state or
25 nationally chartered bank, savings and loan association or savings
26 bank, credit union, or other state or federally chartered lending
27 institution or a regulated affiliate or regulated subsidiary of any

1 of these entities.

2 (k) "Regulatory fee" means the environmental protection
3 regulatory fee imposed under section 21508.

4 (l) "Release" means that term as it is defined in section
5 21303.

6 (m) "Removal" or "removed" means a physical transfer other
7 than by evaporation, loss, or destruction of refined petroleum or a
8 refined petroleum product from a refiner, pipeline terminal
9 operator, or marine terminal operator.

10 (n) "Schedule of costs" means the list of allowable
11 reimbursement amounts that may be paid on a claim, as established
12 in section 21510b.

13 (o) "Site" means that term as it is defined in section 21303.

14 (p) "Supplier" means a supplier or permissive supplier
15 licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to
16 207.1170.

17 (q) "Tank wagon" means a straight truck having 1 or more
18 compartments other than the fuel supply tank designed or used to
19 carry fuel.

20 (r) "Terminal" means a refined petroleum or refined petroleum
21 products storage and distribution facility that meets all of the
22 following requirements:

23 (i) Is registered as a qualified terminal by the internal
24 revenue service.

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

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

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

5 (t) "Transport truck" means a semitrailer combination rig
6 designed or used for the purpose of transporting refined petroleum
7 or a refined petroleum product over the public roads or highways.

8 (u) "Two-party exchange" means a transaction, including a book
9 transfer, in which refined petroleum or a refined petroleum product
10 is transferred from 1 supplier to another supplier and to which all
11 of the following apply:

12 (i) The transaction includes a transfer of refined petroleum
13 or a refined petroleum product from the person that holds the
14 original inventory position for the refined petroleum or refined
15 petroleum product in storage tanks as reflected in the records of
16 the refiner, pipeline terminal operator, or marine terminal
17 operator.

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

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

26 (v) "Underground storage tank system" means that term as it is
27 defined in section 21303.

1 (W) "WORK INVOICE" MEANS A LIST OF GOODS OR SERVICES FOR COSTS
2 OF CORRECTIVE ACTION RELATED TO A CLAIM, INCLUDING A STATEMENT OF
3 THE AMOUNT DUE.

4 Sec. 21508. (1) An environmental protection regulatory fee is
5 imposed on all refined petroleum products sold for resale in this
6 state or consumption in this state. The regulatory fee shall be
7 charged for capacity utilization of refined petroleum underground
8 storage tanks measured on a per gallon basis. The regulatory fee
9 shall be charged against all refined petroleum products sold for
10 resale in this state or consumption in this state so as to not
11 exclude any products that may be stored in a refined petroleum
12 underground tank at any point after the petroleum is refined. The
13 regulatory fee shall be 7/8 cent per gallon for each gallon of
14 refined petroleum sold for resale in this state or consumption in
15 this state, with the per gallon charge being a direct measure of
16 capacity utilization of a refined underground storage tank system.
17 ~~Beginning January 1, 2015, the~~ **THE** regulatory fee shall not be
18 imposed on a bulk transfer of or a 2-party exchange involving
19 refined petroleum or refined petroleum products.

20 (2) The department of treasury shall precollect regulatory
21 fees from persons who refine petroleum in this state for resale in
22 this state or consumption in this state and persons who import
23 refined petroleum into this state for resale in this state or
24 consumption in this state. ~~The department of treasury shall collect~~
25 ~~regulatory fees that can be collected at the same time as the sales~~
26 ~~tax under section 6a of the general sales tax act, 1933 PA 167, MCL~~
27 ~~205.56a.~~ The remainder of the regulatory fees shall be collected in

1 the manner determined by the state treasurer.

2 (3) A public utility with more than 500,000 customers in this
3 state is exempt from any fee or assessment imposed under this part
4 if that fee or assessment is imposed on petroleum used by that
5 public utility for the generation of steam or electricity.

6 ~~(4) Beginning on the effective date of the 2014 amendatory act~~
7 ~~that amended this section, all ALL~~ regulatory fees collected
8 pursuant to this part during each state fiscal year shall be
9 deposited as follows:

10 (a) The first \$20,000,000.00 that is collected shall be
11 deposited into the fund.

12 (b) Following the deposit under subdivision (a), all money
13 collected shall be deposited into the refined petroleum fund.

14 (5) The department of treasury may audit, enforce, collect,
15 and assess the fee imposed by this part in the same manner and
16 subject to the same requirements as revenues collected pursuant to
17 1941 PA 122, MCL 205.1 to 205.31.

18 Sec. 21510. (1) An owner or operator is eligible to receive
19 money from the authority for corrective action or indemnification
20 due to a release from a refined petroleum underground storage tank
21 system only if all of the following requirements are satisfied and
22 the owner or operator otherwise complies with this part:

23 (a) The release from which the corrective action or
24 indemnification arose was discovered and reported on or after ~~the~~
25 ~~effective date of the 2014 amendatory act that amended this~~
26 ~~section.~~ **DECEMBER 30, 2014.**

27 (b) The refined petroleum underground storage tank from which

1 the release occurred was, at the time of discovery of the release,
2 and is presently, in compliance with the registration and fee
3 requirements of part 211. ~~and the rules promulgated under that~~
4 ~~part.~~

5 (c) The owner or operator reported the release within 24 hours
6 after its discovery as required by part 211 and the rules
7 promulgated under that part.

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

9 (e) The claim is not for a release from a refined petroleum
10 underground storage tank closed prior to January 1, 1974, in
11 compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to
12 29.33, and the rules promulgated under that act.

13 (f) The owner or operator has maintained financial
14 responsibility requirements for the deductible amount.

15 ~~—(g) The owner or operator has paid the deductible amount.~~

16 (G) ~~(h)~~—The owner or operator is otherwise eligible to receive
17 money from the authority under this part.

18 (H) ~~(i)~~—The total amount of expenditures, including the
19 deductible amount, does not exceed the ~~claim~~ **CLAIMS** limit **OR THE**
20 **CLAIM PERIOD AGGREGATE LIMIT APPLICABLE TO THE CLAIM.**

21 (2) The owner or operator may receive money from the authority
22 for corrective action or indemnification due to a release that
23 originates from an aboveground piping and dispensing portion of a
24 refined petroleum underground storage tank system if all of the
25 following requirements are satisfied:

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

1 (b) The release is sudden and immediate.

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

4 (d) The owner or operator reported the release to the
5 department within 24 hours after its discovery.

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

8 (4) An owner or operator that is a public utility with more
9 than 500,000 customers in this state is ineligible to receive money
10 from the authority for corrective action or indemnification
11 associated with a release from a refined petroleum underground
12 storage tank system used to supply refined petroleum for the
13 generation of steam electricity.

14 (5) If an owner or operator has received money from the
15 authority under this part for a release at a location, the owner
16 and operator are not eligible to receive money from the authority
17 for a subsequent release at the same location unless the owner or
18 operator has done either or both of the following:

19 (a) Discovered the subsequent release pursuant to corrective
20 action being taken on a confirmed release and included this
21 subsequent release as part of the corrective action for the
22 confirmed release.

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

27 (6) An owner or operator ~~who~~ **THAT** discovers a subsequent

1 release at the same location as an initial release pursuant to
2 subsection (5) (a) may receive money from the authority to perform
3 corrective action on the subsequent release, if the owner or
4 operator otherwise complies with the requirements of this part and
5 the rules promulgated under this part. However, the subsequent
6 release shall be considered as part of the claim for the initial
7 release for purposes of determining the total amount of
8 expenditures for corrective action and indemnification under
9 subsection ~~(1)(i)~~. **(1) (H)** .

10 (7) An owner or operator ~~who~~ **THAT** discovers a subsequent
11 release at the same location as an initial release following
12 compliance with subsection (5) (b) may receive money from the
13 authority to perform corrective action on the subsequent release,
14 if there have been not more than 2 releases at the location, and if
15 the owner or operator otherwise complies with the requirements of
16 this part and the rules promulgated under this part. The subsequent
17 release shall be considered a separate claim for purposes of
18 determining the total amount of expenditures for corrective action
19 and indemnification under subsection ~~(1)(i)~~. **(1) (H)** .

20 ~~(8) An owner or operator may submit to the authority a request~~
21 ~~for a determination that the owner or operator would be eligible~~
22 ~~for funding under this part in the event of a release from a~~
23 ~~refined petroleum underground storage tank system. Upon receipt of~~
24 ~~a request under this subsection, the authority shall make a~~
25 ~~determination and provide notice of that determination, in writing,~~
26 ~~to the owner or operator. The notice may contain conditions for~~
27 ~~maintenance of that eligibility.~~ **AN OWNER OR OPERATOR THAT SEEKS TO**

1 RECEIVE MONEY FROM THE AUTHORITY FOR CORRECTIVE ACTION SHALL SUBMIT
2 TO THE ADMINISTRATOR THE CLEANUP FUND CLAIM SUBMITTAL FORM CREATED
3 BY THE AUTHORITY CONTAINING THE INFORMATION REQUIRED BY THE
4 ADMINISTRATOR TO DETERMINE COMPLIANCE WITH THIS PART. THE
5 ADMINISTRATOR SHALL DETERMINE WHETHER THE CLAIM COMPLIES WITH THIS
6 PART AND SHALL NOTIFY THE OWNER OR OPERATOR. THE ADMINISTRATOR MAY
7 CONSULT WITH THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS TO
8 MAKE THE DETERMINATION REQUIRED IN THIS SUBSECTION.

9 Sec. 21510a. (1) ~~Prior to submitting a claim under this part,~~
10 ~~an~~ AN owner or operator is responsible for a deductible amount as
11 follows:

12 (a) Subject to subdivision (b), \$50,000.00 per claim.

13 (b) If the owner or operator or its affiliate owns or operates
14 fewer than 8 refined petroleum underground storage tanks and pays
15 the authority an annual fee of \$500.00 per refined petroleum
16 underground storage tank, \$15,000.00 per claim. For purposes of
17 this subdivision, each compartment of a multiple compartment
18 refined petroleum underground storage tank is considered a refined
19 petroleum underground storage tank for purposes of calculating the
20 annual fee.

21 (2) The due date for the annual fee paid pursuant to
22 subsection (1)(b) shall be set by the authority. **FOR THE \$15,000.00**
23 **PER CLAIM DEDUCTIBLE TO BE IN EFFECT, THE OWNER OR OPERATOR MUST**
24 **HAVE PAID THE ANNUAL FEE OF \$500.00 PER REFINED PETROLEUM**
25 **UNDERGROUND STORAGE TANK PRIOR TO THE DISCOVERY AND REPORTING OF**
26 **THE RELEASE FOR WHICH ANY SUBSEQUENT CLAIM IS FILED.**

27 (3) The deductible amount applies to each claim. However, 2 or

1 more claims arising out of the same, interrelated, associated,
2 repeated, or continuous releases or a series of related releases
3 shall be considered a single claim and ~~be~~**ARE** subject to ~~1 claim~~
4 ~~limit and 1 deductible amount~~. Any claim ~~which~~**THAT** takes place
5 over 2 or more claim periods ~~shall be~~**IS** subject to ~~1 claim limit~~
6 ~~and 1 deductible amount~~.

7 (4) An owner or operator that submits a ~~claim~~**WORK INVOICE**
8 under section 21515 ~~shall include work invoices or other evidence~~
9 ~~that~~**IS RESPONSIBLE FOR** the deductible amount described in
10 subsection (1). ~~has been met~~. The expenses toward meeting the
11 deductible amount shall be documented and shall comply with the
12 following:

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

16 (b) Expenses for items that are not listed in the schedule of
17 costs shall be reasonable and necessary considering conditions at
18 the site based upon a competitive bidding process established by
19 the authority.

20 Sec. 21510c. A claim shall not be approved by the authority
21 for any of the following:

22 (a) A release that was expected or intended by an owner or
23 operator, or an employee of an owner or operator.

24 (b) Punitive, exemplary, or multiplied damages, fines, taxes,
25 penalties, assessments, punitive or statutory assessments, or any
26 civil, administrative, or criminal fines, sanctions, or penalties.

27 (c) A claim made by an owner or operator against any other

1 person that is also an owner or operator of the refined petroleum
2 underground storage tank system.

3 (d) A release caused by, based upon, resulting from, or
4 attributable to the owner's or operator's intentional, knowing,
5 willful, or deliberate noncompliance with any statute, regulation,
6 ordinance, administrative complaint, notice of violation, notice
7 letter, executive order, or instruction of any governmental agency
8 or body.

9 (e) A release arising from the ownership, maintenance, use, or
10 entrustment to others of any aircraft, auto, rolling stock, or
11 watercraft, including loading and unloading.

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

18 (g) A release arising from any consequence, whether direct or
19 indirect, of war, invasion, act of a foreign enemy, act of
20 terrorists, hostilities, whether war has been declared or not,
21 civil war, rebellion, revolution, insurrection or military or
22 usurped power, strike, riot, or civil commotion.

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

27 (i) Costs arising out of the removing, replacing, or recycling

1 of the contents of a refined petroleum underground storage tank
2 system.

3 (j) Costs, charges, or expenses incurred to investigate or
4 verify that a confirmed release has taken place.

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

15 (l) Any obligation of the owner or operator under worker's
16 compensation, unemployment compensation, or disability benefits law
17 or similar law.

18 (m) Any liability or claim for liability of others assumed by
19 the owner or operator under any contract or agreement, unless the
20 owner or operator would have been liable in the absence of the
21 contract or agreement.

22 (n) A release on, within, under, or emanating from a location
23 if the release commenced subsequent to the time ~~such~~**THE** location
24 was sold, given away, or abandoned.

25 **(O) COSTS THAT HAVE BEEN OR WILL BE SUBMITTED TO OR THAT HAVE**
26 **BEEN PAID PURSUANT TO AN INSURANCE POLICY OR POLICIES.**

27 **(P) COSTS ARISING FROM CORRECTIVE ACTIONS PERFORMED IN EXCESS**

1 OF THE CORRECTIVE ACTIONS REQUIRED TO OBTAIN A RESTRICTED CLOSURE
2 BASED ON THEN CURRENT LAND USE.

3 SEC. 21510D. IF AN OWNER OR OPERATOR INTENDS TO RELY ON THE
4 FUND TO MEET FINANCIAL RESPONSIBILITY REQUIREMENTS, THE OWNER OR
5 OPERATOR SHALL SUBMIT TO THE AUTHORITY A REQUEST FOR A
6 DETERMINATION THAT THE OWNER OR OPERATOR WOULD BE ELIGIBLE FOR
7 FUNDING UNDER THIS PART IN THE EVENT OF A RELEASE FROM A REFINED
8 PETROLEUM UNDERGROUND STORAGE TANK SYSTEM. UPON RECEIPT OF A
9 REQUEST UNDER THIS SUBSECTION, THE AUTHORITY SHALL MAKE A
10 DETERMINATION AND PROVIDE NOTICE OF THAT DETERMINATION, IN WRITING,
11 TO THE OWNER OR OPERATOR. THE NOTICE MAY CONTAIN CONDITIONS FOR
12 MAINTENANCE OF THAT ELIGIBILITY. A DETERMINATION UNDER THIS SECTION
13 IS BASED UPON A DEMONSTRATION OF ALL OF THE FOLLOWING:

14 (A) THE OWNER OR OPERATOR IS NOT INELIGIBLE FOR FUNDING UNDER
15 SECTION 21510(4) AND (5).

16 (B) THE REFINED PETROLEUM UNDERGROUND STORAGE TANK OR TANKS
17 ARE PRESENTLY IN COMPLIANCE WITH THE REGISTRATION AND FEE
18 REQUIREMENTS OF PART 211.

19 (C) THE OWNER OR OPERATOR IS NOT THE UNITED STATES GOVERNMENT.

20 (D) THE OWNER OR OPERATOR HAS FINANCIAL RESPONSIBILITY FOR THE
21 DEDUCTIBLE AMOUNT.

22 Sec. 21515. (1) To receive money from the authority for
23 corrective action, ~~the~~AN owner or operator THAT HAS RECEIVED
24 NOTICE FROM THE ADMINISTRATOR THAT ITS CLAIM HAS BEEN APPROVED
25 PURSUANT TO SECTION 21510(8) shall follow the procedures outlined
26 in this section and shall submit ~~a claim~~WORK INVOICES to the
27 administrator containing information required by the administrator

1 relevant to determining compliance with this part.

2 ~~—— (2) An owner or operator shall not submit a claim under~~
3 ~~subsection (1) until work invoices in excess of the deductible~~
4 ~~amount have been incurred.~~

5 (2) ~~(3) Upon~~ **WITHIN 45 DAYS OF** receipt of a ~~completed claim~~
6 **WORK INVOICES SUBMITTED** pursuant to subsection (1) **USING FORMS**
7 **CREATED BY THE AUTHORITY**, the administrator shall make all of the
8 following determinations:

9 (a) Whether the owner or operator is eligible to receive
10 funding under this part.

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

14 (c) Whether the owner or operator has paid the deductible
15 amount.

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

18 (e) Whether the cost of performing the corrective action work
19 is at or below the allowable reimbursement amount in the schedule
20 of costs or, if the corrective action work is not a listed item,
21 whether the cost is reasonable and necessary, **AND WHETHER THE COST**
22 **WAS BASED UPON A COMPETITIVE BIDDING PROCESS ESTABLISHED BY THE**
23 **AUTHORITY.**

24 (3) ~~(4)~~—The administrator may consult with the department and
25 the department of licensing and regulatory affairs to make the
26 determination required in subsection ~~(3)~~ **(2)**.

27 (4) ~~(5)~~—If the administrator determines under subsection ~~(3)~~

1 (2) that the work ~~invoices included with the claim are~~ **INVOICE IS**
 2 reasonable and necessary considering conditions at the site of the
 3 release and reasonable in terms of cost and the owner or operator
 4 is eligible for funding under this part, the administrator shall
 5 approve the ~~claim~~ **WORK INVOICE** and notify the owner or operator ~~who~~
 6 **THAT** submitted the ~~claim~~ **WORK INVOICE** of the approval. If the
 7 administrator determines that the work described on the work
 8 invoices submitted was not reasonable and necessary or the cost of
 9 the work is not reasonable, or that the owner or operator is not
 10 eligible for funding under this part, the administrator shall deny
 11 the ~~claim~~ **WORK INVOICE** or any portion of the work ~~invoices~~ **INVOICE**
 12 submitted and give notice of the denial to the owner or operator
 13 ~~who~~ **THAT** submitted the ~~claim~~ **WORK INVOICE**.

14 (5) ~~(6)~~—The owner or operator may submit ~~additional~~ work
 15 invoices to the administrator **THAT ARE RELATED TO A CLAIM ONLY**
 16 after **INITIAL** approval of a ~~THE~~ claim under subsection ~~(5)~~. Within
 17 ~~45 days after receipt of a work invoice, the administrator shall~~
 18 ~~make the following determinations:~~ **SECTION 21510(8) AND IF THE**
 19 **AGGREGATE AMOUNT OF WORK INVOICES IN THE SUBMISSION IS \$5,000.00 OR**
 20 **MORE. THIS LIMITATION DOES NOT APPLY TO THE FINAL WORK INVOICE**
 21 **SUBMISSION RELATED TO THE APPROVED CLAIM.**

22 ~~—— (a) Whether the work invoice complies with subsection (3).~~

23 ~~—— (b) Whether the owner or operator is currently in compliance~~
 24 ~~with the registration and fee requirements of part 211 and the~~
 25 ~~rules promulgated under that part for the refined petroleum~~
 26 ~~underground storage tank system from which the release occurred.~~

27 (6) ~~(7)~~—If the administrator determines that ~~the~~ **A** work

1 invoice does not meet the requirements of subsection ~~(6)~~, **(2) OR**
2 **(5)**, the administrator shall deny **REIMBURSEMENT FOR** the work
3 invoice and give written notice of the denial to the owner or
4 operator who submitted the work invoice.

5 ~~—— (8) The administrator shall keep records of approved work~~
6 ~~invoices. If the owner or operator has not exceeded the allowable~~
7 ~~amount of expenditure provided in section 21510(1)(i), the~~
8 ~~administrator shall pay the claim within 45 days of making the~~
9 ~~determinations under subsection (6).~~

10 **(7)** ~~(9)~~—The administrator ~~may~~ **SHALL** approve a reimbursement
11 for a work invoice that was submitted by an owner or operator for
12 corrective action taken if the work invoice meets the requirements
13 of this part for an approved claim and an approved work invoice.

14 **(8)** ~~(10)~~—Except as provided in subsection ~~(11)~~—**(9)** and section
15 21519, the authority shall make a **JOINT** payment to the owner or
16 operator **AND THE CONTRACTOR THAT PERFORMED THE WORK LISTED IN THE**
17 **APPROVED WORK INVOICES** within ~~30~~ **45** days **AFTER THE DATE OF THE**
18 **ADMINISTRATOR'S APPROVAL UNDER SUBSECTION (4)** if sufficient money
19 exists in the fund. Once payment has been made under this section,
20 the authority is not liable for any claim on the basis of that
21 payment.

22 **(9)** ~~(11)~~—The authority may withhold partial payment of money
23 on payment vouchers if there is reasonable cause to suspect that
24 there are violations of section 21548 or if necessary to assure
25 acceptable completion of the proposed work.

26 **(10)** ~~(12)~~—The authority shall prepare and make available to
27 owners and operators standardized claim and work invoice forms.

1 Sec. 21516. (1) An owner or operator with a claim approved
2 pursuant to section ~~21515~~ **21510** for which corrective action is in
3 progress who sells or transfers the property that is the subject of
4 the approved claim to another person may assign or transfer the
5 approved claim to that other person. The person to whom the
6 assignment or transfer is made is eligible to receive money from
7 the authority as an owner or operator for the release which is the
8 subject of the approved claim. Allowable, outstanding approved or
9 paid work invoices of the owner or operator making the assignment
10 or transfer may be counted toward the deductible amount of the
11 person to whom the assignment or transfer is made.

12 (2) An owner or operator assigning or transferring an approved
13 claim pursuant to this section shall notify the administrator of
14 the proposed assignment or transfer at least 10 days before the
15 effective date of the assignment or transfer.

16 Sec. 21521. (1) If the administrator denies a claim, ~~or~~ work
17 invoice, ~~or a~~ request for indemnification, **OR REQUEST FOR AN**
18 **ELIGIBILITY DETERMINATION UNDER SECTION 21510(8)**, the owner or
19 operator who submitted the claim, work invoice, ~~or~~ request for
20 indemnification, **OR REQUEST FOR AN ELIGIBILITY DETERMINATION UNDER**
21 **SECTION 21510(8)** may, within 14 days following the denial, request
22 review by the board. However, if the administrator believes the
23 dispute may be able to be resolved without the board's review, the
24 administrator may contact the owner or operator regarding the
25 issues in dispute and may negotiate a resolution of the dispute
26 prior to the board's review. The board shall conduct a review of
27 the denial to determine whether the claim, work invoice, or request

1 for indemnification is payable under this part.

2 (2) A person who is denied approval by the board after review
3 under subsection (1) may appeal the decision directly to the
4 circuit court.

5 Sec. 21526. Except as otherwise provided in this part, the
6 board of directors may do all things necessary or convenient to
7 implement this part and the purposes, objectives, and powers
8 delegated to the board of directors by other laws or executive
9 orders, including, but not limited to, all of the following:

10 (a) Adopt an official seal and bylaws for the regulation of
11 its affairs and alter the seal or bylaws.

12 (b) Sue and be sued in its own name and plead and be
13 impleaded.

14 (c) Enter into contracts and other instruments necessary,
15 incidental, or convenient to the performance of its duties and the
16 exercise of its powers.

17 (d) With the prior consent of the director of the department,
18 solicit and accept gifts, grants, loans, and other aid from any
19 person or the federal, state, or local government or any agency of
20 the federal, state, or local government, or participate in any
21 other way in a federal, state, or local government program.

22 (e) Procure insurance against loss in connection with the
23 property, assets, or activities of the authority.

24 ~~—(f) Invest money of the authority, at the board of directors'~~
25 ~~discretion, in instruments, obligations, securities, or property~~
26 ~~determined proper by the board of directors, and name and use~~
27 ~~depositories for its money.~~

1 **(F)** ~~(g)~~—Contract for goods and services and engage personnel
2 as necessary and engage the services of private consultants,
3 managers, legal counsel, and auditors for rendering professional
4 financial assistance and advice, payable out of any money of the
5 authority.

6 **(G)** ~~(h)~~—Indemnify and procure insurance indemnifying members
7 of the board of directors from personal loss or accountability from
8 liability asserted by a person on bonds or notes of the authority,
9 or from any personal liability or accountability by reason of the
10 issuance of the bonds or notes, or by reason of any other action
11 taken or the failure to act by the authority.

12 **(H)** ~~(i)~~—Do all other things necessary or convenient to achieve
13 the objectives and purposes of the authority, this part, rules
14 promulgated under this part, or other laws that relate to the
15 purposes and responsibilities of the authority.

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