Act No. 381
Public Acts of 2016
Approved by the Governor
December 21, 2016
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STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016

Introduced by Senator Casperson

ENROLLED SENATE BILL No. 717

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 protect the people's right to hunt and fish; 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 21303, 21304c, 21310a, 21323a, and 21325 (MCL 324.21303, 324.21304c, 324.21310a, 324.21323a, and 324.21325), sections 21303, 21304c, 21310a, and 21323a as amended by 2012 PA 446 and section 21325 as added by 2012 PA 108, and by adding section 21325a.

The People of the State of Michigan enact:

Sec. 21303. As used in this part:

(a) "NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

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

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Public highway" means a road or highway under the jurisdiction of the state transportation department, a county road commission, or a local unit of government.

(f) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

(g) "RBCA" means the American Society for Testing and Materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(h) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

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

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat 1685, 42 USC 7412.

(i) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(j) "Residual NAPL saturation" means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(k) "Risk-based screening level" or "RBSL" means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(*l*) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(m) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(n) "Surface water" means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(o) "Site-specific target level" or "SSTL" means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

(p) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(q) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

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

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

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

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

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

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

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

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

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

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

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

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

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

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

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

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

(s) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated 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 corrective action or 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) and (f) does not apply to this state, a county road commission, or a local unit of government if it is not liable under section 21323a(3)(a), (b), (c), or (e) or to this state, a county road commission, or a local unit of government if it acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if this state or a local unit of government, unless exempt from liability under section 21323a(4)(b), acting as the owner or operator of property offers access to the property on a regular or continuous basis for a public purpose and invites the public to use the property for the public purpose, this state or the 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 public for the public purpose, and not the entire property. Public purpose includes, but is not limited to, activities such as a park, office building, or public works operation. Public purpose does not include a public highway or 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.

(7) Subsection (1)(a) to (f) applies to an owner or operator who is liable under section 21323a with respect to regulated substances present within a public highway above applicable RBSLs or SSTLs.

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 person that owns the property or with the express written permission of the person that owns the property. 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 person that owns the property or with the express written permission of the person that owns the property. 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 person that owns the property 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 this 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 that is liable under section 21323a determines that exposure to regulated substances may be restricted by a means other than a restrictive covenant in a manner that protects against exposure to regulated substances as defined by the RBSLs and SSTLs, the owner or operator that is liable under section 21323a 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, any of the following:

(a) Compliance with an ordinance, state law, or rule that limits or prohibits the use of contaminated groundwater above the RBSLs or SSTLs identified in the corrective action plan, prohibits the raising of livestock, prohibits development in certain locations, or restricts property to certain uses. An ordinance under this subdivision shall be filed with the register of deeds on the affected property or shall be filed as an ordinance affecting multiple properties. An ordinance adopted after the effective date of the 2016 amendatory act that amended this section shall include 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 license or license agreement with the state transportation department if regulated substances are proposed to be left in place within a public highway owned or controlled by the state transportation department. The license or license agreement may include a financial mechanism in an amount calculated to reflect the reasonably estimated increased cost of any activity anticipated to be performed as described in the most recently adopted state 5-year program, that has the potential to disturb or expose the environmental contamination left in place within the public highway, including, but not limited to, 1 of the following:

(*i*) A bond executed by a surety authorized to do business in this state.

(*ii*) Insurance coverage, as evidenced by a proof of insurance.

(*iii*) Eligibility under the underground storage tank cleanup fund created in section 21506b.

(*iv*) A letter of credit.

(*v*) A corporate guarantee.

(*vi*) Self-insurance meeting a financial test approved by the state transportation department.

(c) If the state transportation department fails or refuses to grant a license or enter into a license agreement within 120 days after submission of a request to issue a license or enter into a license agreement, and for public highways owned or controlled by a county road commission or a local unit of government, reliance on the existence of a public highway, if the owner or operator that is liable under section 21323a does all of the following:

(*i*) Provides the department and the person that owns or operates the public highway with the following information related to the release and site:

(A) The site name, address, and facility identification number, and the name and contact information of the person relying on the alternative mechanism.

(B) Identification of the department district office with jurisdiction over the site.

(C) The name of the affected public highway and the nearest intersection.

(D) Identification of known or suspected contaminants.

(E) A statement that residual or mobile NAPL is or is not present at the affected public highway.

(F) The media affected, including depth of contaminated soil, depth of groundwater, and predominate groundwater flow direction.

(G) A scale drawing of the portion of the public highway subject to the alternate mechanism that depicts the area impacted by regulated substances and the location of utilities in the impacted area, including storm water systems and municipal separate storm water systems.

(H) Identification of all ownership and possessory or use property interests related to the public highway and whether they are affected by the contamination and whether they have received notification of the existing conditions as part of a corrective action plan or pursuant to the due care requirements under section 21304c.

(I) Identification of exposure risks from drinking water, direct contact, groundwater, soil excavation, or relocation.

(*ii*) Confirms that there are no current plans to relocate, vacate, or abandon the public highway.

(*iii*) Either provides a certification to the person that owns or operates the public highway that any contamination present as a result of the release from the underground storage tank system does not enter a storm sewer system or provides all information necessary to clearly identify the nature and extent of the contamination that enters or has the potential to enter the storm sewer system.

(4) A person that applies for a permit issued by a county road commission or a local unit of government to excavate, bore, drill, or perform any other intrusive activity within a public highway or right-of-way of a public highway shall identify whether the proposed work will take place within an area being relied upon as an alternative institutional control.

(5) Reliance on a public highway as an alternative mechanism under subsection (3)(b) does not affect an owner's or operator's liability under section 21323a or impose liability for corrective action or any other obligation on the state transportation department, a county road commission, or a local unit of government. Information provided pursuant to section 21310a(3) or (4) to the person that owns or operates a public highway does not create an estoppel, obligation, or liability on the person that owns or operates the public highway. The use of a public highway as an alternative mechanism does not limit or restrict any right or duty of the state transportation department, a county road commission, or a local unit of government to operate, maintain, repair, reconstruct, enlarge, relocate, abandon, vacate, or otherwise exercise its jurisdiction over any public highway or public highway right-of-way or any part thereof, or to permit any utilities or others to use any public highway or public highway right-of-way, or any part thereof.

(6) 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. 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 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.

(*iii*) If the owner or operator fails to meet the time frames in subparagraphs (*i*) and (*ii*), the owner or operator requests and receives from the department a determination that its failure to comply with the time frames was inconsequential.

(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) This state, a county road commission, or a local unit of government if it 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 county road commission or a local unit of government to which ownership or control of property is transferred by this state, by a county road commission, or by another local unit of government that is not liable under subsection (1); or this state, a county road commission, or a local unit of government if it acquired ownership or control of property by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) This state, a county road commission, or a local unit of government if it 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) This state, a county road commission, or a local unit of government if it leases property to a person and 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) A person that owns or operates 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 21315(4). 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, a person 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. However, if the closure report relies on an alternate mechanism as provided for in section 21310a and the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned, the owner or operator that is liable under section 21323a for the environmental contamination addressed in the closure report shall notify the department 30 days before the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned. In such cases, the owner or operator is liable under this part for additional corrective action activities necessary to address any increased risk of exposure to the environmental contamination.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a 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 that is liable under section 21323a 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 this 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 May 1, 2012 is considered to be in compliance with subsection (1)(b).

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

(a) Has experience in all phases of underground storage tank work, including RBCA, 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 on May 1, 2012.

(b) Has all of the following insurance policies written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by this 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.

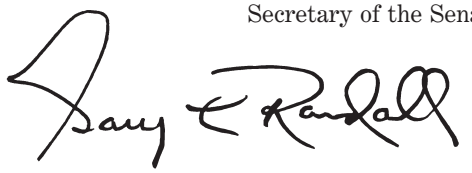
(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

(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. 21325a. Department employees who are responsible for the oversight of corrective action or the audits conducted under section 21315 shall be formally trained and demonstrate proficiency in RBCA.

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

Secretary of the Senate



Clerk of the House of Representatives

Approved

Governor