

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.21324 Submission of false, misleading, or fraudulent information as felony; penalty; civil fine; retroactive application; "fraudulent" and "fraudulent practice" defined; investigation and commencement of action by attorney general or county prosecutor; subpoena; enforcement; order granting immunity; failure to comply with subpoena; prosecution under other laws not precluded; apportionment of fines.

Sec. 21324.

(1) Beginning April 25, 1994, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of \$50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

- (a) Representing that services were done or work was provided that was not done or provided.
- (b) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.
- (c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil.
- (d) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.
- (e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.
- (f) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.
- (g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.
- (h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.
- (i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this part.
- (j) Misrepresenting or falsifying the source of data regarding site conditions.
- (k) Misrepresenting or falsifying the date upon which a release occurred.
- (l) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.
- (m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release.
- (n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.
- (o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than \$25,000.00 for each day of continued noncompliance.

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(10) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

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