Act No. 150
Public Acts of 1989
Approved by the Governor
July 18, 1989
Filed with the Secretary of State
July 18, 1989

STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989

Introduced by Senators Ehlers and Dingell

ENROLLED SENATE BILL No. 264

AN ACT to amend the title and sections 4, 8, 12, and 19 of Act No. 478 of the Public Acts of 1988, entitled "An act to regulate and provide for corrective action due to releases from leaking underground storage tank systems; to prescribe the powers and duties of certain state agencies and officials; to provide penalties and remedies; and to repeal this act on a specific date," being sections 299.834, 299.838, 299.842, and 299.849 of the Michigan Compiled Laws; and to provide for the repeal of the act on a specific date.

The People of the State of Michigan enact:

Section 1. The title and sections 4, 8, 12, and 19 of Act No. 478 of the Public Acts of 1988, being sections 299.834, 299.838, 299.842, and 299.849 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to regulate and provide for corrective action due to releases from leaking underground storage tank systems; to prescribe the powers and duties of certain state agencies and officials; to provide penalties and remedies; and to provide for the repeal of this act on a specific date.

Sec. 4. (1) "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.

(2) "Owner" means a person who holds, or at the time of a release 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 located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(3) "Person" means an individual, partnership, joint venture, trust, firm, joint stock company, corporation, including a government corporation, association, local unit of government, commission, the state, a political subdivision of the state, an interstate body, the federal government, a political subdivision of the federal government, or any other legal entity.

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

(5) "Regulated substance" means either of the following:

(a) 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 U.S.C. 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 U.S.C. 6921 to 6931 and 6933 to 6939b.

(b) 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 comprised 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.

(6) "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:

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

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

(c) A septic tank.

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

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

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

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

(f) A storm water or wastewater collection system.

(g) A flow-through process tank.

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

(i) 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.

(j) Any pipes connected to a tank that is described in subdivisions (a) to (i).

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

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

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

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

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

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

Sec. 8. (1) At any point after reviewing the information submitted in compliance with section 7, the director may require the owner and operator to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils, groundwater, and surface water. If a plan is required, the owner or operator shall submit the plan according to a schedule established by the director. Alternatively, the owner or operator may, after fulfilling the requirements of section 7, choose to submit a corrective action plan for responding to contaminated soil, groundwater, or surface water. In either case, the owner or operator is responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the director, and shall modify his or her plan as necessary to meet this standard.

(2) The director shall approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment.

(3) The director shall approve or disapprove the corrective action plan within 45 days after it has been received. If the director disapproves the corrective action plan, he or she shall provide the owner or operator with a list of deficiencies, and recommendations that if incorporated would result in the plan's approval, along with a schedule for resubmittal. The owner or operator shall submit an amended corrective action plan according to the schedule specified by the director.

(4) Upon approval of the corrective action plan or as directed by the director, the owner or operator shall implement the plan, including modifications to the plan required by the director. The owner or operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule established by the director.

(5) The owner or operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved, provided that they do all of the following:

(a) Notify the director of their intention to begin cleanup.

(b) Comply with any conditions imposed by the director, including halting cleanup or mitigating adverse consequences from cleanup activities.

(c) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the director for approval.

(6) After the director approves a corrective action plan under this section, and the owner or operator has completed in full all corrective actions required in the plan, and is in compliance with this act, the director shall execute a document stating that the corrective actions have been completed. If an owner or operator delivers to the director a written statement asserting that all corrective actions have been completed and includes with this statement documentation sufficient to show full compliance with the approved corrective action plan and this act, the director shall respond within 60 days of receipt of that statement by either executing a document stating that the corrective actions have been completed or by executing a document indicating what corrective actions remain to be completed. Failure to respond shall be considered as if it were a response that corrective action remains to be completed, and the owner or operator may request a hearing before the commission of natural resources in the same manner as provided in section 10.

(7) The director may issue corrective action orders pursuant to section 10 to the owner or operator as necessary to carry out the purposes of this act.

Sec. 12. (1) Except as otherwise provided in this section, liability imposed upon an owner or operator under this act shall be strict and without regard to fault, as applied to either or both of the following:

(a) The obligation to carry out all corrective action requirements pursuant to this act.

(b) Any liability for other relief provided in section 13(1).

(2) An owner or operator shall not be liable under this act where any of the following occur:

(a) The owner or operator proves that the release was caused solely by any of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

(*iv*) Any combination of subparagraphs (*i*) to (*iii*).

(b) The owner would otherwise be liable solely as the owner of the real property on which the underground tank system is or was located, the owner acquired that property after the release of a regulated substance, and the owner can establish 1 or more of the circumstances described in the following subparagraphs by a preponderance of the evidence:

(*i*) At the time the owner acquired the property, the owner did not know and had no reason to know that any release of a regulated substance had occurred on, in, or at the property.

(*ii*) The owner is a government entity that acquired the property through an involuntary transfer or acquisition.

(*iii*) The owner acquired the property by inheritance or devise.

(*iv*) The owner is a government entity that acquired the property from the state by statutory transfer pursuant to Act No. 73 of the Public Acts of 1970, being sections 259.801 to 259.823 of the Michigan Compiled Laws.

(3) To establish that the owner had no reason to know, as provided in subsection (2)(b)(*i*), the owner must 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 in an effort to minimize liability. For purposes

of the preceding sentence, the court shall take into account any specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

(4) Notwithstanding subsection (2), if the owner obtained actual knowledge of the release of a regulated substance at such property when the owner owned the property and then subsequently transferred ownership of the property to another person without disclosing this knowledge, the owner shall be treated as liable under this act and a defense under subsection (2)(b) shall not be available to such owner.

(5) Nothing in this section shall affect the liability under this act of a person who, by any act or omission, caused or contributed to the release of a regulated substance that is the subject of the action relating to the property.

(6) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator or from any person who may be liable for a release or threat of release under this act, to any other person the liability imposed under this act. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this act.

(7) This act shall not bar a cause of action that an owner or operator or any other person subject to liability under this act, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

(8) The owner or operator, or both, shall be liable to the state for costs that are incurred by the state for taking corrective action or enforcement action pursuant to this act.

(9) Unpaid costs incurred by the state for taking corrective action shall constitute a lien in favor of the state against the land on which the underground storage tank system is located and the tank system itself and shall have priority over all other liens and encumbrances except such liens and encumbrances recorded before the date the lien under this act is recorded. This lien arises when the agency first incurs costs for taking corrective action.

(10) The lien provided in subsection (9) is perfected against real property when a notice of lien is recorded with the register of deeds in the county in which real property is located. Subject to subsection (9), recording of the notice of lien relates back to the date on which the lien arose and perfects the lien as of that date. The recording of the notice of lien shall relate only to those unpaid costs arising during the 12 months immediately preceding the recording date, unless this provision is specifically waived, in writing, by the owner as part of an approved corrective action plan.

Sec. 19. This act is repealed upon the expiration of 12 months after Act No. 518 of the Public Acts of 1988, being sections 299.801 to 299.828 of the Michigan Compiled Laws, becomes invalid pursuant to section 23(3) of Act No. 518 of the Public Acts of 1988, being section 299.823 of the Michigan Compiled Laws.

. This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved .....

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Governor.