

Act No. 151
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. 265

AN ACT to amend the title of Act No. 423 of the Public Acts of 1984, entitled as amended "An act to regulate certain underground storage tank systems; to require the registration of certain underground storage tank systems; to prescribe the powers and duties of certain state and local agencies and officials; to impose certain fees; and to prescribe penalties and remedies," as amended, being sections 299.701b to 299.704 of the Michigan Compiled Laws; to add sections 1, 1a, 2, 3, 3a, 7, 8, 9, 10, 10a, 11, and 12; to repeal certain parts of the act; 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 of Act No. 423 of the Public Acts of 1984, as amended, being sections 299.701b to 299.704 of the Michigan Compiled Laws, is amended and sections 1, 1a, 2, 3, 3a, 7, 8, 9, 10, 10a, 11, and 12 are added to read as follows:

TITLE

An act to regulate certain underground storage tank systems; to require the registration of certain underground storage tank systems; to prescribe the powers and duties of certain state and local agencies and officials; to impose certain fees; to prescribe penalties and remedies; and to provide for the repeal of this act on a specific date.

Sec. 1. As used in this act:

(a) "Board" means the state fire safety board created in section 3b of the fire prevention act, Act No. 207 of the Public Acts of 1941, being section 29.3b of the Michigan Compiled Laws.

(b) "Department" means the department of state police, fire marshal division.

(c) "Director" means the director of the department of state police.

(d) "Fund" means the underground storage tank regulatory enforcement fund created in section 3a.

(e) "Local unit of government" means a city, village, township, county, or governmental authority, or any combination of cities, villages, townships, counties, or governmental authorities.

(f) "Natural gas" means natural gas, synthetic gas, and manufactured gas.

(g) "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.

(h) "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.

(i) "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 a state; an interstate body; the federal government; a political subdivision of the federal government; and any other legal entity.

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

(k) "Regulated substance" means either 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 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.

(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 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.

(l) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(m) "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 U.S.C. 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 U.S.C. 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 subparagraphs (i) to (xvi).

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

Sec. 1a. This act shall be known and may be cited as the "underground storage tank regulatory act".

Sec. 2. (1) A person who is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department.

(2) A person who is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use.

(3) The department shall accept the registration or renewal of registration of an underground storage tank system under this section only if the owner of the underground storage tank system pays the registration fee specified in subsection (8).

(4) Except as otherwise provided in subsections (5) and (6), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 3 or of the removal of an underground storage tank system from service.

(5) A person who is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials which are stored in the underground storage tank system on the registration form described in section 3. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(6) Except as otherwise provided in section 3(2), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon request of the department.

(7) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of registration or notification of change to the local unit of government where the underground storage tank system is located.

(8) Except as provided in section 3a(3), the owner of an underground storage tank system shall, upon registration or renewal of registration, pay a registration fee of \$100.00 for each underground storage tank included in that underground storage tank system. The department shall deposit all registration fees it collects into the fund.

(9) The board may promulgate rules that require proof of registration under this act to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(10) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this act is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the board. The owner of an underground storage tank system shall continue to pay registration fees on underground storage tanks that have been closed or removed until notification of the closure or removal is provided pursuant to these rules.

Sec. 3. (1) The registration required by section 2(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system, and the resulting findings.

Sec. 3a. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this act and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used only by the department to enforce this act and the rules promulgated under this act and the rules promulgated under the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, pertaining to the delivery and dispensing operations of regulated substances.

(3) Notwithstanding section 2(8), if at the close of any fiscal year the amount of money in the fund exceeds \$8,000,000.00, the department shall not collect a registration fee for the following year from existing underground storage tank systems. After the registration fee has been suspended under this subsection, it shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than \$2,000,000.00.

(4) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

Sec. 7. The board shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

Sec. 8. (1) The department shall enforce this act and the rules promulgated under this act.

(2) The department may delegate the authority to enforce this act and the rules promulgated under this act to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this act, the rules promulgated under this act, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this act and the rules promulgated under this act as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this act or rules promulgated under this act.

(4) If the department elects to delegate enforcement authority under subsection (2), the board shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this act and the rules promulgated under this act.

Sec. 9. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this act or rules promulgated under this act.

(3) Beginning October 1, 1990, a local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

Sec. 10. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this act.

(2) A person shall not repair or test an underground storage tank system that is not registered under this act.

Sec. 10a. The following are deferred from regulation under this act until such time as the director determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

Sec. 11. (1) A person who violates this act or a rule promulgated under this act or who knowingly submits false information when registering an underground storage tank system under this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$500.00, or both.

(2) A person who violates this act or a rule promulgated under this act or who knowingly submits false information when registering an underground storage tank system under this act is subject to a civil fine of not more than \$5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this act and the rules promulgated under this act.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

Sec. 12. 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.

Section 2. Sections 1b, 2a, and 3b of Act No. 423 of the Public Acts of 1984, being sections 299.701b, 299.702a, and 299.703b of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved-----

Governor.