

HOUSE BILL No. 4557

April 16, 2013, Introduced by Reps. Tlaib, Irwin, Robinson and Slavens and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding part 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 204.

ENVIRONMENTAL CONTAMINATION INSURANCE

SEC. 20401. AS USED IN THIS PART:

(A) "COMMISSIONER" MEANS THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.

(B) "DEPARTMENT" MEANS THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR HIS OR HER DESIGNEE TO WHOM THE DIRECTOR DELEGATES A POWER OR DUTY BY WRITTEN INSTRUMENT.

(C) "ENVIRONMENT" MEANS THAT TERM AS DEFINED IN SECTION 20101.

(D) "ENVIRONMENTAL CONTAMINATION" MEANS THE RELEASE OF A SUBSTANCE, OR THE POTENTIAL RELEASE OF A DISCARDED SUBSTANCE, IN A

1 QUANTITY THAT IS OR MAY BECOME INJURIOUS TO THE ENVIRONMENT OR TO
2 THE PUBLIC HEALTH, SAFETY, OR WELFARE.

3 (E) "FINAL SETTLEMENT" MEANS A DETERMINATION OF THE AMOUNT
4 OWED TO THE INSURED FOR A LOSS TO INSURED PROPERTY, MADE BY ANY OF
5 THE FOLLOWING MEANS:

6 (i) ACCEPTANCE OF A PROOF OF LOSS BY THE INSURER.

7 (ii) EXECUTION OF A RELEASE BY THE INSURED.

8 (iii) ACCEPTANCE OF AN ARBITRATION AWARD BY BOTH THE INSURED AND
9 THE INSURER.

10 (iv) JUDGMENT OF A COURT OF COMPETENT JURISDICTION.

11 (F) "INDUSTRIAL PROPERTY" MEANS REAL PROPERTY ON WHICH AN
12 INDUSTRY IS OPERATING OR OPERATED AFTER THE EFFECTIVE DATE OF THIS
13 SECTION.

14 (G) "INSURED PROPERTY" MEANS INDUSTRIAL PROPERTY FOR WHICH
15 THERE IS ENVIRONMENTAL CONTAMINATION INSURANCE COVERAGE, UNDER
16 SECTION 20403 OR OTHERWISE.

17 (H) "INTERIM RESPONSE ACTIVITY" MEANS THE CLEANUP OR REMOVAL
18 OF A RELEASED SUBSTANCE OR THE TAKING OF OTHER ACTIONS, BEFORE THE
19 IMPLEMENTATION OF A REMEDIAL ACTION, AS MAY BE NECESSARY TO
20 PREVENT, MINIMIZE, OR MITIGATE INJURY TO THE PUBLIC HEALTH, SAFETY,
21 OR WELFARE, OR TO THE ENVIRONMENT. INTERIM RESPONSE ACTIVITY ALSO
22 INCLUDES, BUT IS NOT LIMITED TO, MEASURES TO LIMIT ACCESS,
23 REPLACEMENT OF WATER SUPPLIES, AND TEMPORARY RELOCATION OF
24 INDIVIDUALS AS DETERMINED TO BE NECESSARY BY THE DEPARTMENT. IN
25 ADDITION, INTERIM RESPONSE ACTIVITY MEANS THE TAKING OF OTHER
26 ACTIONS AS MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE A
27 THREATENED RELEASE.

1 (I) "MUNICIPALITY" MEANS AND "MUNICIPAL" REFERS TO A CITY,
2 VILLAGE, OR TOWNSHIP.

3 (J) "OWNER" MEANS A PERSON WHO OWNS AN INDUSTRIAL PROPERTY.
4 OWNER DOES NOT INCLUDE A PERSON WHO HOLDS INDICIA OF OWNERSHIP
5 PRIMARILY TO PROTECT THE PERSON'S SECURITY INTEREST IN THE
6 PROPERTY, INCLUDING, BUT NOT LIMITED TO, A VENDOR'S INTEREST UNDER
7 A RECORDED LAND CONTRACT.

8 (K) "RELEASE" INCLUDES, BUT IS NOT LIMITED TO, ANY SPILLING,
9 LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING,
10 INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF A SUBSTANCE
11 INTO THE ENVIRONMENT, OR THE ABANDONMENT OR DISCARDING OF BARRELS,
12 CONTAINERS, AND OTHER CLOSED RECEPTACLES CONTAINING A SUBSTANCE.
13 RELEASE DOES NOT INCLUDE ANY OF THE FOLLOWING:

14 (i) AN ACTIVITY AUTHORIZED UNDER THIS ACT.

15 (ii) A RELEASE THAT RESULTS IN EXPOSURE TO INDIVIDUALS SOLELY
16 WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM THAT THESE INDIVIDUALS
17 MAY ASSERT AGAINST THEIR EMPLOYERS.

18 (iii) EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE,
19 ROLLING STOCK, AIRCRAFT, OR VESSEL.

20 (iv) A RELEASE OF SOURCE MATERIAL, BY-PRODUCT MATERIAL, OR
21 SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS
22 ARE DEFINED IN 42 USC 2014, IF THE RELEASE IS SUBJECT TO
23 REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY
24 THE NUCLEAR REGULATORY COMMISSION UNDER 42 USC 2210, OR ANY RELEASE
25 OF SOURCE MATERIAL, BY-PRODUCT MATERIAL, OR SPECIAL NUCLEAR
26 MATERIAL FROM ANY PROCESSING SITE DESIGNATED UNDER 42 USC 7912 OR
27 7942.

1 (v) IF APPLIED ACCORDING TO LABEL DIRECTIONS AND ACCORDING TO
2 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES DEVELOPED
3 PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471
4 TO 286.474, THE APPLICATION OF A FERTILIZER, SOIL CONDITIONER,
5 AGRONOMICALLY APPLIED MANURE, OR PESTICIDE; FRUIT, VEGETABLE, OR
6 FIELD CROP RESIDUALS OR PROCESSING BY-PRODUCTS; AQUATIC PLANTS; OR
7 A COMBINATION OF THESE SUBSTANCES. AS USED IN THIS SUBPARAGRAPH,
8 "FERTILIZER", "SOIL CONDITIONER", AND "PESTICIDE" MEAN THOSE TERMS
9 AS DEFINED IN SECTIONS 8501, 8501A, AND 8305, RESPECTIVELY.

10 (vi) FRUITS, VEGETABLES, FIELD CROP PROCESSING BY-PRODUCTS, OR
11 AQUATIC PLANTS, THAT ARE APPLIED TO THE LAND FOR AN AGRICULTURAL
12 USE OR FOR USE AS AN ANIMAL FEED, IF THE USE IS CONSISTENT WITH
13 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES DEVELOPED
14 PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471
15 TO 286.474.

16 (l) "REMEDIAL ACTION" INCLUDES, BUT IS NOT LIMITED TO, CLEANUP,
17 REMOVAL, CONTAINMENT, ISOLATION, DESTRUCTION, OR TREATMENT OF A
18 SUBSTANCE RELEASED OR THREATENED TO BE RELEASED INTO THE
19 ENVIRONMENT AND MONITORING, MAINTENANCE, OR THE TAKING OF OTHER
20 ACTIONS THAT MAY BE NECESSARY TO PREVENT, MINIMIZE, OR MITIGATE
21 INJURY TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR TO THE
22 ENVIRONMENT.

23 (M) "REPRESENTATIVE OF THE MUNICIPALITY" OR "REPRESENTATIVE"
24 MEANS AN INDIVIDUAL DESIGNATED BY THE GOVERNING BODY OF THE
25 MUNICIPALITY AS THE MUNICIPALITY'S AGENT FOR THE PURPOSES OF THIS
26 PART.

27 (N) "RESPONSE ACTIVITY" MEANS EVALUATION, INTERIM RESPONSE

1 ACTIVITY, REMEDIAL ACTION, DEMOLITION, OR THE TAKING OF OTHER
2 ACTIONS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE,
3 THE ENVIRONMENT, OR NATURAL RESOURCES. RESPONSE ACTIVITY ALSO
4 INCLUDES HEALTH ASSESSMENTS OR HEALTH EFFECT STUDIES CARRIED OUT
5 UNDER THE SUPERVISION, OR WITH THE APPROVAL OF, THE DEPARTMENT OF
6 COMMUNITY HEALTH AND ENFORCEMENT ACTIONS RELATED TO ANY RESPONSE
7 ACTIVITY.

8 (O) "THREATENED RELEASE" OR "THREAT OF RELEASE" MEANS ANY
9 CIRCUMSTANCE THAT MAY REASONABLY BE ANTICIPATED TO CAUSE A RELEASE.

10 SEC. 20403. (1) THE OWNER OF INDUSTRIAL PROPERTY SHALL
11 MAINTAIN ENVIRONMENTAL CONTAMINATION INSURANCE THAT WILL COVER
12 CLAIMS ARISING FROM OCCURRENCES DURING THAT PERSON'S PERIOD OF
13 OWNERSHIP AND AFTER THE EFFECTIVE DATE OF THE INSURANCE POLICY. THE
14 INSURANCE SHALL BE PROVIDED BY AN INSURER WHO HAS A CERTIFICATE OF
15 AUTHORITY FROM THE COMMISSIONER TO SELL ENVIRONMENTAL CONTAMINATION
16 INSURANCE.

17 (2) NOT LATER THAN 120 DAYS AFTER THE DEPARTMENT PROMULGATES
18 RULES UNDER SECTION 20417 TO IMPLEMENT THIS PART, OR 120 DAYS AFTER
19 A PERSON BECOMES THE OWNER OF INDUSTRIAL PROPERTY, WHICHEVER IS
20 LATER, THE OWNER OF INDUSTRIAL PROPERTY SHALL SUBMIT BOTH OF THE
21 FOLLOWING TO THE DEPARTMENT AS EVIDENCE OF THE REQUIRED COVERAGE
22 UNDER SUBSECTION (1):

23 (A) A CERTIFICATE OF INSURANCE THAT USES WORDING APPROVED BY
24 THE DEPARTMENT.

25 (B) A CERTIFIED TRUE AND COMPLETE COPY OF THE INSURANCE
26 POLICY.

27 (3) AN INSURANCE POLICY UNDER SUBSECTION (1) SHALL REQUIRE THE

1 INSURER TO NOTIFY THE DEPARTMENT AND THE OWNER AT LEAST 120 DAYS
2 BEFORE THE EXPIRATION DATE OF THE POLICY OR UPON CANCELLATION OF
3 THE POLICY. IF THE OWNER DOES NOT EXTEND THE EFFECTIVE DATE OF THE
4 INSURANCE POLICY OR OBTAIN A NEW INSURANCE POLICY THAT SATISFIES
5 THE REQUIREMENTS OF THIS PART WITHIN 90 DAYS AFTER THE DEPARTMENT
6 RECEIVES THE NOTICE, THE DEPARTMENT SHALL NOTIFY THE MUNICIPALITY,
7 WHICH MAY DRAW ON THE POLICY AS PROVIDED IN SECTION 20407.

8 SEC. 20405. THE AMOUNT OF THE INSURANCE REQUIRED UNDER SECTION
9 20403 SHALL BE DETERMINED UNDER RULES PROMULGATED UNDER SECTION
10 20417.

11 SEC. 20407. (1) IF A CLAIM IS FILED FOR A LOSS DUE TO
12 ENVIRONMENTAL CONTAMINATION FROM AN INSURED INDUSTRIAL PROPERTY AND
13 A FINAL SETTLEMENT OF THE CLAIM IS REACHED OR A JUDGMENT IS ENTERED
14 IN AN ACTION THAT INVOLVES THE LOSS, THE INSURER FOR THE INSURED
15 INDUSTRIAL PROPERTY SHALL WITHHOLD THE FINAL SETTLEMENT OR JUDGMENT
16 AMOUNT FROM PAYMENT. WHEN THE SETTLEMENT OR JUDGMENT AMOUNT IS
17 WITHHELD, THE INSURER SHALL GIVE NOTICE OF THE WITHHOLDING TO THE
18 TREASURER OF THE MUNICIPALITY IN WHICH THE INSURED INDUSTRIAL
19 PROPERTY IS LOCATED, TO THE INSURED, AND TO ANY MORTGAGEE THAT HAS
20 A LIEN AGAINST THE INSURED INDUSTRIAL PROPERTY, IF THE MORTGAGEE IS
21 NAMED ON THE POLICY. IF A JUDGMENT WAS ENTERED, NOTICE SHALL ALSO
22 BE PROVIDED TO THE COURT IN WHICH THE JUDGMENT WAS ENTERED. THE
23 NOTICE SHALL INCLUDE ALL OF THE FOLLOWING:

24 (A) THE IDENTITY AND ADDRESS OF THE INSURER.

25 (B) THE NAME AND ADDRESS OR FORWARDING ADDRESS OF EACH
26 POLICYHOLDER, INCLUDING ANY MORTGAGEE NAMED ON THE POLICY.

27 (C) THE LOCATION OF THE INSURED INDUSTRIAL PROPERTY.

1 (D) THE DATE OF LOSS, POLICY NUMBER, AND CLAIM NUMBER.

2 (E) THE AMOUNT OF MONEY WITHHELD.

3 (F) A STATEMENT THAT THE WITHHELD AMOUNT WILL BE PAID TO THE
4 MUNICIPALITY FOR DEPOSIT INTO A TRUST OR ESCROW ACCOUNT ESTABLISHED
5 FOR THE PURPOSES OF THIS PART IF WITHIN 15 DAYS AFTER THE NOTICE IS
6 SENT BY THE INSURER THE MUNICIPALITY NOTIFIES THE INSURER THAT THE
7 MONEY SHOULD BE PAID TO THE MUNICIPALITY FOR THE PURPOSES OF THIS
8 PART.

9 (G) A STATEMENT THAT, IF THE MUNICIPALITY DOES NOT NOTIFY THE
10 INSURER AS PROVIDED IN SUBDIVISION (F), THE WITHHELD AMOUNT WILL BE
11 PAID TO THE INSURED.

12 (H) AN EXPLANATION OF THIS PART.

13 (2) THE INSURER SHALL NOT PAY THE WITHHELD AMOUNT TO THE
14 MUNICIPALITY UNLESS ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

15 (A) WITHIN 15 DAYS AFTER THE INSURER SENDS NOTICE UNDER
16 SUBSECTION (1), A REPRESENTATIVE OF THE MUNICIPALITY REQUESTS, FOR
17 CAUSE AS DESCRIBED IN THIS SUBDIVISION, THAT THE INSURER PAY THE
18 WITHHELD AMOUNT TO THE MUNICIPALITY FOR DEPOSIT IN A TRUST OR
19 ESCROW ACCOUNT MAINTAINED BY THE MUNICIPAL TREASURER FOR THE
20 PURPOSES OF THIS PART. ANY OF THE FOLLOWING ARE PRIMA FACIE
21 EVIDENCE OF ENVIRONMENTAL CONTAMINATION FROM THE INSURED INDUSTRIAL
22 PROPERTY AND CONSTITUTE CAUSE FOR THE ESCROWING OF THE WITHHELD
23 AMOUNT AS SURETY FOR RESPONSE ACTIVITY:

24 (i) A FINAL SETTLEMENT OR JUDGMENT UNDER SUBSECTION (1) THAT
25 EQUALS OR EXCEEDS 50% OF THE AMOUNT OF ENVIRONMENTAL CONTAMINATION
26 INSURANCE ON THE INSURED INDUSTRIAL PROPERTY.

27 (ii) A CERTIFICATE FROM THE DEPARTMENT THAT THERE IS A

1 REASONABLE BASIS TO BELIEVE THAT RESPONSE ACTIVITIES WHOSE COST
2 WILL EQUAL OR EXCEED 50% OF THE AMOUNT OF ENVIRONMENTAL
3 CONTAMINATION INSURANCE ON THE INSURED INDUSTRIAL PROPERTY WILL BE
4 REQUIRED BECAUSE OF A RELEASE FROM INDUSTRY OPERATING ON THE REAL
5 PROPERTY DURING THE PERIOD OF THE OWNER'S OWNERSHIP AND AFTER THE
6 EFFECTIVE DATE OF THE INSURANCE POLICY.

7 (B) IF THERE IS A SETTLEMENT, THE REQUEST UNDER SUBDIVISION
8 (A) IS SENT TO THE INSURER WITH A COPY TO THE INSURED AND ANY
9 MORTGAGEES NAMED ON THE INSURANCE POLICY. THE COPY TO THE INSURED
10 SHALL CONTAIN THE NOTICE REQUIRED UNDER SUBDIVISION (D). UPON
11 RECEIPT OF THE REQUEST, THE INSURER SHALL FORWARD THE WITHHELD
12 AMOUNT TO THE MUNICIPAL TREASURER AND SHALL PROVIDE NOTICE OF THE
13 FORWARDING TO THE INSURED AND ANY MORTGAGEES NAMED ON THE INSURANCE
14 POLICY.

15 (C) IF THERE IS A JUDGMENT, THE REQUEST UNDER SUBDIVISION (A)
16 IS SENT TO THE INSURER WITH A COPY TO THE INSURED, ANY MORTGAGEES
17 NAMED ON THE INSURANCE POLICY, AND THE COURT IN WHICH JUDGMENT WAS
18 ENTERED. THE COPY TO THE INSURED SHALL CONTAIN THE NOTICE REQUIRED
19 UNDER SUBDIVISION (D). UPON THE MOTION OF THE MUNICIPALITY, THE
20 COURT SHALL ORDER THE INSURER TO TRANSMIT THE WITHHELD AMOUNT TO
21 THE MUNICIPAL TREASURER.

22 (D) THE MUNICIPALITY NOTIFIES THE INSURED OF THE INSURED'S
23 RIGHT TO OBJECT UNDER SUBSECTION (3) TO THE MUNICIPALITY'S
24 RETENTION OF THE WITHHELD AMOUNT. THE NOTICE SHALL IDENTIFY THE
25 REPRESENTATIVE OF THE MUNICIPALITY TO WHOM THE INSURED SHOULD
26 ADDRESS HIS OR HER OBJECTIONS.

27 (3) WITHIN 10 DAYS FROM THE DATE OF MAILING OF NOTICE TO THE

1 INSURED UNDER SUBSECTION (2), THE INSURED MAY OBJECT TO THE
2 MUNICIPALITY'S RETENTION OF THE WITHHELD AMOUNT AND DO EITHER OF
3 THE FOLLOWING:

4 (A) SEEK RESOLUTION WITH A REPRESENTATIVE OF THE MUNICIPALITY.
5 THE MUNICIPALITY SHALL DESIGNATE A REPRESENTATIVE TO RECEIVE AND
6 RESOLVE OBJECTIONS UNDER THIS SECTION. IF THE INSURED SEEKS
7 RESOLUTION UNDER THIS SUBDIVISION, THE MUNICIPALITY SHALL MAKE A
8 FINAL DETERMINATION AND SHALL NOTIFY THE INSURED OF THAT
9 DETERMINATION NOT LATER THAN 30 DAYS AFTER RECEIPT OF NOTICE THAT
10 THE INSURED WISHES TO SEEK RESOLUTION UNDER THIS SUBDIVISION. THIS
11 FINAL DETERMINATION SHALL INCLUDE NOTICE TO THE INSURED THAT IF THE
12 INSURED OBJECTS TO THE MUNICIPALITY'S DETERMINATION, THE INSURED
13 MAY SEEK RELIEF IN CIRCUIT COURT.

14 (B) SEEK RELIEF IN THE CIRCUIT COURT.

15 (4) UPON RECEIPT OF MONEY AND INFORMATION FROM AN INSURER AS
16 PRESCRIBED IN SUBSECTIONS (1) AND (2), THE MUNICIPAL TREASURER
17 SHALL RECORD THE INFORMATION AND THE DATE OF RECEIPT OF THE MONEY
18 AND SHALL IMMEDIATELY DEPOSIT THE MONEY IN A TRUST OR ESCROW
19 ACCOUNT ESTABLISHED FOR THE PURPOSES OF THIS PART. THE ACCOUNT MAY
20 EARN INTEREST. IF A MORTGAGE ON THE INSURED INDUSTRIAL PROPERTY IS
21 IN DEFAULT, THE MUNICIPAL TREASURER, NOT MORE THAN 10 DAYS AFTER
22 RECEIPT OF A WRITTEN REQUEST FROM A FIRST MORTGAGEE, SHALL RELEASE
23 TO THE MORTGAGEE POLICY PROCEEDS RECEIVED BY THE MUNICIPALITY WITH
24 RESPECT TO THAT PROPERTY TO THE EXTENT NECESSARY TO SATISFY ANY
25 OUTSTANDING LIEN OF THE MORTGAGEE.

26 (5) MONEY DEPOSITED IN A TRUST OR ESCROW ACCOUNT PURSUANT TO
27 SUBSECTION (4) SHALL NOT BE COMMINGLED WITH MUNICIPAL FUNDS. ANY

1 INTEREST EARNED ON THE MONEY SHALL BE RETAINED BY THE MUNICIPALITY
2 TO DEFRAY EXPENSES INCURRED UNDER THIS PART.

3 SEC. 20409. (1) THE REPRESENTATIVE OF THE MUNICIPALITY
4 DESIGNATED UNDER SECTION 20407(3) SHALL IMMEDIATELY FORWARD THE
5 POLICY PROCEEDS DEPOSITED UNDER SECTION 20407(4) TO THE INSURED IF
6 THE REPRESENTATIVE RECEIVES OR IS SHOWN REASONABLE PROOF THAT ANY
7 NECESSARY RESPONSE ACTIVITY IS UNDER WAY OR HAS BEEN COMPLETED,
8 EXCEPT TO THE EXTENT THAT THE AMOUNT WITHHELD UNDER SECTION 20407
9 IS NEEDED TO COMPLETE RESPONSE ACTIVITY. THE REPRESENTATIVE SHALL
10 IMMEDIATELY FORWARD THE POLICY PROCEEDS TO A CONTRACTOR PERFORMING
11 RESPONSE ACTIVITIES RELATIVE TO A RELEASE AT THE INSURED PROPERTY
12 IF THE REPRESENTATIVE RECEIVES OR IS SHOWN REASONABLE PROOF THAT
13 THE INSURED HAS ENTERED INTO A CONTRACT WITH THE CONTRACTOR FOR THE
14 PERFORMANCE OF RESPONSE ACTIVITIES RELATIVE TO A RELEASE AT THE
15 INSURED PROPERTY AND THAT THE INSURED CONSENTS TO PAYMENT OF FUNDS
16 DIRECTLY TO THE CONTRACTOR PERFORMING THE RESPONSE ACTIVITIES UPON
17 COMPLETION.

18 (2) REASONABLE PROOF REQUIRED UNDER SUBSECTION (1) INCLUDES
19 ANY OF THE FOLLOWING:

20 (A) ORIGINALS OR COPIES OF PERTINENT CONTRACTS, INVOICES,
21 RECEIPTS, AND OTHER SIMILAR PAPERS EVIDENCING BOTH THE WORK
22 PERFORMED OR TO BE PERFORMED AND THE MATERIALS USED OR TO BE USED
23 BY ALL CONTRACTORS PERFORMING RESPONSE ACTIVITY RELATIVE TO A
24 RELEASE AT THE INSURED PROPERTY, OTHER THAN A CONTRACTOR SUBJECT TO
25 SUBDIVISION (B).

26 (B) AN AFFIDAVIT EXECUTED BY THE CONTRACTOR THAT HAS PERFORMED
27 THE GREATEST AMOUNT OF RESPONSE ACTIVITY RELATIVE TO A RELEASE AT

1 THE INSURED PROPERTY. THE CONTRACTOR SHALL ATTACH TO THE AFFIDAVIT
2 ALL PERTINENT CONTRACTS, INVOICES, AND RECEIPTS AND SHALL SWEAR
3 THAT THESE ATTACHED PAPERS CORRECTLY INDICATE THE NATURE AND EXTENT
4 OF THE WORK PERFORMED TO DATE BY THE CONTRACTOR AND THE MATERIALS
5 USED.

6 (C) AN INSPECTION OF THE INSURED REAL PROPERTY THAT VERIFIES
7 THAT RESPONSE ACTIVITY HAS BEEN COMPLETED IN ACCORDANCE WITH
8 SUBSECTION (1).

9 (3) IF REASONABLE PROOF REQUIRED UNDER SUBSECTION (1) IS NOT
10 RECEIVED BY OR SHOWN TO THE AUTHORIZED REPRESENTATIVE OF THE
11 MUNICIPALITY WITHIN 120 DAYS AFTER THE WITHHELD POLICY PROCEEDS
12 WERE RECEIVED BY THE MUNICIPAL TREASURER, THE MUNICIPALITY SHALL
13 USE THE WITHHELD PROCEEDS TO PERFORM RESPONSE ACTIVITIES RELATIVE
14 TO THE RELEASE AT THE INSURED PROPERTY. ANY UNUSED PORTION OF THE
15 WITHHELD PROCEEDS SHALL BE RETURNED TO THE INSURED. THE
16 MUNICIPALITY MAY EXTEND THE 120-DAY TIME PERIOD UNDER THIS
17 SUBSECTION.

18 (4) AN INSURER OR AN AGENT OR EMPLOYEE OF AN INSURER IS NOT
19 LIABLE FOR WITHHOLDING OR TRANSFERRING MONEY IN THE COURSE OF
20 COMPLYING OR ATTEMPTING TO COMPLY WITH THIS PART. IF THERE IS A
21 DISPUTE WITH A LIENHOLDER CONCERNING THE DISTRIBUTION OF AN AMOUNT
22 WITHHELD FROM PAYMENT UNDER THIS SECTION, THE INSURER MAY FILE AN
23 ACTION IN CIRCUIT COURT TO IDENTIFY ALL PARTIES THAT MAY HAVE A
24 FINANCIAL INTEREST IN THE WITHHELD AMOUNT AND TO DETERMINE HOW THE
25 WITHHELD AMOUNT SHOULD BE DISTRIBUTED.

26 SEC. 20411. (1) THIS PART DOES NOT APPLY TO INDUSTRIAL
27 PROPERTY LOCATED IN A MUNICIPALITY UNLESS THE MUNICIPALITY BY

1 RESOLUTION BY ITS GOVERNING BODY NOTIFIES THE COMMISSIONER IN
2 WRITING THAT THE MUNICIPALITY HAS ESTABLISHED A TRUST OR ESCROW
3 ACCOUNT TO BE USED AS PRESCRIBED IN THIS PART AND INTENDS TO
4 UNIFORMLY APPLY THIS SECTION WITH RESPECT TO ALL INDUSTRIAL
5 PROPERTY LOCATED WITHIN THE MUNICIPALITY. THE COMMISSIONER SHALL
6 PREPARE AND DISTRIBUTE TO ALL INSURANCE COMPANIES THAT PROVIDE
7 ENVIRONMENTAL CONTAMINATION INSURANCE IN THIS STATE A LIST OF ALL
8 MUNICIPALITIES THAT HAVE ELECTED TO APPLY THIS PART.

9 (2) IF THE COMMISSIONER RECEIVES A NOTIFICATION UNDER
10 SUBSECTION (1) AFTER THE LIST UNDER SUBSECTION (1) HAS FIRST BEEN
11 DISTRIBUTED, THE COMMISSIONER SHALL PREPARE AND DISTRIBUTE AN
12 AMENDED LIST INDICATING THE ADDITION. THE ADDITION IS EFFECTIVE ON
13 THE DATE SPECIFIED BY THE COMMISSIONER IN THE AMENDMENT. THE
14 COMMISSIONER SHALL NOTIFY THE MUNICIPALITY ADDED TO THE LIST, AND
15 INSURANCE COMPANIES THAT PROVIDE ENVIRONMENTAL CONTAMINATION
16 INSURANCE IN THIS STATE, OF THE EFFECTIVE DATE OF THE ADDITION,
17 WHICH SHALL BE AT LEAST 30 DAYS AFTER RECEIPT OF NOTICE BY THE
18 INSURANCE COMPANY. A MUNICIPALITY ADDED TO THE LIST SHALL NOT APPLY
19 THIS PART TO ANY LOSS THAT OCCURRED BEFORE THE EFFECTIVE DATE OF
20 THE ADDITION.

21 (3) A MUNICIPALITY MAY SUBMIT A REQUEST TO THE COMMISSIONER TO
22 BE DELETED FROM THE LIST UNDER SUBSECTION (1). AFTER RECEIPT OF A
23 MUNICIPALITY'S REQUEST TO BE DELETED FROM THE LIST, THE
24 COMMISSIONER SHALL PREPARE AND DISTRIBUTE AN AMENDMENT TO THE LIST
25 INDICATING THE DELETION. THE DELETION IS EFFECTIVE ON THE DATE
26 SPECIFIED BY THE COMMISSIONER IN THE AMENDMENT. THE COMMISSIONER
27 SHALL NOTIFY THE MUNICIPALITY DELETED FROM THE LIST, AND INSURANCE

1 COMPANIES THAT PROVIDE ENVIRONMENTAL CONTAMINATION INSURANCE IN
2 THIS STATE, OF THE EFFECTIVE DATE OF THE DELETION, WHICH SHALL BE
3 NOT LESS THAN 30 DAYS AFTER RECEIPT OF THE NOTICE BY THE
4 COMMISSIONER. A MUNICIPALITY DELETED FROM THE LIST SHALL CONTINUE
5 TO APPLY THIS SECTION TO ANY LOSS THAT OCCURRED BEFORE THE
6 EFFECTIVE DATE OF THE DELETION, NOTWITHSTANDING THE DELETION.

7 SEC. 20413. (1) THE WITHHOLDING REQUIREMENTS OF SECTION 20407
8 DO NOT APPLY IF ALL OF THE FOLLOWING OCCUR:

9 (A) WITHIN 15 DAYS AFTER AGREEMENT ON A FINAL SETTLEMENT
10 BETWEEN THE INSURED AND THE INSURER, THE INSURER RECEIVES FROM THE
11 INSURED OR IS SHOWN BY THE INSURED REASONABLE PROOF OF A CONTRACT
12 FOR THE PERFORMANCE OF RESPONSE ACTIVITIES AS DESCRIBED IN SECTION
13 20409(1) AND (2).

14 (B) THE INSURED CONSENTS TO THE PAYMENT OF MONEY DIRECTLY TO
15 THE CONTRACTOR PERFORMING THE RESPONSE ACTIVITY. MONEY RELEASED
16 UNDER THIS SUBDIVISION MAY BE FORWARDED ONLY TO A CONTRACTOR
17 PERFORMING THE RESPONSE ACTIVITY ON THE INSURED PROPERTY.

18 (2) UPON RECEIPT UNDER SUBSECTION (1) OF REASONABLE PROOF OF A
19 CONTRACT TO PERFORM RESPONSE ACTIVITY, THE INSURER SHALL GIVE
20 NOTICE TO THE MUNICIPALITY IN WHICH THE PROPERTY IS LOCATED THAT
21 THERE WILL NOT BE A WITHHOLDING UNDER THIS SECTION BECAUSE OF THE
22 CONTRACT.

23 SEC. 20415. IF AN INSURER WITHHOLDS PAYMENT UNDER AN
24 ENVIRONMENTAL CONTAMINATION INSURANCE POLICY IN GOOD FAITH BECAUSE
25 OF A SUSPECTED INTENTIONAL RELEASE, FRAUD, OR ANOTHER QUESTION
26 CONCERNING COVERAGE, THIS PART DOES NOT APPLY UNTIL THE ISSUE IS
27 RESOLVED AND A FINAL SETTLEMENT OR JUDGMENT IS ENTERED.

1 SEC. 20417. THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT
2 THIS PART. THE DEPARTMENT SHALL SUBMIT PROPOSED RULES FOR PUBLIC
3 HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
4 PA 306, MCL 24.201 TO 24.328, WITHIN 1 YEAR AFTER THE EFFECTIVE
5 DATE OF THIS PART.

6 SEC. 20419. (1) AN OWNER OF INDUSTRIAL PROPERTY WHO VIOLATES
7 THIS PART MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN
8 \$10,000.00. A VIOLATION OF THIS PART MAY BE PROSECUTED BY THE
9 PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE VIOLATION OCCURRED
10 OR BY THE ATTORNEY GENERAL.

11 (2) IF AN INSURER VIOLATES THIS PART, THE COMMISSIONER, AFTER
12 PROVIDING THE INSURER NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY
13 TEMPORARILY REVOKE THE INSURER'S AUTHORITY TO TRANSACT BUSINESS IN
14 THIS STATE.