

Enforcement Provisions

Relevant Discussion Group Recommendations¹

- #80. *The part 201 program should retain the causation-based liability standard. The MDEQ requires additional enforcement authority as set forth in following recommendations.*
- #82. *Part 201 (Section 20129(3)) contribution language should be clarified. Suggested language is as follows: "A person who incurs response activity costs may seek contribution from any person who is or may be liable under section 20126".*
- #83. *The statute of limitations must be revised under Part 201. Revisions should consider the use of tolling agreements to preserve the state's claims when a private party initiates a cleanup.*
- #85. *Create authority for the MDEQ to levy administrative penalties without involvement of the Attorney General, similar to the penalties available under Part 213.*
- #86. *Expand the MDEQ's information request authority under Section 17 to include access to corporate information documents, ownership, or business structure records where relevant to determining the claims of liable parties.*
- #88. *Define non-performance, especially in terms of "diligent pursuit" and "adequate characterization" (see Appendix M, for discussion on time frames and deliverables).*
- #94. *Include clear remediation benchmarks in requirements for reporting and disclosure to induce self-implementation compliance.*
- #96. *Land use or activity restrictions must be funded to be fully protective. There must be financial assurance at the time of creating an institutional control (i.e., ordinance) that the control will be monitored over its life and continue to be protective of the public health. Likewise, engineering controls must also be maintained and monitored to ensure protectiveness. Requiring some level of on-going financial assurance for land use restriction maintenance at the time the measure is approved or implemented is also warranted. The group did not reach consensus on who should bear the long-term costs of land use restrictions.*
- #97. *The Liability/Compliance Supgroup endorses the Uniform Environmental Covenants Act (UECA), currently before the Michigan legislature, as a tool to improve public health protection at sites with land and resource use restrictions.*

¹ The Discussion Group recommendations, facilitated by Public Sector Consultants, are contained in a report entitled Michigan's Part 201 Environmental Remediation Program Final Report and Recommendations. Please see http://www.michigan.gov/deq/0,1607,7-135-3311_4109_9846-154288--,00.html for information regarding the Part 201 Discussion Group.