

LIABILITY

Relevant Discussion Group Recommendations¹

- #79. *Provide relief from the technical applications of the definitions of owner, operator to achieve a result whereby condominium associations and homeowner associations, not individual owners, are responsible for the common elements. This relief could be accomplished through exemptions from the current definitions or a new section which addresses these issues independently (similar to the secured lender exemption provisions).*
- #80. *The part 201 program should retain the causation-based liability standard. The MDEQ requires additional enforcement authority as set forth in following recommendations.*
- #81. *Retain the “joint and several” liability standard under Part 201 as it is currently defined.*
- #82. *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.”*
- #84. *Develop incentives to encourage source removal that do not create unintended consequences. For example, some form of liability cap or other finality could be provided to a party that was liable for only a portion of the cleanup but elected to complete source removal for entire site.*
- #87. *Develop a definition of “bona-fide prospective purchaser” that assures new owners/operators seeking liability protection under Part 201 are unaffiliated with liable, previous owners/operators. Use language consistent with the bona fide prospective purchaser definition under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).*
- #88. *Define nonperformance, especially in terms of “diligent pursuit” and “adequate characterization” (see Appendix M).*
- #89. *Consider the enforcement benefits of adopting a rebuttable presumption of liability against historic owners/operators at legacy sites where it can be shown that the contaminants or processes used were the same as those that contributed to the contamination found at the site.*
- #98. *Historic, liable owners/operators that have conducted cleanup meeting generic criteria for the zoned land use at the time of the cleanup should be released.*
- #99. *The release of the owner/operator should have as few conditions as possible and reopeners must be clearly defined.*
- #101 *Develop incentives for source removal and control to benefit both the public, by protection of the public health, and regulated parties, by encouraging activities that would relieve them of their Part 201 obligations.*

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.