

## **Program Redesign: Summary of Major Provisions November, 2009**

This summary provides a general discussion of proposed provisions and major changes for amending parts 201 and 213 of NREPA, including comments received and resolution/justification of the issues raised. This summary is intended to be general in nature. For information of specific details, please refer to the proposed statutory language.

### **Purpose and Intent:**

- Combine Parts 201 and 213 into a single program for efficiency and to balance with resource allocations.
- Continue to provide liability protection for new owners and operators of contaminated property through a modified BEA/Inquiry/Facility Notification process. An earlier proposal to link liability protection with compliance with due care obligations has been eliminated.
- Create a self-implementing program to streamline private party response activities.
- Focus response activities on the greatest uncontrolled risks first and provide clarity.
- Limit MDEQ required approvals.
- Establish an audit program for specific submittals.
- Allow multiple compliance endpoints for response activities to control risks rather than require complete closure of a site. Provide a mechanism for limited liability relief when risks are controlled through the land use and/or the presence of a municipal water supply.
- Maintain the current release reporting requirements for Part 211 regulated tanks, and expand and clarify the reporting requirements for other releases.
- Provide a “grandfather” provision so existing approved response actions would not be reopened unless new information establishes a significant risk is present.
- Clarify MDEQ enforcement and appeal options.
- Clarify the periods and processes by which claims can be brought by both liable and non liable persons.
- Provide incentives for timely action and compliance by providing for statutory premiums that can be sought by those taking the action (so long as they have standing).

### **Specific Topics discussed in this summary include:**

Definitions  
Release Reporting, Suspected and Potential Releases  
Immediate Response Activities  
Removal of NAPL (non-aqueous phase liquid)  
48 Hour Notice of On-Site Response Activities  
Cleanup Criteria  
BEA, Inquiry, Liability Protection  
Facility Determination  
Due Care Obligations  
Liability for Person Responsible for an Activity that Causes a Release, Arrangers or Transporters  
Remedial Obligations  
Limited Liability Relief  
MDEQ Demand for Response Action  
Self-Implementation and MDEQ Required Actions  
MDEQ Review, Approval, Public Notice, Audit, and Appeals  
Disclosure  
Access  
Information Requests, Document Retention  
Enforcement Provisions  
MDEQ Authorities (e.g. promulgation of rules, create and require use of forms, etc.)

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## **Definitions:**

- Clarify existing definitions for: owner; operator; co-owners of condominiums; containers; exacerbation; facility; institutional controls; release; significant hazardous substance use; threatened release; response activity; etc.
- Add new definitions for: BEA/Inquiry; activity and use limitations; response activity categories; suspected and potential releases; uncontrolled and controlled risks; source; source removal; source control; NAPL; quarterly monitoring; affiliate and insider; control; contractual relationship; claim; quarterly monitoring; residential owner-occupant; etc.

## **Release Reporting, Suspected and Potential Releases:**

- Clarify the reporting requirements for releases. Make reportable quantities for current Part 201 releases consistent with the existing Michigan Part 5 Rules. Maintain current release reporting requirements under Part 211 for regulated UST systems. Establish a format for reporting the releases not regulated pursuant to Part 211.
- Establish response activities required for new and discovered releases. A release addressed within 30 days would not require a facility notification.
- Establish a mechanism to report and address suspected and potential release conditions. In response to comments provisions were included so that reporting of suspected and potential releases is only required by a person in control of the hazardous substance that was released, or by the owner or operator of property where the suspected release was discovered.
- Concerns regarding the Environmental Audit Privilege were evaluated. The proposed reporting requirements are consistent with the Environmental Audit Privilege provisions. If releases are discovered during an audit they may be reported at that time without penalty. Further response activities and information submittals under this proposal are consistent the Environmental Audit Privilege provisions.

## **Immediate Response Activities:**

- Clarify the activities necessary to address the greatest risks (fire and explosive conditions, potentially acute exposures, impact to a drinking water supply, NAPL removal, etc.) within an expedited time-frame. Focus is on eliminating the condition or acute exposure, not on full remediation.
- Examples include evacuating an occupied building if flammable or explosive conditions are detected; providing bottled water if a domestic well is impacted above the residential criteria; preventing access to or mitigating areas with acute (not chronic) inhalation exposures.

## **NAPL Removal:**

Clarify the obligation and methods for longer-term NAPL removal and reporting requirements.

## **48 Hour Notice to MDEQ of On-Site Response Activities:**

Currently required under Part 213, this extends the notification to response activities conducted on the types of facilities/releases currently regulated under Part 201

## **Cleanup Criteria:**

- Reduce the number of cleanup categories to residential, restricted residential, and restricted non-residential.
- Reduce the number of exposure pathways by eliminating the groundwater dermal contact; combining the direct contact and ambient air exposure pathways into a single soil criterion protective of ingestion, dermal contact, particulate, and inhalation; and combining the current soil and groundwater indoor air inhalation pathways into a single vapor intrusion evaluation process with criteria for soil gas and indoor air.

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- Establish acute inhalation screening levels for 34 compounds for immediate response purposes.
- Based on the best available science and in line with how EPA addresses the vapor intrusion pathway, the evaluation of exposure risks will utilize screening levels for groundwater and criteria for soil gas and indoor air. Soil screening levels have not been established at this time, although the MDEQ recognizes the importance of screening levels for evaluation purposes. Currently there is not a scientifically valid method that will consistently predict the vapor intrusion risks for indoor air from contaminated soil. The MDEQ is still considering the development and usefulness of soil screening levels, and intends to propose language that will allow adjustment to the evaluation of this pathway as the science and technology evolves.
- Remove the criteria from the rules and establish a periodic (3 year) re-evaluation of the criteria. This will allow the flexibility to reflect changes in the science, and still provide predictability for the implementation of response activities. This will also allow the criteria to better reflect changes in the Rule 57 standards for water quality. Public input would be required as part of the evaluation process. Revisions to criteria would become effective on a predictable pre-known schedule. New criteria would not apply to previously approved response activities. If new scientific information indicated that closures based on previous criteria could result in a significant health risk, this proposal includes provisions for the MDEQ to reopen those closures.
- Site-specific criteria can still be proposed by the party implementing response activities.
- The establishment of mixing zone criteria for waters of the state would remain consistent with Part 31 requirements, as it is currently.
- As established in the current Part 201 rules, this proposal will continue to allow compliance with MIOSHA regulations for evaluation of vapor intrusion in specific circumstances when specific hazardous substance are regulated by MIOSHA, limits apply, and protection for the non-worker population is provided.

### **BEA, Inquiry, Liability Protection:**

- Continue Michigan's liability protection provisions for new owners and operators: all appropriate inquiry and facility determination must be completed prior to purchase, foreclosure, or becoming the operator; and the facility notification must be submitted to the MDEQ within 30 days after purchase, foreclosure, or becoming the operator. Considerable concern has been expressed over an earlier MDEQ proposal to tie liability protection to due care compliance. In response to this concern, this redesign proposal does not tie liability protection to due care compliance. Considerable concern has also been expressed over the elimination of the BEA process; however, this proposal maintains the liability protection mechanism while streamlining the process of obtaining that protection. Inquiry and facility determination are the first two steps of the existing BEA process. The current proposal modifies the existing BEA process by eliminating only the third step which requires the BEA provide a means to differentiate a new release from the existing contamination. Protection from having strict status liability is still provided under this proposal without the requirement to predetermine a divisibility of harm defense. This third step can be taken by new owners or operators as part of their business process, but MDEQ will not be involved in this business decision. Considerable concern has been expressed over the impact to brownfield redevelopment, however, because the liability protection mechanism is being retained, will be easier to obtain, and does not require MDEQ review or approval, the benefit to redevelopment will be greater than under the current BEA process. As is currently done, a letter acknowledging receipt of the submittal will be provided by the MDEQ. As under the existing statute, this process will provide protection from strict liability solely due to a person's status as the owner or operator of a contaminated property. Liability can still exist

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under the current statute and this redesign proposal through causation, being an arranger or transporter, when a divisibility of harm defense is not accomplished, etc.

- Clarify the existing BEA requirement for conducting inquiry by requiring inquiry to follow the federal All Appropriate Inquiry process. This also provides consistency with the federal CERCLA Bona Fide Prospective Purchaser process.
- Modify time-frames by requiring the inquiry and facility determination steps to be completed prior to purchase, foreclosure, or becoming the operator. The current BEA process allows for conducting the BEA prior to or within 45 days after purchase, foreclosure, or becoming the operator. The MDEQ believes the information gained in this process is needed prior to purchase, foreclosure, or becoming the operator, and can then be factored into decisions regarding the given property.
- Facility notification is required within 30 days after purchase, foreclosure, or becoming the operator. Submittal of the Facility Notification and the AAI report to the MDEQ is required to obtain liability protection, replacing the current submittal of the BEA report. Approval by the MDEQ is not required. The proposed redesign does not include petitioning the MDEQ for review of the submittal due to resource limitations.
- Requires environmental samples for analysis be collected from the property to determine whether it is or is not a facility when the property has historically had hazardous substances use. Concerns have been raised regarding this requirement when de minimus quantities of hazardous substances were historically used. The proposal does include the use of professional judgment in determining the need for collecting samples if the historical property use information leads one to conclude that hazardous substance use was insignificant, and the ability to rely on existing environmental data if it appropriately represents the current facility status. Justification of those circumstances must be provided in the submittal.
- Exemptions are consistent with the existing BEA exemptions including: residential owner-occupied property; property involuntarily acquired by local units of governments (LUGs); easement holders; severed mineral rights holder; the only source of contamination is migrating onto the property (if sufficient inquiry documents that circumstance), etc. Provisions for LUGs voluntarily acquiring property solely for the purpose of fostering redevelopment are being developed. The current exemption for lessees of commercial property is eliminated. If the lessee does not have operator status, this exemption is not necessary.
- Considerable concern was raised over the previous proposal's requirement for existing non-residential property owners to conduct inquiry and to determine if their property is a facility on a schedule phased in over 5-8 years from the effective date of the legislation. The schedule was based on property uses that are historically known to have involved the use of hazardous substances and are likely to be contaminated from such use. This provision was proposed to accomplish the statutory objective to protect the public health, safety, and welfare. Consideration is being given to incorporate the need for existing property owners to conduct inquiry when they become aware of suspected and or potential releases, rather than requiring inquiry solely based on property use, absent evidence of a release, suspected release or the potential for a release.

### **Facility Determination and Facility Notification:**

- Establish a consistent process for making a facility determination and providing notification to the MDEQ. Facility determination and notification is used in conjunction with release reporting, inquiry, and remedial obligations. MDEQ also has the authority to make a facility determination consistent with these requirements. Concerns were raised over the environmental sampling requirement under facility determination. The proposal includes the use of professional judgment in determining the need for sampling. Justification must be provided in the submittal.

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### Due Care Obligations:

- Clarify and modify the existing due care obligations to prevent exacerbation and unacceptable exposures, and to take reasonable precautions in regards to the existing contamination on a property. This proposal does not tie due care compliance to liability protection. The failure to maintain compliance with due care or cited violations of due care would not result in liability.
- Exemptions for conducting due care are maintained and further clarified by specifying the limited due care obligations for:
  - property involuntarily acquired by local units of government (LUGs);
  - property acquired by land banks and other LUG entities for brownfield redevelopment purposes;
  - property acquired by LUG via transfer from the state or a non-liable LUG, seizure, forfeiture, etc.;
  - property acquired by LUG before June 5, 1995;
  - Exemptions for LUGs do not apply for property acquired after June 5, 1995 if the property is subsequently developed for their own operational use (for example a school, DPW, etc).
  - property where the contamination is migrating onto the property from an off-site source;
  - owner of severed sub-surface mineral rights who is not operating on the surface;
  - surface owner where the only source of contamination is from the surface operations of the severed sub-surface mineral rights holder;
  - residential tenants; etc.These limited due care obligations include:
  - complying with existing deed restrictions and use or activity limitations;
  - providing access and cooperation to a party conducting response activities on the property with appropriate compensation if warranted;
  - not impeding the response activities implemented on the property;
  - not exacerbating the existing contamination; and
  - disclosure of environmental information when an interest in the property is transferred.
- Establish new obligations for non-exempt property owners or operators including: removal of abandoned hazardous substance from above ground containers and accessible below ground containers; submittal of documentation that due care was evaluated and, if needed, response activities were implemented or mitigation response activities were implemented in lieu of characterization; submittal of an annual certification that response activities remain protective and effective and that identifies any modifications that were necessary and made since the last submittal. Residential owner-occupants would not be required to submit documentation or remove hazardous substances from containers.
- Establish time-frames for specific steps in the due care evaluation process. Documentation must be submitted to the MDEQ within 240 days of the facility notification. The comments the MDEQ has received stated the time-frame was both too short and too long. Submittal of documentation will provide a basis to measure progress and compliance. Documentation will allow the MDEQ to prioritize sites and actions to be taken based on the greatest risks.
- Owners and operators have a due care obligation to provide reasonable access to the party conducting response activities.
- The previous MDEQ proposal included “cure times” to correct violations because due care compliance was tied to liability. This proposal does not tie due care compliance to liability. However, performance of due care is still critical to managing risks. While not included in statutory language the MDEQ enforcement process would allow opportunities to cure deficiencies for inadequate due care response activities.

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### **Liability for Person Responsible for an Activity that Causes a Release, Arrangers, Transporters:**

- Continue Michigan's unique causational liability standard: a person responsible for an activity causing a release is liable for response activities at the facility.
- Simplify the provisions that address liability for a more consistent interpretation.
- Address the area of causation that creates one of the biggest hurdles where multiple owners and operators have been involved in the same or similar business such that individual liability is clouded. The proposal creates a mechanism to establish liability and defenses to liability for facilities where several parties have historically used one or more of the same hazardous substances and where improper management of one or more of the same hazardous substances is reasonably anticipated to cause or has caused a release.
- Clarify the recycling exemption (for example, it doesn't exempt from liability a person who accepts recycled material and then is responsible for an activity causing a release) and maintain the liability provisions for arrangers and transporters of hazardous substances.
- Maintain the existing provisions for joint and several liability.
- Maintain and clarify the divisibility of harm and apportionment of liability provisions.
- Maintain and clarify the exemptions for liability for Part 115 (licensed landfills) and Part 111 (hazardous waste treatment, storage or disposal facilities) until such time as they are no longer regulated under those parts.
- Maintain conditional liability protection provisions for response activity contractors, persons rendering care or advice, persons holding a security interest or acting as a fiduciary.

### **Remedial Obligations:**

This section proposes considerable revisions and adds clarification with respect to the response activities required of a liable party or any other party choosing to conduct response activities. The intent of the changes as proposed is to establish a statute that requires the most critical environmental risks be addressed first, such as remove sources, it provides for multiple compliance points, and it fosters self-implementation with limited MDEQ oversight, as opposed to lengthy MDEQ review and approval.

- Specific obligations and time-frames are established for facilities with uncontrolled risks and compliance points are created for facilities with controlled risks.
- Uncontrolled risks generally include (see definitions for specific details):
  - Category 1: the existence of acute exposures and or the presence of sources within 25' of the surface that create the potential for acute exposures to exist; the existence of conditions requiring immediate response; contaminated drinking water supply; presence of NAPL, etc.
  - Category 2: chronic exposures and sources that cause chronic exposures may still exist, but the existence of acute exposures and sources less than 25' below the surface that cause acute exposures have been addressed.
  - Obligations for facilities with uncontrolled risks generally include (see proposed statutory language for details): conducting immediate response activities if needed; NAPL removal; source removal (or control if approved by the MDEQ and removal is not feasible) of sources that result in acute exposures and/or exceed soil saturation or water solubility limits; characterization of the nature and extent of remaining contamination; development of a facility conceptual model to evaluate environmental and property conditions and exposure pathways; determine appropriate response actions to reach a controlled risk category; disclose environmental conditions and any activity and use limitations to affected parties. Submittals include current conditions report, monitoring data; category determination, and annual certification of status.
- Controlled risks generally include (see definitions for specific details):
  - Category 3: response activities have been conducted, acute sources and/or sources that exceed soil saturation or water solubility limits are removed, and remaining

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- exposures are addressed solely through the existing land use and/or the presence of a municipal water supply.
- **Category 4:** response activities have been conducted, acute sources and/or sources that exceed soil saturation or water solubility limits are controlled or removed, risks are controlled by engineering controls, long term remediation is in place and on-going, etc.
  - Obligations for controlled facilities generally include (see proposed statutory language for details): monitoring, inspection, and operation of the response activities (including activity and use limitations) to ensure the continued effectiveness of the response activities; implementation of a contingency plan if response activities are not achieving the designated goal or performing as designed; re-evaluation of category and response activities upon receipt of new environmental data or information or new release; disclosure of environmental conditions and any activity and use limitations to affected parties. Submittals include: monitoring reports; annual certification that category status is being maintained.
  - **Category (5):** MDEQ approval of response activities is required. Category 5 requires a party to enter into a legal agreement with the MDEQ to implement approved response activities and usually requires a financial assurance mechanism, environmental covenants, permanent markers, etc. A person can petition the MDEQ to be a category 5 (such as when a party wants MDEQ approval of a remediation plan). An existing RAP or FAR may be used to classify a facility as a category 5. A facility with an existing administrative order, consent judgment, judicial consent order, etc. would likely default to this category. MDEQ may demand response activities in accordance with category 5 in circumstances where the MDEQ has determined that long term controls are necessary to ensure risks remain reliably controlled.
- Establish time-frames for conducting response activities and achieving compliance with the statute. Time-frames are established to address the immediate risks (45 days) and uncontrolled risks (365-730 days for category 1 and 2). There are provisions to address large uncontrolled waste disposal areas (e.g., landfills) under extended time-frames. Extensions to the established time-frames can be requested by a party implementing the response activities; MDEQ must approve or deny the extension request.
  - The proposed process encourages for self implementation, with submittal to MDEQ of documentation of the response activities taken within the time-frames established for each uncontrolled category and when there is a change in the category status of the facility. Once a controlled facility status has been obtained, an annual certification must be submitted indicating that response activities to address or control the risks remain effective and appropriate, or describing what modifications were made during that year. This proposal does not include submittal of work plans for approval. However, specific response activities will require prior MDEQ approval or authorization, and specific submittals will be subject to MDEQ audit, as described in the section "MDEQ audit, review, and approval".
  - Environmental covenants are not required to remain in controlled categories 3 and 4, but may be used voluntarily without MDEQ signature and approval. Category 5 facilities will require environmental covenants.
  - Environmental conditions must be disclosed upon transfer of an interest in the property.

### **Limited Liability Relief:**

- Establish a provision to allow a person to petition the MDEQ for limited liability relief for facilities where response activities have been conducted and all remaining risks are controlled solely through land use and/or the presence of municipal water (category 3). An environmental risk advisory must be filed on the deed of all affected properties. An environmental covenant (without MDEQ approval or signature) may be used but is not required.

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### **MDEQ Demand for Response Activities:**

Establish MDEQ authority to demand response activities, including immediate responses, remedial obligations, due care activities, and release reporting and response.

### **Self-implementation and MDEQ Required Actions**

- Program is designed to be self-implementing with MDEQ review and/or audit of submitted documentation, and MDEQ approval for specific listed actions.
- MDEQ approval and authorization remains required for mixing zones, groundwater plume waivers, in-situ injections, environmental covenants when a component of a Category 5, water quality variances, site-specific criteria. MDEQ approval and authorization is also required for petitions seeking limited liability relief, requests for source control rather than source removal, requests to extended remedial obligation time-frames, reliance on part 111 or 115 instead of this part, exceptions to the obligations for uncontrolled or controlled risks, exceptions to supplying alternative water pursuant to immediate response, changing or discontinuing a monitoring program (see proposed statutory language for details).

### **MDEQ Review, Approval, Public Notice, Audit, and Appeals:**

- MDEQ may audit submittals indicating the property no longer meets the definition of a facility, submittals indicating that a facility has reached a new category status, or submittals indicating a change in category status. Audits are intended to ensure the facility conditions meet the category standards. MDEQ may review other required documentation or submittals as part of the audit.
- MDEQ will maintain the ability to conduct internal reviews and audits. As is the current practice, meetings with MDEQ staff and management to discuss decisions can be requested.
- MDEQ is proposing a statutory departmental administrative review process (at the director level) for certain actions taken by the department. This concept follows the provisions of Executive Order 2009-45 and allows for the director to assign certain scientific matters to an outside board. This proposal has been added to the section entitled State Administrative Actions-Written Demands, etc.
- Before MDEQ approval and prior to submittal of request for MDEQ approval, public comments must be obtained for: response activities that rely on a mixing zone, a variance from a water quality standard, an ordinance, or a groundwater waiver; MDEQ approval of a remediation plan (MDEQ demand, or as required by order); limited liability relief; and petition for MDEQ approval of category 5 status.

### **Disclosure:**

- Maintain and clarify disclosure requirements for: disclosure of environmental conditions when an interest in the property is transferred; disclosure of migration to off-site affected parties.
- Establish new disclosure requirements for: notice of environmental contamination recorded on the deed for a facility prior to property transfer; disclosure of dissolution of a legal entity.
- Disclosure requirements exist under BEA/Inquiry, due care, remedial obligations.

### **Environmental Covenants:**

In the limited situations where restrictions or activity and use limitations are required to be placed on a deed, or where a party voluntarily placed activity and use limitations on the deed, this proposal will use requirements similar to Uniform Environmental Covenants Act provisions.

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### **Access:**

- Maintain MDEQ right to enter without the requirement of reasonable basis to believe there has been a release or threat of release.
- Clarify that MDEQ entry, in accordance with the statute, is not trespass and that the MDEQ may petition for reimbursement of its enforcement costs when required to obtain court ordered access.
- Establish requirement for liable parties to secure and maintain right to access property for purposes of implementing response activities prior to sale or transfer of property.
- Expand provision for private parties to obtain court ordered access to perform response activities as well as liable parties and remove requirement that the response activities be approved by the MDEQ.
- Provide guidance concerning compensation for access. The proposed statute does not prevent a party from seeking reasonable compensation for providing access.

### **Information Requests, Document Retention:**

- Maintain and clarify MDEQ right to obtain information from private parties to determine the need for or selecting and taking response activities and for determining a person's liability.
- Establish requirement for owners and operators of a facility as well as liable parties and their affiliates to retain documents concerning environmental conditions of a property/facility, response activities conducted until the 10 years anniversary of the completion of operation, maintenance and monitoring or achieving unrestricted cleanup criteria. Liable parties and affiliates are also required to retain certain business records.

### **Enforcement Provisions:**

- Reorganize, clarify, and consolidate existing enforcement provisions from both Part 201 and Part 213 into sections for civil, administrative, and criminal provisions.
  - Establish response activity steps and timeframes so that compliance is well defined and limits the need for state agency involvement in achieving compliance.
  - Maintain both the judicial appeals processes that currently exist under Part 213 and Part 201, and allow more timely judicial appeals than currently allowed for the non leaking underground storage tank systems facilities.
- Attempt to bring together the causation standard and the temporal nature of business entities so that response activity obligations are better coordinated with business entity law (e.g. the Uniform Fraudulent Transfer Act and the Business Corporation and Limited Liability Acts).
- Clarify due process and statute of limitations for all claims including those brought by liable and non-liable persons (e.g. notice provisions, and due process related to the pre-enforcement bar provisions).
- Stimulate expedited response activity and establish incentives for the regulated community and other persons who have standing to bring actions to compel compliance. One incentive is the establishment of premiums that can be sought by non state entities recovering response activity costs. The percentage of the cost subject to premiums would be based on whether the party seeking cost recovery is liable or non-liable, and on whether the response activity is associated with source removal or achievement of a controlled risk category.
- Allow for timely enforcement by establishing wider application of administrative penalties for more limited violations and attempt to modify the way claims can be brought and avoid claim splitting issues.
- Allow administrative penalties, including fixed and accruing fines.
- Maintain and clarify MDEQ authority to place environmental liens on property that is a facility for which response activities are required and when the liable party owns the property. Maintain the existing lien provisions that allow for increase market value liens.

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- Clarify and refine administrative settlement provisions to afford the department settlement authorities for response activities and clarify the scope of liability protection afforded under that part. In extraordinary circumstances or where a covenant not to sue is appropriate to limit a person's statutory liability the Department of Attorney General would still be involved.
- Establish and clarify statute of limitation and limitation (SOL) periods. SOL for cost recovery: within 6 years after the response activity cost is incurred. SOL for natural resource damages: within 6 years of completion of the response activity. SOL for contribution actions: within 6 years from judgment, administrative order, or settlement. SOL for civil violations: within 6 years. There is no SOL for injunctive relief.
- Maintain, clarify, and expand the red tag authority for underground and above ground storage tank systems under specific circumstances and for specific reasons. The red tag authority has been an effective enforcement tool under Part 213 for obtaining quick compliance with specific requirements that are not easily nor quickly obtained using other enforcement processes. Limitations on the MDEQ's use of red tagging will include: only for UST and AST systems that have a spatial relationship with the release in question; only for AST and UST owned or operated by the person liable for the release. Issues regarding substantive and procedural due process are being discussed with the attorney general.
- Maintain and clarify provisions for contribution and contribution protection.

### **MDEQ Authorities (e.g. promulgate rules, create and require use of forms, etc):**

- Establish forms for reporting to foster ease and uniformity in reporting.
- MDEQ would like to incorporate a significant electronic reporting component to this statute, providing an interactive database can be funded and developed.
- Maintain a list of facilities in a database that is populated by the facility notifications and other submittals required by the proposed statute. The list would include at a minimum the address, the date of the last update, and the category if known. The list would be available electronically on the MDEQ web page. It would not be published in paper copy. The MDEQ believes that such a list, available for viewing via the web would help facilitate property transactions, aid in conducting all appropriate inquiries, disclosure to the public and the legislature, etc.

### **Scoring, List of Sites of Environmental Contamination:**

Eliminate the current numerical scoring process. This process was originally designed to prioritize state funded actions, however, MDEQ priorities for state funded actions are now based on a combination of risks, redevelopment needs, liable party status, available resources, etc., that are not factored into the current scoring process.