Underground Storage Tank Qualified Consultant and Certified Professional Program

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Environmental Quality
Storage Tank Division
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- **History**
- **Current Program**
- **Impact**
- **Effectiveness**

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Executive Summary

The Qualified Underground Storage Tank Consultant and Certified Underground Storage Tank Professional (QC/CP) Program is unique to any other cleanup program in the state, in that it provides a mechanism to assure that consultants meet minimum requirements for certification. It also provides for revocation of certification for fraud or other actions that may jeopardize public health, safety, or the environment.

On October 26, 1993, the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Act, 1988 PA 518, was amended to include specific requirements for certification of contractors as well as establishing the requirement for certified professionals and approval criteria. Unlike the previous MUSTFA contractor program, which provided for reimbursement only for work conducted by an approved contractor, the consultant certification program requires an owner to hire a QC to conduct all of the corrective actions required at leaking underground storage tank (LUST) sites. The program provides for more responsibility and accountability from the QC/CP. In making the QC/CP more accountable, state project managers are relieved of excessive backlogs of report reviews and as a result are able to concentrate their efforts on those sites which pose the greatest risk, and are able to conduct more field visits.

There was an immediate and drastic impact to the program simply based on the fact that 51 percent of the QC/CP applicants did not meet the minimum experience requirements and are, therefore, no longer conducting corrective actions at LUST sites. It should be noted, however, that owners must use the same caution and discretion in hiring a QC as they would in hiring any other licensed professional.

Through enforcement of the statute, rules, and effective use of the revocation process, the Department of Environmental Quality (DEQ) will ensure that any QC/CP certified by the state demonstrates the expertise and capability to conduct corrective actions required at LUST sites, thereby protecting owners and operators who are required by law to hire a QC approved by the state, and also protecting the health, safety and environment of the state. For up-to-date information on the QC/CP Program, you can access the DEQ Storage Tank Division web site at http://www.deq.state.mi.us/std.

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A History of Certification Requirements for Consultants and Professionals

Michigan Underground Storage Tank Financial Assurance (MUSTFA) Act, 1988 PA 518

The objective of the MUSTFA Act was to assist underground storage tank (UST) owners and operators in meeting the financial responsibility requirements provided for in Subtitle I of Title II of the Solid Waste Disposal Act, Public Law 89-272, 42 U.S.C. 6991 to 6991 i. The MUSTFA Act provided reimbursement to owners or operators for conducting corrective actions at LUST facilities.

In an attempt to control charges to the MUSTFA Fund and to ensure that corrective action work was conducted in accordance with statutory requirements, the MUSTFA Act required that all invoices submitted to the state for reimbursement be signed by approved contractors. However, the MUSTFA Act did not stipulate any requirements for contractor approval and without statutory requirements or rules governing the program, the DEQ was unable to effectively establish or enforce minimum requirements for contractor approval. The first list of approved MUSTFA contractors was published on May 10, 1990, with the requirements for inclusion on the list essentially being the submittal of a notarized questionnaire by the consultant stating that they had the experience and capability to conduct corrective actions at LUST sites. The DEQ staff were required to review and approve all work plans submitted by contractors, whether or not they were on the approved contractor list.

1993 Amendments to the MUSTFA Act, 1988 PA 518 and the 1993 and 1995 Amendments to the Leaking Underground Storage Tank (LUST) Act, 1988 PA 478

The MUSTFA Act was amended on October 26, 1993, to include specific requirements for certification of contractors as well as establishing the requirement for certified professionals and their criteria for approval. Unlike the MUSTFA contractor program, the consultant certification program requires that an owner hire a QC to conduct all of the corrective actions at a site where a release from a UST has occurred.

The importance of the 1993 MUSTFA amendment is linked to coincide with amendments to the LUST Act, 1988 PA 478. Prior to the date of the LUST amendments, the DEQ staff were required to review and approve all work plans submitted by contractors whether they were on the approved contractor list or not. Due to the limited number of DEQ staff and the high number of LUST sites, investigation and cleanup of LUST facilities was significantly delayed as a result of this preapproval requirement. The 1993 amendments allow an approved QC to conduct corrective action activities at facilities without prior departmental approval, and authorize the DEQ to selectively audit these activities. The LUST Act was amended again in 1995 to reduce the number of required report submittals.

ACT 518 1993 AMENDMENTS QC/CP REQUIREMENTS

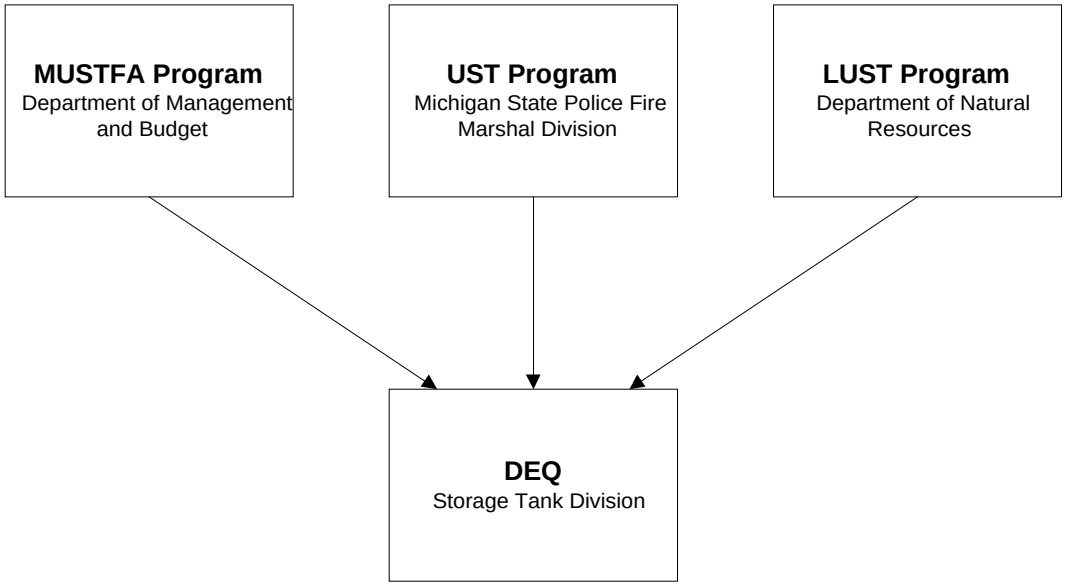
Because QCs are provided with greater authority in conducting corrective actions, the criteria for approval are much more comprehensive than were the requirements for MUSTFA approved contractors.

- Documentation of experience in all phases of UST work.
- Documentation of an approved CP actively on staff.
- Documentation of liability insurances in the required amounts.
- Documentation of OSHA compliance.
- Minimum years of experience required.
- Risk-Based Corrective Action (RBCA) training required.

On March 3, 1994, the three parts of the UST program which had previously been divided between the Department of Natural Resources (DNR), the Michigan State Police Fire Marshal (MSPFM) Division, and the Department of Management and

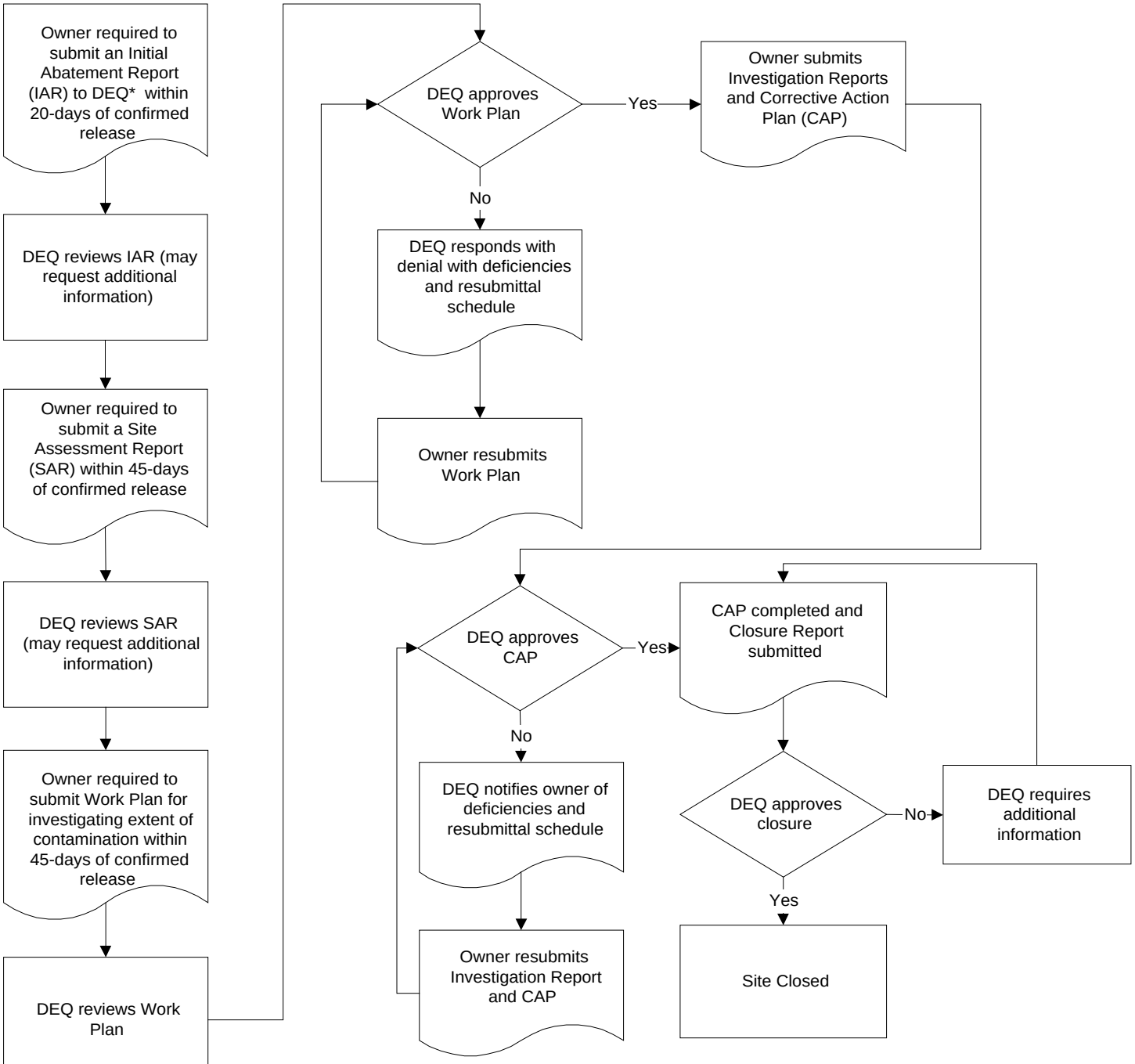
Budget (DMB), were combined pursuant to Executive Order No. 1994-7 and consolidated into the DNR Underground Storage Tank Division (USTD). This transfer included the responsibility for reviewing QC/CP applications and establishing the QC List. Effective October 1, 1995, Executive Order No. 1995-18 created the DEQ. In addition, Executive Order No. 1997-2 moved the Aboveground Storage Tank (AST) Program from the MSPFM Division to the DEQ and Executive Order No. 1998-2 changed the USTD name to the Storage Tank Division (STD) to better reflect the responsibilities of the division.

CONSOLIDATION OF AGENCY PROGRAMS



COMPARISON OF REQUIRED REPORT SUBMITTALS AND DEQ REVIEWS

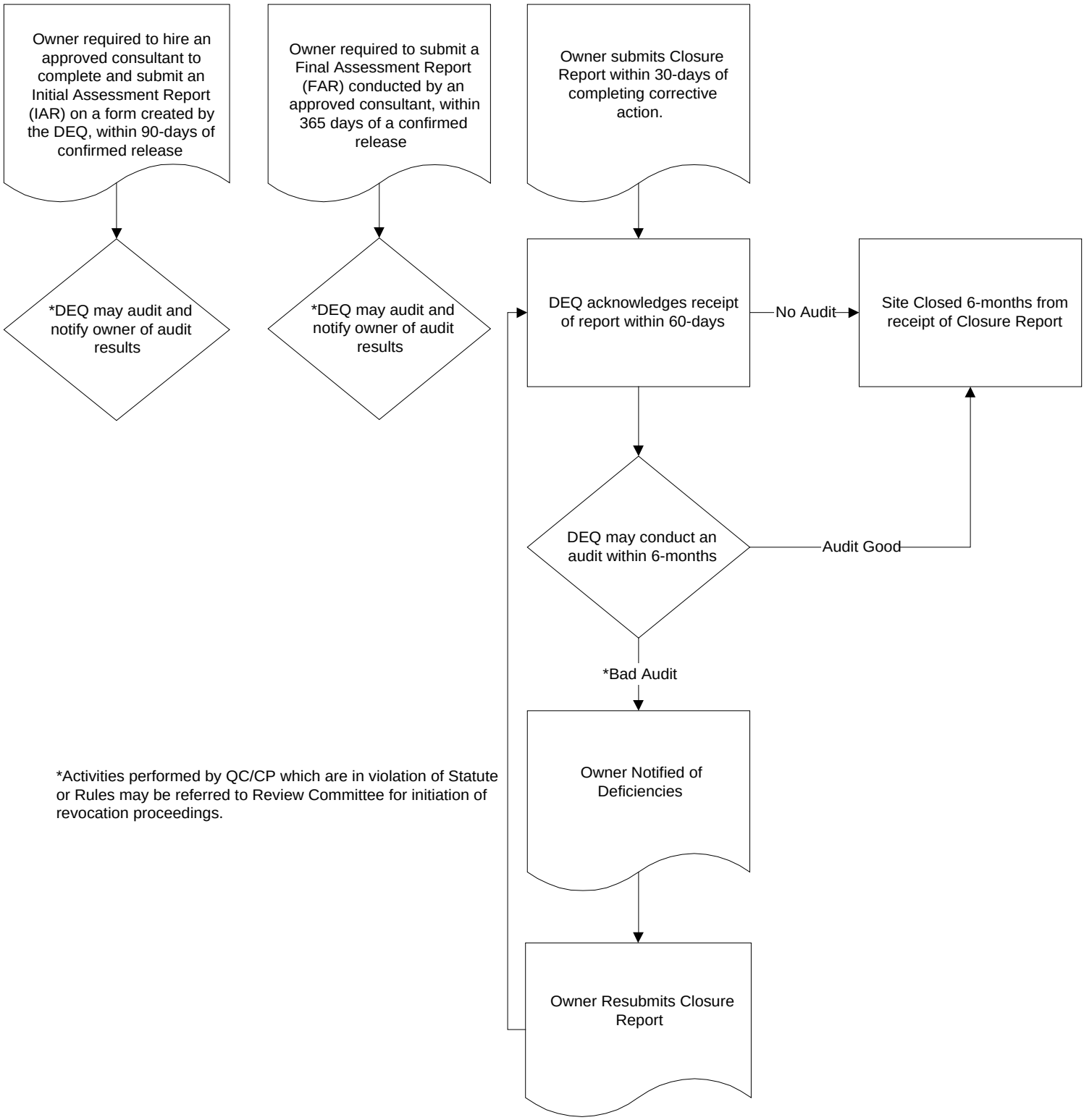
(pre 1993/1995 amendments)



*DNR prior to October 1, 1995

COMPARISON OF REQUIRED REPORT SUBMITTALS AND DEQ REVIEWS

(post 1993/1995 amendments)



*Activities performed by QC/CP which are in violation of Statute or Rules may be referred to Review Committee for initiation of revocation proceedings.

On September 6, 1994, the DEQ (formerly DNR) published the final list of Interim QCs based on notarized application submittals. Although review of QC/CP applications was initiated immediately upon transfer of the program to the DEQ, it was necessary to publish an interim list in order for tank owners and operators to meet the statutory requirements which stipulated that they hire an approved QC to conduct corrective action activities at LUST sites.

The DEQ reviewed approximately 1100 QC/CP applications for certification by early 1995, when the process was halted by a temporary restraining order prohibiting the DEQ from publishing the final QC list.

On September 18, 1995, Guidance No. USTD-1 was promulgated governing the review of QC/CP applications, which allowed the DEQ to again commence QC/CP application reviews. On March 5, 1997, the Permanent Qualified Underground Storage Tank Consultant List was published. This QC List included 163 approved QCs, as well as an addendum of 36 additional QCs whose applications had been denied by the Review Committee and were in the process of being reviewed by the Division Review Officer. On December 21, 1998, the Permanent QC List was published incorporating all approved QCs subsequent to completion of the Division Review process. The December 21, 1998 QC List consisted of a total of 189 approved QCs. A total of 334 QC applications and 745 CP applications had been submitted for approval (note: 341 CPs were approved as of December 21, 1998. The DEQ does not publish a list of CPs).

December 21, 1998 QC List

QC Applications Submitted	334
QC Applications Approved	189
Percentage Approved	57%
CP Applications Submitted	745
CP Applications Approved	341
Percentage Approved	46%

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3

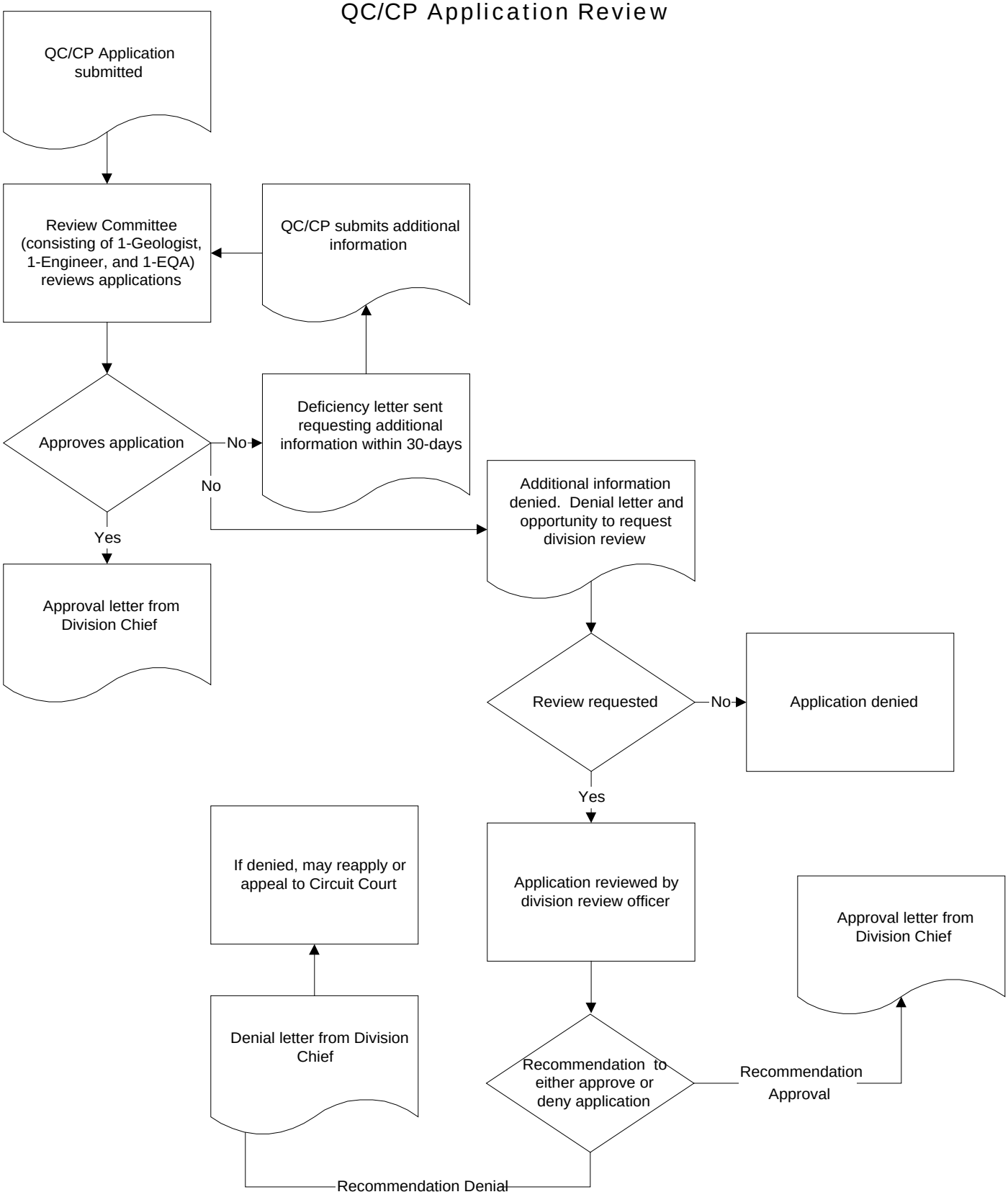
Current QC/CP Program

QC/CP Application Process

On September 1, 1999, the Michigan Qualified Underground Storage Tank Consultants and Certified Underground Storage Tank Professional Rules (QC/CP Rules) took effect. The rules were promulgated consistent with the provisions of the MUSTFA Act. The rules provide direction to applicants seeking certification as QCs and CPs, define specific terms, describe the procedure used by the DEQ to evaluate applicants, describes the qualification requirements, and establishes a detailed procedure for suspending or revoking a certification. A copy of the QC/CP Administrative Rules can be downloaded from the DEQ Storage Tank Division web site at http://www.deq.state.mi.us/std.

The QC/CP applicants may submit applications for approval any one time during a calendar year for review. The DEQ reviews applications using a staff committee comprised of one geologist, one engineer, and one environmental quality analyst. Each review committee member reviews each application submitted. Absent unanimous agreement for recommendation of certification by the review committee, an applicant is notified of all deficiencies in writing and provided an opportunity to submit additional information to correct the deficiencies noted. Upon final review of all application material submitted, the review committee makes a recommendation to the division chief regarding approval or denial of the application. An applicant who receives a notice of rejection may request a division review of the qualifications that were declared deficient by the review committee. Subsequent to review of the documentation submitted, the division review officer submits a recommendation for certifying or denying the application to the division chief. The division chief then determines whether or not an applicant's qualifications meet the requirements for certification based upon a review of the supporting documentation from the applicant, the recommendation from the division review officer, and any information available from the review committee. A person who is denied certification as a QC/CP may appeal the final agency action to the circuit court. (Refer to next page for illustration.)

QC/CP Application Review



Revocation Process

If a QC/CP fails to maintain the requirements for certification, or performs an improper act as defined in the QC/CP Rules, written notice is provided by the DEQ of its intent to revoke certification. A QC/CP may avoid revocation of its certification by submitting documentation to the DEQ that demonstrates compliance with the requirements of the QC/CP Rules. Alternatively, a QC/CP may request to voluntarily discontinue its certification.

If the DEQ determines that the public health, safety, or welfare is endangered, a notice of violation summarily suspending a QC/CP may be issued. A QC/CP may respond to a notice of violation imposing suspension by submitting documentation that demonstrates compliance with the requirements of the QC/CP Rules.

If the review committee determines that the documentation submitted is not adequate to remedy the deficiencies, the QC/CP is notified in writing of revocation and is provided the opportunity to request an informal hearing. A review officer designated by the division chief conducts the informal hearings and, based upon findings of fact resulting from the informal hearing, makes a recommendation to the division chief to either preserve the QC/CP certification or to uphold the suspension or revocation. Upon receiving a final determination upholding suspension or revocation, a QC/CP may request a contested case hearing. (Refer to next page for illustration.)

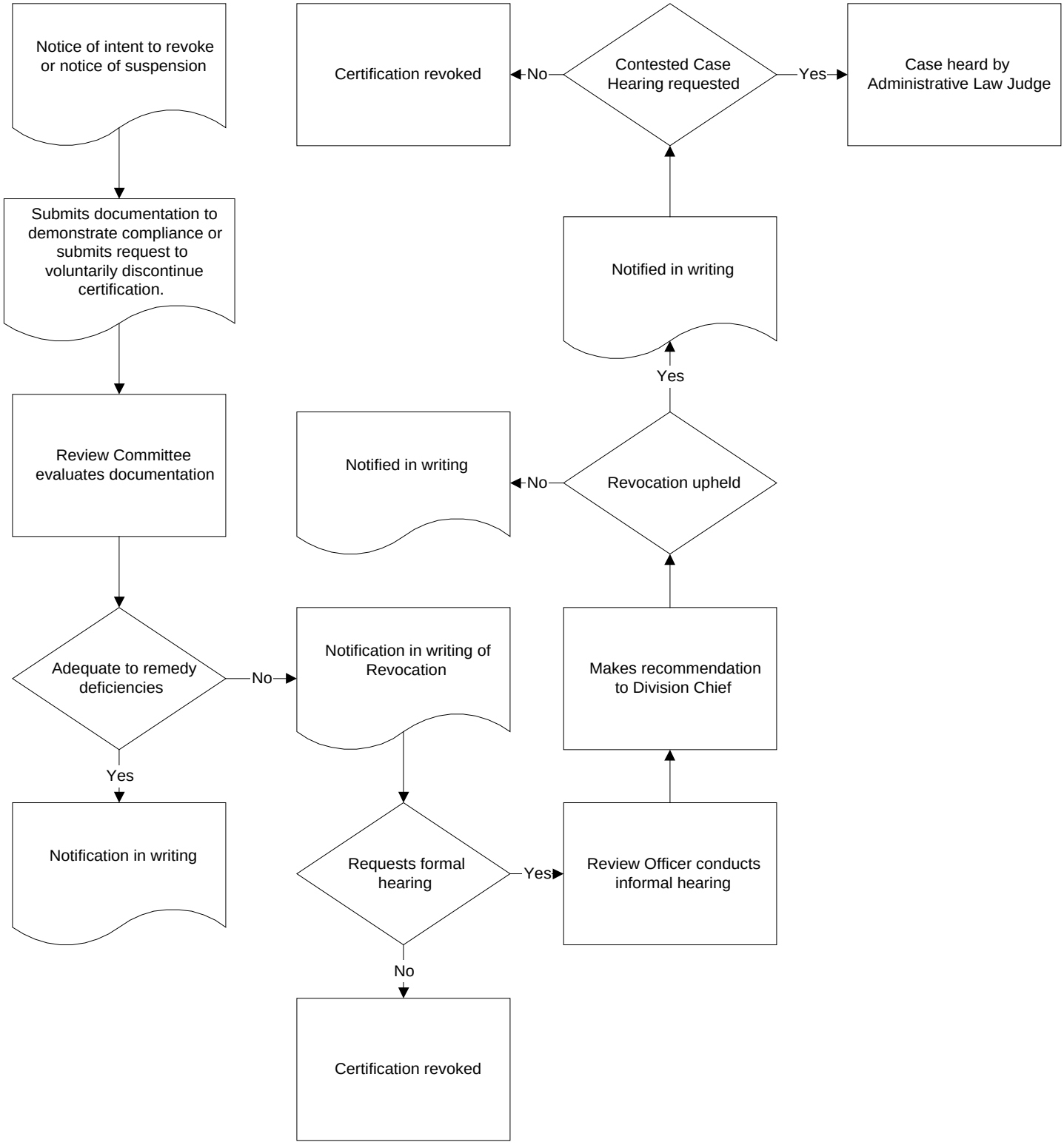
If a QC is a firm and the consultant's certification is revoked, then the principals of the organization, including corporate officers, shall not be allowed to reapply for certification as a QC prior to three years from the date of revocation.

A CP whose certification is revoked shall not be allowed to reapply for certification before three years from the date of revocation.

A QC/CP convicted of fraud shall not be allowed to reapply for certification if certification is revoked.

Through enforcement of the statute, rules, and effective use of the revocation process, the DEQ will ensure that any QC/CP certified by the state demonstrates the expertise and capability to conduct corrective actions required by law at LUST sites, thereby protecting owners and operators who are required by law to hire a QC approved by the state, and also protecting the health, safety and environment of the state.

QC/CP Revocation Process



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QC/CP Program Impact

Impact of the QC/CP Program on the DEQ

The program provides for more responsibility and accountability from the QC/CP, which relieves the state of the burden of direct review and oversight of every step of the corrective action process, as was required previously. The QC/CP Rules, which were enacted subsequent to the statutory amendments, allows the DEQ to suspend or remove QC/CPs for fraud and/or other unacceptable actions that may jeopardize public health, safety or the environment, thereby maintaining the integrity of the program.

There are over 7,000 LUST facilities in the state, and over 9,000 confirmed releases from tank systems at those facilities. Before the 1993 LUST amendments, state project managers were required to spend the majority of their time reviewing work proposals and investigation reports submitted by consultants. Tank owners and operators, as well as consultants, expressed extreme frustration with the program both because work was very often delayed for long periods of time due to the state's backlog of report reviews, and because state project managers did not have the time to make actual field inspections and were therefore basing their decisions and conclusions mainly on review of written reports. Many state project managers reported that at the time the audit program was instituted, they had backlogs for report reviews in excess of one year.

The 1993 LUST amendments instituted an audit program, which places more responsibility on the QC/CP to conduct corrective actions in accordance with state regulatory requirements, and allows state project managers to randomly audit report submittals. State project managers are therefore able to spend much more time performing site visits, which enables them to be more familiar with high priority sites and to verify that sites have been properly classified by the QC. Since QC report submittals are now required to contain certain information, it is also much easier for state project managers to identify and address risks to public health, safety or the environment at LUST sites.

IMPACT OF QC/CP PROGRAM ON DEQ STAFF

Pre 1993 Amendments	Post 1993 Amendments
State required to review report submittals	State may conduct random audits or audit based on risk
Work delayed and contamination exacerbated waiting for state's review	Work progresses without prior departmental approval
Few field visits made by state project managers due to backlog of report reviews	Many field visits made and more direct contact with facility owners
Companies offering environmental consulting services without meeting minimum qualifications	Consultants must meet minimum qualification to ensure they are able to provide the necessary environmental consulting services
State project managers required to directly oversee every corrective action	QCs/CPs required to certify that corrective actions were conducted in accordance with regulatory requirements

The DEQ staff time required to support the QC/CP program equals approximately one full time equivalent (FTE): one review committee coordinator at 75 percent, two other committee members at approximately 10 percent each, and one division review officer at 5 percent. This does not include any district staff time, which may be required in noticing QC/CPs of improper activities and making referrals to the Enforcement Unit for revocation of certification.

Impact of the QC/CP Program on LUST Owners/Operators

Although there are no actual figures to rely on, we may safely assume that costs to owners/operators for cleanups will have been somewhat reduced simply based on the fact that they are able to proceed with work at their facilities without prior DEQ approval. Under the previous program, owners/operators were often hesitant to proceed without prior DEQ approval for fear that if they did, the expenses incurred for conducting the work would not be reimbursed by MUSTFA. Impacts to the environment were, therefore, in many cases exacerbated resulting in increased costs for cleanup.

Another benefit to owners/operators is in knowing a certain endpoint for their project. Once a QC submits a closure report, the DEQ may audit the closure for up to six months after submittal. If the DEQ does not conduct an audit, the site will be closed. Previously, owners/operators had to wait for DEQ review and concurrence, which meant that they may wait a year or more for review of the closure report and then be required to conduct additional sampling, submit another closure report, and wait once again for DEQ review.

One of the drawbacks to owners/operators is the misconception that since they are required to hire a QC from the approved list, the QC will do all required work and do it correctly. Although the newly enacted QC/CP Rules will be useful in revoking certifications where fraudulent or improper activities are conducted, owners/operators must be aware that the QC certification program is no different than any other licensing program and that, just as in hiring any other licensed professional, they must use caution and discretion in hiring a QC.

Impact of the QC/CP Program on Consultants and Environmental Professionals

There are several advantages of the program to the consultants and professionals. First, in order to be approved to conduct corrective action work at LUST sites, all applicants must meet the same requirements. This means that every consultant bidding on a job must carry the required insurance coverage, which in turn means that no one has an unfair advantage and bids are more fair and competitive.

Prior to enactment of the QC/CP Rules in September 1999, and DEQ review of applicant qualifications in 1996, the DEQ received numerous complaints from consultants who found themselves at a disadvantage when bidding against consultants who did not maintain liability insurance coverage.

Another advantage to consultants is that the DEQ has had to be more consistent and provide better guidance due to the decreased direct oversight by the DEQ of work conducted. There has been an increase in the quality of reports submitted by consultants both due to the better guidance provided and to the minimum qualifications required for QC/CP approval. Because consultants are required to submit certain information in a standardized format, it is more efficient and consistent for the consultant and it is easier for the DEQ to identify risks.

IMPACT OF QC/CP PROGRAM ON CONSULTANTS

Pre 1993 Amendments	Post 1993 Amendments
No minimum statutory requirements for contractor approval	Specific requirements for consultants and professionals
Approval based on unenforceable department guidelines	Approval based on statutory requirements
Consultants who maintained liability insurance coverage were at a disadvantage when bidding for jobs	Specific statutory requirements for liability insurance coverage
No standard format for report submittals	Reports required to be submitted in standardized format
Uncertain endpoint to corrective action	Site closed within six months of submittal of Closure Report unless DEQ conducts audit

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QC/CP Program Evaluation and Effectiveness

The Storage Tank Division (STD) staff have reported that, due to implementation of the QC/CP Rules, some QCs and major oil companies are now taking a more proactive approach to resolving several long-standing issues regarding corrective action activities at LUST sites. This is a direct result of the revocation process provided for in the QC/CP Rules. It is important to note here that losing certification as a QC or CP has greater implications than simply being prevented from conducting work at LUST sites. Is has been reported that the banking industry also considers whether a consultant is certified as a criteria for placement on their lists of consultants. Some consultants have stated that they wished to be certified, although they do not work on LUST sites, because they wanted only to be placed on lists of consultants approved by banks to conduct site assessments. The reasoning is that banks only want to include those consultants on their lists who have the capability of responding to any situation encountered.

Effective use of the revocation process provided for in the QC/CP Rules will be critical in determining the effectiveness of the QC/CP Program.

For the latest information on the QC/CP Program, access the DEQ Storage Tank Division web site at http://www.deq.state.mi.us/std.

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Requirements of Other State's Certification Programs

ALASKA: Alaska maintains a list of Approved Qualified Persons. Requirements for approval include submitting an application and resume as well as documenting at least one year of professional experience in environmental science after obtaining a bachelor's degree in environmental science or engineering, geology, hydrology, physical science or a related field.

In order to legally conduct soil and groundwater sampling at regulated UST sites, owners must hire a qualified person from the approved list. A qualified person is responsible for collecting field data, interpreting, and reporting data from sampling events.

ARIZONA: Arizona requires geologists to be registered and requires any firm or corporation engaging in the practice of geology to have the work conducted under full authority and responsible charge of the registered geologist who must also be a principal of the firm or officer of the corporation.

Requirements for certification include documentation of experience and certified educational transcripts.

Disciplinary actions taken by the Board of Technical Registration for non-compliance can include restitutions, reprimands, administrative or civil penalties, suspensions, and license revocation. Certain violations are also classified as Class 2 misdemeanors.

CONNECTICUT: Connecticut requires professionals wishing to engage in the business of certifying cleanups at LUST and non-LUST sites of environmental contamination to obtain a license. Licensing requirements

include passing a state administered exam, a bachelor's degree in a science or engineering field, 8 years of corrective action experience, or 14 years of corrective action experience without a bachelor's degree.

The licensing board may conduct investigations concerning the conduct of licensed environmental professionals and may conduct audits of any actions authorized by law to be performed by a licensed environmental professional.

DELAWARE: Delaware has minimum qualification requirements for three categories of corrective action work: facility evaluations; remedial investigations/feasibility studies; and remedial design/remedial action oversight. Requirements for certification in each category include documentation of a registered professional, geologist or engineer on staff, and documentation of experience in the related category.

A company may be delisted because of unsatisfactory work and may not reapply for six months. Certification is required to work on any site of environmental contamination, not strictly LUST sites.

MASSACHUSETTS: As with Connecticut and Delaware, owners are required to hire a licensed professional to conduct corrective actions at all hazardous waste sites. A board of registration establishes qualifications, administers a licensing exam, requires licensed professionals to obtain continuing education, and investigates complaints. Requirements for licensure include a bachelor's degree and 8 years of professional experience, or 14 years of professional experience without a bachelor's degree.

SOUTH CAROLINA: South Carolina requires certification for contractors conducting corrective actions at LUST sites. There are two classes of contractors. Class I certification is for contractors performing work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I certification requires that the work be conducted by a geologist or engineer. Class II certification is for contractors performing work involving routine investigative activities such as soil or groundwater sampling and well installation. All contractors must have liability insurance and provide documentation of experience and references.

TENNESSEE: Tennessee requires work conducted at LUST sites to be performed by approved corrective action contractors. Requirements for approval include oversight by a licensed geologist or engineer, documentation of experience, liability insurance and references.

CERTIFICATION REQUIREMENTS BY STATE

STATE	Certified Professional, Geologist or Engineer	Bachelor's Degree	Minimum Years Professional Experience	Educational Transcripts	Continuing Education Courses Required	References	Documentation of Experience	RBCA Training	Liability Insurance	Examination	Revocation Process	Board of Registration Appointed by Governor	Application Fee	Examination Fee	Renewal Fee
Alaska	x	x	x												
Arizona	x		x	x		x	x			x	x	x	x		x
Connecticut	x		x	x		x	x			x	x	x		x	
Delaware	x					x	x				x				
Massachusetts		x	x	x	x	x	x			x	x	x	x	x	x
Michigan	x		x			x	x	x	x		x				
South Carolina	x					x	x		x						
Tennessee	x					x	x		x		x				

Part

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REFERENCE SOURCES

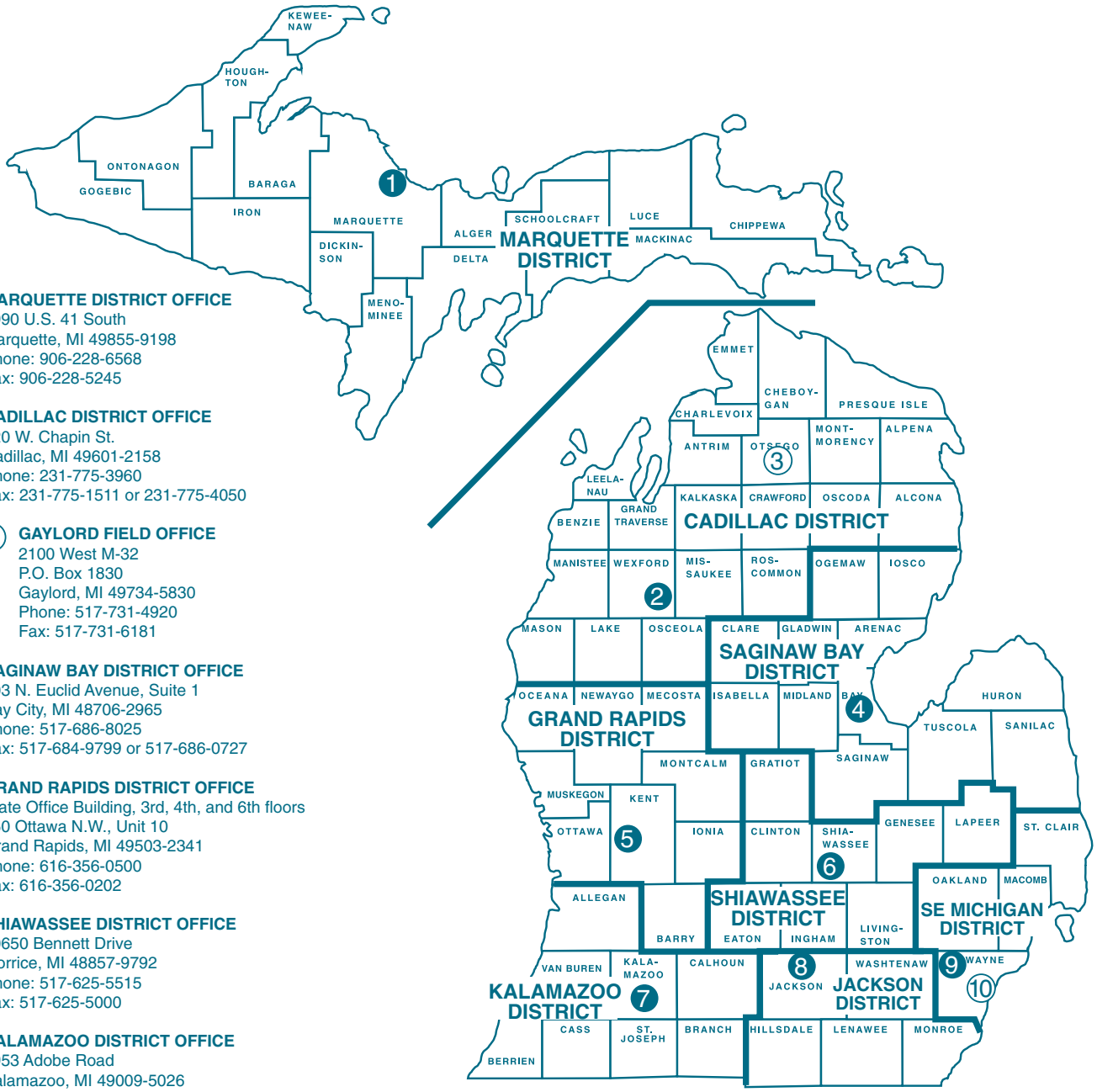
Documents are available from the STD upon request

- Act 518 of 1988
- January 21, 1992 Memo Regarding Problems with the LUST/MUSTFA Program and Possible Solutions
- Act 518 of 1988 as Amended by Act 132, 1993
- Executive Order 1994-7
- Executive Order 1995-18
- Guidance No. USTD-1, September 18, 1995 Guidelines for QC/CP Application Submittal
- QC/CP Rules
- STD-27, January 19, 2000 QC/CP Suspension and Revocation Procedure
- Act 478 of 1988
- Act 478 of 1988, as Amended
- Certification Program Requirements for Alaska
- Certification Program Requirements for Arizona
- Certification Program Requirements for Connecticut
- Certification Program Requirements for Delaware
- Certification Program Requirements for Massachusetts
- Certification Program Requirements for South Carolina
- Certification Program Requirements for Tennessee

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

District and Office Boundaries and Locations

John Engler, Governor • Russell J. Harding, Director



9 denotes district office

10 denotes field office

1 MARQUETTE DISTRICT OFFICE
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Fax: 906-228-5245

2 CADILLAC DISTRICT OFFICE
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Phone: 231-775-3960
Fax: 231-775-1511 or 231-775-4050

3 GAYLORD FIELD OFFICE
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Gaylord, MI 49734-5830
Phone: 517-731-4920
Fax: 517-731-6181

4 SAGINAW BAY DISTRICT OFFICE
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Report Underground Storage Tank Releases:
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STD Web Site
www.deq.state.mi.us/std