

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 529

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20114e (MCL 324.20114e), as added by 2010 PA
227, and by adding sections 21332 and 21333.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20114e. (1) The director shall establish a response
2 activity review panel to advise him or her on technical or
3 scientific disputes, including disputes regarding assessment of
4 risk, concerning response activity plans and no further action
5 reports **UNDER THIS PART, AND INITIAL ASSESSMENT REPORTS, FINAL**
6 **ASSESSMENT REPORTS, AND CLOSURE REPORTS UNDER PART 213.**

7 (2) The panel shall consist of 15 individuals, appointed by
8 the director. Each member of the panel shall meet all of the
9 following minimum requirements:

10 (a) Meet 1 or more of the following:

1 (i) Hold a current professional engineer's or professional
2 geologist's license or registration from a state, tribe, or United
3 States territory, or the Commonwealth of Puerto Rico, and have the
4 equivalent of 6 years of full-time relevant experience.

5 (ii) Have a baccalaureate degree from an accredited institution
6 of higher education in a discipline of engineering or science and
7 the equivalent of 10 years of full-time relevant experience.

8 (iii) Have a master's degree from an accredited institution of
9 higher education in a discipline of engineering or science and the
10 equivalent of 8 years of full-time relevant experience.

11 (b) Remain current in his or her field through participation
12 in continuing education or other activities.

13 (3) An individual is not eligible to be a member of the panel
14 if any 1 of the following is true:

15 (a) The individual is a current employee of any office,
16 department, or agency of the state.

17 (b) The individual is a party to 1 or more contracts with the
18 department and the compensation paid under those contracts
19 represented more than 5% of the individual's annual gross revenue
20 in any of the preceding 3 years.

21 (c) The individual is employed by an entity that is a party to
22 1 or more contracts with the department and the compensation paid
23 to the individual's employer under these contracts represented more
24 than 5% of the employer's annual gross revenue in any of the
25 preceding 3 years.

26 (d) The individual was employed by the department within the
27 preceding 3 years.

1 (4) An individual appointed to the panel shall serve for a
2 term of 3 years and may be reappointed for 1 additional 3-year
3 term. After serving 2 consecutive terms, the individual ~~may~~**SHALL**
4 not be a member of the panel for a period of at least 2 years
5 before being eligible to be appointed to the panel again. The terms
6 for members first appointed shall be staggered so that not more
7 than 5 vacancies are scheduled to occur in a single year.

8 Individuals appointed to the panel shall serve without
9 compensation. However, members of the panel may be reimbursed for
10 their actual and necessary expenses incurred in the performance of
11 their official duties as members of the panel.

12 (5) A vacancy on the panel shall be filled in the same manner
13 as the original appointment.

14 (6) The business that the panel may perform shall be conducted
15 at a public meeting of the panel held in compliance with the open
16 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

17 (7) A person who submitted a response activity plan or a no
18 further action report **UNDER THIS PART OR AN INITIAL ASSESSMENT**
19 **REPORT, FINAL ASSESSMENT REPORT, OR CLOSURE REPORT UNDER PART 213**
20 may appeal a decision made by the department regarding a technical
21 or scientific dispute, including a dispute regarding assessment of
22 risk, concerning the response activity plan, ~~or~~ no further action
23 report, **INITIAL ASSESSMENT REPORT, FINAL ASSESSMENT REPORT, OR**
24 **CLOSURE REPORT** by submitting a petition to the director. **HOWEVER,**
25 **AN ISSUE THAT WAS ADDRESSED AS PART OF THE FINAL DECISION OF THE**
26 **DIRECTOR UNDER SECTION 21332 OR THAT IS THE SUBJECT OF A CONTESTED**
27 **CASE HEARING UNDER SECTION 21332 IS NOT ELIGIBLE FOR REVIEW BY THE**

1 **PANEL.** The petition shall include the issues in dispute, the
2 relevant facts upon which the dispute is based, factual data,
3 analysis, opinion, and supporting documentation for the
4 petitioner's position. The petitioner shall also submit a fee of
5 \$3,500.00. If the director believes that the dispute may be able to
6 be resolved without convening the panel, the director may contact
7 the petitioner regarding the issues in dispute and may negotiate a
8 resolution of the dispute. This negotiation period shall not exceed
9 45 days. If the dispute is resolved without convening the panel,
10 any fee that is submitted with the petition shall be returned.

11 (8) If a dispute is not resolved pursuant to subsection (7),
12 the director shall schedule a meeting of 5 members of the panel,
13 selected on the basis of their relevant expertise, within 45 days
14 after receiving the original petition. **IF THE DISPUTE INVOLVES AN**
15 **UNDERGROUND STORAGE TANK SYSTEM, AT LEAST 3 OF THE MEMBERS SELECTED**
16 **SHALL HAVE RELEVANT EXPERIENCE IN THE AMERICAN SOCIETY FOR TESTING**
17 **AND MATERIALS RISK-BASED CORRECTIVE ACTION PROCESSES DESCRIBED IN**
18 **PART 213.** A member selected for the dispute resolution process
19 shall agree not to accept employment by the person bringing the
20 dispute before the panel, or to undertake any employment concerning
21 the facility in question for a period of 1 year after the decision
22 has been rendered on the matter if that employment would represent
23 more than 5% of the member's gross revenue in any of the preceding
24 3 years. The director shall provide a copy of all supporting
25 documentation to members of the panel who will hear the dispute. An
26 alternative member may be selected by the director to replace a
27 member who is unable to participate in the dispute resolution

1 process. Any action by the members selected to hear the dispute
2 shall require a majority of the votes cast. The members selected
3 for the dispute resolution process shall elect a chairperson of the
4 dispute resolution process. At a meeting scheduled to hear the
5 dispute, representatives of the petitioner and the department shall
6 each be afforded an opportunity to present their positions to the
7 panel. The fee that is received by the director along with the
8 petition shall be forwarded to the state treasurer for deposit into
9 the fund.

10 (9) Within 45 days after hearing the dispute, the members of
11 the panel who were selected for and participated in the dispute
12 resolution process shall make a recommendation regarding the
13 petition and provide written notice of the recommendation to the
14 director of the department and the petitioner. The written
15 recommendation shall include the specific scientific or technical
16 rationale for the recommendation. The panel's recommendation
17 regarding the petition may be to adopt, modify, or reverse, in
18 whole or in part, the department's decision that is the subject of
19 the petition. If the panel does not make its recommendation within
20 this 45-day time period, the decision of the department is the
21 final decision of the director.

22 (10) Within 60 days after receiving written notice of the
23 panel's recommendation, the director shall issue a final decision,
24 in writing, regarding the petition. However, this time period may
25 be extended by written agreement between the director and the
26 petitioner. If the director agrees with the recommendation of the
27 panel, the department shall incorporate the recommendation into its

1 response to the response activity plan, ~~or the~~ no further action
2 report, **INITIAL ASSESSMENT REPORT, FINAL ASSESSMENT REPORT, OR**
3 **CLOSURE REPORT**. If the director rejects the recommendation of the
4 panel, the director shall issue a written decision to the
5 petitioner with a specific rationale for rejecting the
6 recommendation of the panel. If the director fails to issue a final
7 decision within the time period provided for in this subsection,
8 the recommendation of the panel shall be considered the final
9 decision of the director. The final decision of the director under
10 this subsection is subject to review pursuant to section 631 of the
11 revised judicature act of 1961, 1961 PA 236, MCL 600.631.

12 (11) Upon request of the director, the panel shall make a
13 recommendation to the department on whether a member should be
14 removed from the panel. Prior to making this recommendation, the
15 panel may convene a peer review panel to evaluate the conduct of
16 the member with regard to compliance with this part.

17 (12) A member of the panel shall not participate in the
18 dispute resolution process for any appeal in which that member has
19 a conflict of interest. The director shall select a member of the
20 panel to replace a member who has a conflict of interest under this
21 subsection. For purposes of this subsection, a member has a
22 conflict of interest if a petitioner has hired that member or the
23 member's employer on any environmental matter within the preceding
24 3 years.

25 (13) As used in this section, "relevant experience" means
26 active participation in the preparation, design, implementation,
27 and assessment of remedial investigations, feasibility studies,

1 interim response activities, and remedial actions under this part
2 OR EXPERIENCE IN THE AMERICAN SOCIETY FOR TESTING AND MATERIALS
3 RISK-BASED CORRECTIVE ACTION PROCESSES DESCRIBED IN PART 213. This
4 experience must demonstrate the exercise of sound professional
5 judgment and knowledge of the requirements of this part OR PART
6 213, OR BOTH.

7 SEC. 21332. (1) SUBJECT TO SUBSECTION (2), AN OWNER OR
8 OPERATOR MAY PETITION THE DEPARTMENT FOR A CONTESTED CASE HEARING
9 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
10 MCL 24.201 TO 24.328, REGARDING ANY OF THE FOLLOWING:

11 (A) CORRECTIVE ACTION PROPOSED, COMMENCED, OR COMPLETED.

12 (B) THE SSTLS PROPOSED FOR A SITE.

13 (C) THE IMPOSITION OF PENALTIES PURSUANT TO SECTION 21313A.

14 (D) THE RESULTS OF ANY AUDIT PERFORMED UNDER SECTION 21315.

15 (2) UPON RECEIPT OF A PETITION FROM AN OWNER OR OPERATOR
16 PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL CONDUCT THE HEARING
17 PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
18 1969 PA 306, MCL 24.271 TO 24.287. HOWEVER, AN ISSUE THAT WAS
19 ADDRESSED AS PART OF THE FINAL DECISION OF THE DIRECTOR UNDER
20 SECTION 20114E OR THAT IS BEING CONSIDERED BY THE RESPONSE ACTIVITY
21 REVIEW PANEL UNDER SECTION 20114E IS NOT ELIGIBLE FOR REVIEW AS
22 PART OF A CONTESTED CASE HEARING UNDER THIS SECTION.

23 SEC. 21333. AN OWNER OR OPERATOR MAY APPEAL A FINAL AGENCY
24 DECISION TO AFFIX A PLACARD UNDER SECTION 21316A(2) OR ISSUE AN
25 ADMINISTRATIVE ORDER UNDER SECTION 21319A(2) TO THE CIRCUIT COURT
26 FOR THE COUNTY WHERE THE UNDERGROUND STORAGE TANK SYSTEM IS LOCATED
27 OR THE INGHAM COUNTY CIRCUIT COURT IN THE SAME MANNER AS AND

1 ACCORDING TO THE SAME PROCEDURES PROVIDED FOR APPEALS TO THE
2 CIRCUIT COURT UNDER SECTION 631 OF THE REVISED JUDICATURE ACT OF
3 1961, 1961 PA 236, MCL 600.631. THE COURT SHALL SET ASIDE THE FINAL
4 AGENCY DECISION IF SUBSTANTIAL RIGHTS OF THE PETITIONER HAVE BEEN
5 PREJUDICED BECAUSE THE DECISION OR ORDER IS ANY OF THE FOLLOWING:

6 (A) IN VIOLATION OF THE CONSTITUTION OR A STATUTE.

7 (B) IN EXCESS OF THE STATUTORY AUTHORITY OR JURISDICTION OF
8 THE AGENCY.

9 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL
10 PREJUDICE TO A PARTY.

11 (D) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL
12 EVIDENCE ON THE WHOLE RECORD.

13 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
14 EXERCISE OF DISCRETION.

15 (F) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF LAW.

16 Enacting section 1. This amendatory act does not take effect
17 unless all of the following bills of the 96th Legislature are
18 enacted into law:

19 (a) Senate Bill No. 528.

20 (b) Senate Bill No. 530.

21 (c) Senate Bill No. 531.

22 (d) Senate Bill No. 532.

23 (e) Senate Bill No. 533.