

**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 section 21332; and to repeal acts and parts of
acts.

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.

6 (2) The panel shall consist of 15 individuals, appointed by
7 the director. Each member of the panel shall meet all of the

1 following minimum requirements:

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

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

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

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

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

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

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

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

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

1 (d) The individual was employed by the department within the
2 preceding 3 years.

3 (4) An individual appointed to the panel shall serve for a
4 term of 3 years and may be reappointed for 1 additional 3-year
5 term. After serving 2 consecutive terms, the individual may not be
6 a member of the panel for a period of at least 2 years before being
7 eligible to be appointed to the panel again. The terms for members
8 first appointed shall be staggered so that not more than 5
9 vacancies are scheduled to occur in a single year. Individuals
10 appointed to the panel shall serve without compensation. However,
11 members of the panel may be reimbursed for their actual and
12 necessary expenses incurred in the performance of their official
13 duties as members of the panel.

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

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

19 (7) A person who submitted a response activity plan or a no
20 further action report **OR AN INITIAL ASSESSMENT, FINAL ASSESSMENT**
21 **REPORT, OR CLOSURE REPORT UNDER PART 213** may appeal a decision made
22 by the department regarding a technical or scientific dispute,
23 including a dispute regarding assessment of risk, concerning the
24 response activity plan, ~~or~~ no further action report, **INITIAL**
25 **ASSESSMENT, FINAL ASSESSMENT REPORT, OR CLOSURE REPORT** by
26 submitting a petition to the director. The petition shall include
27 the issues in dispute, the relevant facts upon which the dispute is

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

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

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

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

21 (10) Within 60 days after receiving written notice of the
22 panel's recommendation, the director shall issue a final decision,
23 in writing, regarding the petition. However, this time period may
24 be extended by written agreement between the director and the
25 petitioner. If the director agrees with the recommendation of the
26 panel, the department shall incorporate the recommendation into its
27 response to the response activity plan, ~~or the~~ no further action

1 report, **INITIAL ASSESSMENT, FINAL ASSESSMENT REPORT, OR CLOSURE**
2 **REPORT**. If the director rejects the recommendation of the panel,
3 the director shall issue a written decision to the petitioner with
4 a specific rationale for rejecting the recommendation of the panel.
5 If the director fails to issue a final decision within the time
6 period provided for in this subsection, the recommendation of the
7 panel shall be considered the final decision of the director. The
8 final decision of the director under this subsection is subject to
9 review pursuant to section 631 of the revised judicature act of
10 1961, 1961 PA 236, MCL 600.631.

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

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

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

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

6 SEC. 21332. (1) AN OWNER OR OPERATOR MAY PETITION THE
7 DEPARTMENT FOR A CONTESTED CASE HEARING PURSUANT TO THE
8 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
9 24.328, TO RESOLVE DISPUTES BETWEEN THE OWNER OR OPERATOR AND THE
10 DEPARTMENT REGARDING 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 (E) THE PLACEMENT OR REMOVAL OF PLACARDS ON AN UNDERGROUND
16 STORAGE TANK SYSTEM PURSUANT TO SECTION 21316A.

17 (F) THE ISSUANCE OF AN ADMINISTRATIVE ORDER PURSUANT TO
18 SECTION 21319A.

19 (G) THE REQUEST FOR INFORMATION BY THE DEPARTMENT PURSUANT TO
20 SECTION 21326.

21 (2) UPON RECEIPT OF A PETITION FROM AN OWNER OR OPERATOR
22 PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL CONDUCT THE HEARING
23 PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
24 1969 PA 306, MCL 24.271 TO 24.287.

25 Enacting section 1. Sections 21542 and 21543 of the natural
26 resources and environmental protection act, 1994 PA 451, MCL
27 324.21542 and 324.21543, are repealed.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 96th Legislature are
3 enacted into law:

- 4 (a) Senate Bill No. 528.
- 5 (b) Senate Bill No. 530.
- 6 (c) Senate Bill No. 531.
- 7 (d) Senate Bill No. 532.
- 8 (e) Senate Bill No. 533.