

DEPARTMENT OF ENVIRONMENTAL QUALITY

STORAGE TANK DIVISION

MICHIGAN UNDERGROUND STORAGE TANK QUALIFIED
CONSULTANTS AND CERTIFIED PROFESSIONALS

(By authority conferred on the department of environmental quality by section 21544 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21544 of the Michigan Compiled Laws)

R 324.21501 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 451 of the Public Acts of 1994, as amended, being §324.101 et seq. of the Michigan Compiled Laws, and known as the natural resources and environmental protection act.

(b) "Certified professional" means an individual certified by the department as meeting the requirements of a certified underground storage tank professional as defined under section 21543 of the act.

(c) "Corrective action" means and includes, but is not limited to, the actions specified in sections 21307 to 21313 of the act, the investigation, risk assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment, or the taking of other action as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(d) "Department" means the department of environmental quality.

(e) "Design" means development of a corrective action plan for soil and groundwater remediation utilizing scientifically accepted practices, procedures, and technologies which are proven effective based on industry standards and which comport with statutory requirements and these rules.

(f) "Environmental quality analyst" means a person employed in this job classification series by the department and who possesses specific education and experience requirements established for this classification by the department of civil service.

(g) "Feasibility" means and includes, but is not limited to, the development and evaluation of alternative remedial technologies based on results obtained from site investigation activities. The term also includes the analysis of alternative technologies for remediating impacted soil and groundwater, for the treatment, disposal, and reduction of contaminants, and for recycling or destroying contaminants at an on-site or off-site facility.

(h) "Other cause" under sections 21542 and 21543 of the act, for which the department may suspend or revoke a qualified consultant or certified professional certification, means and includes, but is not limited to, the acts set forth in sections 21324 and 21548 of the act and all of the following acts:

(i) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition pursuant to the proper use and application of the RBCA process as set forth in part 213 of the act.

(ii) Failing to identify the most cost-effective corrective action measures to the owner/operator of the facility. As used in these rules, "cost-effective" includes a consideration of timeliness of implementation of the corrective action measures and use of methodology that is necessary and appropriate considering conditions at the site. The RBCA process shall be utilized in determining the most cost-effective corrective action measures to be implemented.

(iii) Failure to conduct corrective action activities in accordance with the RBCA process and in a manner that is protective of the public health, safety, and welfare and the environment.

(iv) Failure to comply with parts 213 and 215 of the act and written directives issued by the department in conformance with parts 211, 213, and 215 of the act, including, but not limited to, any of the following:

(A) Operational and informational memoranda.

(B) Procedures.

(C) Guidance documents.

(D) Orders.

(E) Written correspondence from department staff requesting information about a facility or site.

(v) Conducting work that is unnecessary or inappropriate, or both, considering conditions at a site, including, but not limited to, consideration by the department of whether the work performed is technically adequate. Necessary, appropriate, and adequate work is based on department guidance documents and industry standards applicable at the time the work is conducted.

(vi) Failure to supply the department with requested information whether the request is informal or a formal information request was issued under section 20117 of the act. All information requests made by the department shall be made in writing.

(vii) Failure to provide written notification to the department within 10 business days following a change in the person's operations or organizational status that materially affects the qualified consultant's status or qualifications as set forth in these rules. As used in these rules, "change" includes any of the following:

(A) Failure to actively maintain an approved certified professional on staff.

(B) A change in corporate name or corporate structure.

(C) A staffing change that may affect the qualified consultant's ability to meet experience requirements, such as the loss of a certified professional or other persons whose experience was used to meet the qualified consultant's experience qualification requirements necessary for qualified consultant certification.

(D) A change in the required insurance, including policy cancellation.

(E) Revocation of professional licenses or certificates, such as certified professional geologist or physical engineer.

(F) A change in compliance with the occupational safety and health act or the Michigan occupational safety and health act requirements, including submission of notices of violation issued pursuant to the occupational safety and health act or the Michigan occupational safety and health act.

(viii) Failure to submit or annually update, or both, information required in the application requesting inclusion on the list.

(ix) Failure to attend the risk-based corrective action training entitled "RBCA Applied At Petroleum Release Sites" provided by the American society for testing and materials and other training as may be required by the department.

(x) Failure to comply with all applicable, relevant, and appropriate state and federal laws.

(xi) Failure to acquire and maintain any required insurance.

(i) "Qualified consultant" means a firm or individual certified by the department as meeting the requirements of a qualified underground storage tank consultant defined under section 21542 of the act.

(j) "RBCA" means the risk-based corrective action process as established by the American society for testing and materials and adopted in section 21303 of the act.

(k) "Relevant environmental assessment" means site assessment activities as defined in subdivision (r) of this rule and conducted for both soil and groundwater media. Environmental assessment is relevant if the corrective action activity involves soils and groundwater that are contaminated with regulated or hazardous substances.

(l) "Relevant environmental work" means activities, including site assessment and corrective actions, involving soil and groundwater contaminated with regulated substances as defined in part 213 of the act or hazardous substances as defined in part 201 of the act.

(m) "Relevant soil corrective action" means corrective actions that include all of the activities described in subdivision (c) of this rule as applied to the investigation and remediation of soils and groundwater contaminated with regulated substances, including the proper disposal of contaminated soils and groundwater.

(n) "Remedial system installation" means the implementation of a corrective action plan utilizing a properly designed system for remediation of contaminated media to achieve a final remedy. The system shall comport with generally accepted industry standards, statutory requirements, and these rules.

(o) "Remediation management activities" means the supervision or management of corrective actions conducted at sites of environmental contamination. The term includes direct oversight of response personnel and activities associated with site assessment, remedial system installation and operation effectiveness, and overseeing site closure.

(p) "Removal" means the permanent removal of qualified underground storage tank consultants from the department's list.

(q) "Respondent" means the qualified consultant or certified professional relevant to suspension and revocation proceedings.

(r) "Revoked" or "revocation" means having certification as a qualified consultant or certified professional, or both, permanently withdrawn.

(s) "Site assessment" means corrective actions listed in sections 21307 to 21313 of the act. Selected methodology shall comport with generally accepted industry standards, statutory requirements, and these rules. Site assessment and environmental assessment are synonymous terms.

(t) "Site closure" means that a final remedy at a site of environmental contamination has been completed in accordance with section 21312 of the act and that either 6 months has elapsed since submittal of the closure report and the department has not conducted an audit, or the Department has provided approval of the closure report.

(u) "Soil removal" means soil excavation at a site of environmental contamination. The term includes, but is not limited to, utilizing proper staging and containment procedures and properly characterizing and disposing of excavated soils.

(v) "Suspension" means the immediate withdrawal of the certification of a qualified consultant or certified professional, or both, under the summary suspension provisions of section 92 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.292 of the Michigan Compiled Laws.

(w) "Tank removal oversight" means on-site supervision of all stages of underground storage tank system removal, including soil excavation, tank and piping removal from the ground, and documentation of proper disposal of the tank, piping, and contents.

History: 1998-2000 AACS.

R 324.21502 Review committee; notification; review process; departmental review.

Rule 2. (1) The department will accept initial applications for qualified consultant and certified professional any 1 time during a calendar year. Subsequent applications will be accepted any 1 time during a calendar year. In order to facilitate annual publication of the qualified consultant list, an applicant will not be included on the list until publication the following year if the application is submitted after November 1. An applicant will not be included on the list until publication the following year if the applicant receives a written notice of deficiencies and the application was submitted after October 1. If a certification was voluntarily withdrawn under R 324.21514(6), then applications to reinstate qualified consultants or certified professional certifications may be submitted any 1 time during a 12-month period. The department shall review applications for qualified consultant and certified professional using a staff committee comprised of at least 1 geologist, 1 engineer, and 1 environmental quality analyst.

(2) Each review committee member shall review each qualified consultant and certified professional application submitted. The review committee shall make recommendations to the division chief for certification of applicants based upon unanimous agreement of the review committee members.

(3) An applicant who is certified by the department for inclusion on the qualified consultant list shall receive written notification. An applicant who is certified for certified professional status shall receive written notification.

(4) Absent unanimous agreement for recommendation of certification by the review committee, an applicant may be notified of all deficiencies in writing by certified mail. If it is apparent from the review of documents originally submitted with the application that the applicant is unable to meet the requirements for the certification requested, then the committee may reject the application by sending a notice of rejection. An applicant who receives a notice of deficiency shall submit additional information for review, based upon the deficiencies indicated by the department, within 30 days of receipt of the notice of deficiency letter. If additional documentation is not provided within 30 days, the applicant shall be sent a notice of rejection. A rejected applicant shall be notified by certified letter that states the specific reasons for rejection.

(5) An applicant who receives a notice of rejection from the review committee may request a division review of the qualifications that were declared deficient by the review committee.

(6) An applicant shall request a division review not later than 30 days from receipt of the notice of rejection or the division review is waived. Within the 30-day time period, the applicant shall submit a written request for the review along with all documentation specific to the deficiencies identified in the notice of rejection to support his or her eligibility for certification as either a qualified consultant or a certified professional. The notice of rejection received from the review committee serves as final

agency action for which no further department review will occur if a request for a division review is not received within 30 days.

(7) The supporting documentation from the applicant shall clearly and concisely demonstrate why the applicant meets the requirements noted in the notice of rejection.

(8) The chief of the division delegated to oversee the qualified consultant and certified professional review program shall designate a division review officer. Following review of an applicant's documentation, the review officer shall submit his or her recommendations for certifying or denying the application to the division chief. The review officer shall submit the recommendation within a reasonable time from receipt of the applicant's supporting documentation.

(9) The division chief shall determine if an applicant's qualifications meet the requirements for certification as a qualified consultant or certified professional 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. The division chief shall notify an applicant of the determination by certified letter. The decision of the division chief shall serve as a final agency action.

History: 1998-2000 AACCS.

R 324.21503 Denial of certification.

Rule 3. A person who is denied certification as a qualified underground storage tank consultant or denied certification as a certified professional may appeal the final agency action issued under R 324.21502 to the circuit court having appropriate jurisdiction within 21 days of the date of receipt of the final agency action under section 631 of Act No. 236 of the Public Acts of 1961, as amended, being §600.631 of the Michigan Compiled Laws.

History: 1998-2000 AACCS.

R 324.21504 Qualified consultant qualifications.

Rule 4. (1) A successful qualified consultant applicant shall have performed all the following activities:

- (a) Underground storage tank work, including tank removal oversight.
- (b) Site assessment.
- (c) Soil removal.
- (d) Feasibility.
- (e) A minimum of 2 different types of remediation system design.
- (f) Remedial system installation.
- (g) Remediation management.
- (h) Site closure.

(2) An application shall include all of the following information:

- (a) The location.
- (b) Site name.
- (c) State project manager or contact person.
- (d) Client contact.
- (e) Names of individuals in the company who worked on the site and their responsibilities.
- (f) A detailed narrative describing the corrective actions conducted.
- (g) The names of contact persons and telephone numbers of not less than 5 clients that employed the applicant to conduct any or all of the required tasks stated in subrule (1) of this rule. Each of the required tasks shall be documented at not less than 3 sites.

(3) An applicant shall include a letter certifying that the applicant employs at least 1 full-time certified professional, as defined in R 324.21501(b), who has an active operational role in the daily activities of the applicant. Full-time is defined as 40 hours per week. An applicant shall provide the letter in the initial application package and, upon approval, shall update the letter annually under R 324.21513, unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii). A certified professional shall provide a letter declaring that he or she is employed full-time by the applicant and has an active operational role in the daily activities of the applicant. An applicant shall include the

letter from all certified professionals in the initial application package and, upon approval, shall update the letter annually under R 324.21513, unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii). The phrase "active operational role" means direct involvement and oversight of corrective actions, including, but not limited to, tasks defined in subrule (1) of this rule. If the experience of a certified professional is used to meet the experience requirements for the applicant, then the qualified consultant shall notify the department within 10 days from the termination of employment of the certified professional even if the qualified consultant employs another certified professional. The department may require the qualified consultant to demonstrate that it still possesses the minimum qualifications for certification. A qualified consultant may use the experience of its certified professional to fulfill the requirements under section 21542(2)(a) of the act. However, the certified professional whose experience is used to qualify the qualified consultant shall meet the employment requirements of this subrule.

(4) An applicant shall submit certificates of insurance or certify that it will obtain all of the required insurance under section 21542 of the act within 30 days from application approval. Failure to submit the requisite proof of insurance by the 30-day deadline may result in immediate suspension of the qualified consultant certification under R 324.21514. An applicant shall annually update all required insurance certificates as required by R 324.21513 unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii). A qualified consultant shall include language in its insurance policies stating that the insurance company shall notify the department within 10 days after a policy expires, lapses, or otherwise becomes void. The department shall be listed as the certificate holder on the insurance binder. The insurance required under section 21542 of the act include all of the following:

(a) Michigan workers' compensation.

(b) Errors and omissions coverage which shall include coverage for claims resulting from acts of forbearance that cause or exacerbate pollution and claims of bodily injury and property damage in the amount of, \$1,000,000.00 minimum coverage per occurrence. The insurance is required of all qualified consultants who conduct professional environmental services including, but not limited to, any of the following services:

(i) Remedial system design.

(ii) Remediation management.

(iii) Feasibility development and implementation.

(iv) Hydrogeological evaluation.

(v) Media testing and analysis.

(vi) Subsurface and geophysical investigation.

(vii) Other related activities as determined by the department.

(c) Contractor pollution liability in the amount of \$1,000,000.00 per occurrence is required if the consultant also performs contracting work including, but not limited to, tank removal, soil excavation, soil borings, well installation, or related construction activities; unless the coverage is included under the consultant's errors and omissions policy or under a general commercial liability policy that contains completed products and operations coverage with pollution coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Contractor pollution coverage is not required if the consultant does not perform contracting work. If an independent contractor is employed directly by the owner/operator to perform any of the corrective actions which a qualified consultant is required to perform under part 213 of the act, then the contractor shall also be a qualified consultant and employ a full-time certified professional who oversees the corrective actions and certifies that the work comports with applicable statutory requirements. A contractor shall carry contractor pollution coverage. A contractor does not need error and omissions coverage unless performing professional consulting functions as described in subdivision (b) of this subrule.

(d) Commercial general liability coverage not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(e) Automobile coverage of not less than \$1,000,000.00 per occurrence.

History: 1998-2000 AACS.

R 324.21505 High deductibles; self-insurance; insurance rating.

Rule 5. (1) If an insurance policy of a qualified consultant has a deductible that is in excess of 10% of the insurance amount requirements, then an applicant shall prove that it has the financial ability to pay potential claims against it by documenting a tangible net worth, not including goodwill value or stockholder equity, of not less than \$1,000,000.00 or 5 times the deductible amount, whichever is higher. An applicant shall include documentation of financial ability to pay claims in the initial application package and, upon approval of the applicant, shall update the documentation annually under R 324.21513 unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii).

(2) If an applicant claims self-insurance, then the applicant shall demonstrate a tangible net worth, discounting goodwill value and stockholder equity, of not less than \$5,000,000.00. The applicant shall demonstrate, to the department's satisfaction, a financial capability to pay a \$1,000,000.00 claim and remain viable by the establishment of an escrow, letter of credit, or other mechanism approved by the department. The applicant shall provide documentation to the department showing that the firm has an approved dedicated program in place for administering claims against it. The mechanism shall include an amount available for paying claims of not less than \$1,000,000.00. An applicant shall provide the documentation in the initial application package and, upon approval of the applicant, shall update the documentation annually under R 324.21513, unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii). A qualified consultant shall notify the department within 10 days from the date that it no longer meets the requirements for self-insurance.

(3) An insurance company that provides policies required under part 215 of the act and under this rule shall possess a minimum rating from the A.M. Best Company of B+ VII. An insurer shall meet the minimum level in both categories of B+ or higher and VII or higher.

History: 1998-2000 AACCS.

R 324.21506 OSHA and MIOSHA compliance.

Rule 6. An applicant shall submit a declaration that states it has complied with all occupational safety and health act (OSHA) and Michigan occupational safety and health act (MIOSHA) requirements, as set forth in section 21542 of the act, while performing all previous corrective action work. In addition, an applicant shall provide 40-hour or 24-hour certificates and current annual updates demonstrating that the applicant's workers have received hazardous waste operation training under sections 21542 and 21543 of the act. Failure of an applicant to comply with OSHA or MIOSHA requirements may result in denial of the application. An applicant shall include the declaration of OSHA compliance in the initial application package and, upon approval of the applicant, shall update the declaration annually under R 324.21513 unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii).

History: 1998-2000 AACCS.

R 324.21507 Corporate annual report.

Rule 7. If an applicant is a corporation, it shall submit a recent annual report. If the applicant is not a corporation, it shall submit the name of the registered business in the form of a D.B.A. (doing business as) certificate indicating the assumed name under which the applicant is conducting business and resubmit the D.B.A. certificate upon making any changes to the business name or business status.

History: 1998-2000 AACCS.

R 324.21508 Certified professional qualifications.

Rule 8. (1) An applicant shall provide documentation, as required by the department, to verify that he or she meets any of the following requirements:

(a) The applicant is a licensed professional engineer in the state of Michigan and has 3 or more years of relevant soil corrective action experience, preferably involving underground storage tanks.

(b) The applicant is a certified professional geologist (CPG), or holds a similar approved designation, including registered or certified professional hydrologist (CPH) or certified groundwater professional (CGWP), and has 3 or more years of relevant soil corrective action experience, preferably involving underground storage tanks. As referred to in this subdivision, a CPG holds a certification issued by the American institute of professional geologists (AIPG). The department may accept professional geology certifications from other organizations if the department determines that the requirements for granting certification by the organization are equal to or greater than the requirements established by AIPG. As referred to in this rule, a CPH holds a certification issued by the American institute of hydrology (AIH). The department may accept a professional hydrology or hydrogeology certification from other organizations if the department determines that the requirements for granting certification by the organization are equal to or greater than the requirements established by AIH. As referred to in this rule, a CGWP holds a certification issued by the association of groundwater scientists and engineers (AGWSE). The department may accept professional groundwater certifications from other organizations if the department determines that the requirements for granting certification by the organization are equal to or greater than the requirements established by AGWSE. Other certification programs may be accepted by the department as a similar approved designation if the department determines that the certification program is equal to or greater than the requirements of the organizations stated in this subdivision, is exclusive to geologists, hydrogeologists, or hydrologists, and is directly related to conducting corrective actions under part 213 of the act.

(c) The individual is able to demonstrate, in detailed narrative form, that he or she possesses 3 or more years of relevant environmental assessment and corrective action experience and 10 or more years of specific experience in relevant environmental work demonstrating increasing responsibilities. The applicant shall document how his or her experience consists of all relevant corrective action activities set forth in R 324.21501(c). Relevant environmental assessment includes site assessment activities involving contaminated soils and groundwater. The term "increasing responsibilities," as used in this subrule, means the applicant must demonstrate that the experience was acquired while employed by a person who has experience in all types of the corrective actions as set forth in R 324.21501(c). Each type of experience claimed by the applicant shall have been performed in a satisfactory manner and in accordance with the statutory requirements and rules in effect at the time the experience was acquired. The department may disapprove any experience that it determines was not performed in a satisfactory manner, does not meet the specific corrective action definition in R 324.21501, or was not performed in accordance with state and federal law.

(2) The application shall include the location, site name, state project manager or contact, client contact, dates of involvement, and a detailed narrative of the applicant's specific duties describing the environmental assessment and corrective action activities conducted. The demonstrated experience shall be documented with a minimum of 5 professional and personal references and with past employment references and histories. Licenses or certificates required in subrule (1)(a) or (b) of this rule shall be provided in the initial application package and, upon approval of the applicant, shall be updated annually under R 324.21513, unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii).

History: 1998-2000 AACS.

R 324.21509 OSHA and MIOSHA compliance.

Rule 9. An applicant for certified professional certification shall submit copies of certificates documenting compliance with OSHA and MIOSHA regulations as set forth in section 21543 of the act, including 40-hour or 24-hour training, and a current annual hazardous waste operations training certificate update. An applicant who cannot provide documentation of compliance with OSHA training requirements for the period of time being documented as meeting the experience requirements of R 324.21508 shall not be approved as a certified professional. Upon approval of the applicant, a current OSHA certificate of training shall be provided annually upon expiration of the previous certificate under R 324.21513 unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii).

History: 1998-2000 AACS.

R 324.21510 Certified professional employment.

Rule 10. An applicant for certified professional certification may not work for more than 1 qualified consultant in the capacity of a certified professional unless it can be demonstrated to the department's satisfaction that the certified professional meets the requirements of R 324.21504(3). The certified professional shall be employed on a full-time basis by the qualified consultant and shall directly oversee corrective actions at each site. The certified professional shall provide a letter declaring the qualified consultant or consultants that he or she is employed by, if any, and that he or she has a full-time, active operational role in the daily activities of the qualified consultant or consultants unless a change occurs which would require notification within 10 days under R 324.21501(h)(vii).

History: 1998-2000 AACS.

R 324.21511 Risk-based corrective action (RBCA) training.

Rule 11. An applicant for certified professional certification shall submit a copy of a certificate documenting that he or she has obtained the training entitled "RBCA Applied at Petroleum Release Sites" from an American society for testing and materials (ASTM) certified trainer.

History: 1998-2000 AACS.

R 324.21512 Department consideration of other information.

Rule 12. When evaluating an application, the department may consider other information received from department staff or other sources concerning corrective actions or related activities performed by the applicant.

History: 1998-2000 AACS.

R 324.21513 Information required to be updated annually; time for submittal; effect of failure to update information.

Rule 13. Information required to be updated annually under these rules shall be submitted during the month of February of each year. Failure to update the required information during the month of February of each year may result in a notice of revocation of certification.

History: 1998-2000 AACS.

R 324.21514 Suspension and revocation of qualified underground storage tank consultant, certified underground storage tank professional certification.

Rule 14. (1) If the department determines that a qualified consultant has failed to maintain, or otherwise no longer meets, the requirements for certification under part 215 of the act or these rules, then the department shall give the qualified consultant written notice, by certified mail, of its intent to revoke certification. The notice of intent to revoke shall clearly state the reasons why the qualified consultant no longer meets the requirements for certification, and shall inform the qualified consultant of the opportunity to voluntarily discontinue the certification under subrule (6) of this rule. A qualified consultant may avoid revocation of its certification by submitting documentation to the department that demonstrates, to the department's satisfaction, compliance with all of the requirements set forth in these rules. The documentation to demonstrate compliance with the certification requirements shall be submitted within 30 days from the receipt of a notice of intent to revoke. Alternatively, a qualified consultant may request in writing to voluntarily discontinue its certification under subrule (6) of this rule. If a qualified consultant fails to provide the required documentation or to request discontinuance of certification within 30 days from receipt of a notice of intent to revoke, then the department shall provide a written notice of revocation. Written notice of

revocation shall be by certified mail. If the review committee determines that the documentation submitted is not adequate to remedy the deficiencies, the qualified consultant shall be given written notice, by certified mail, of the determination. The notice shall inform the qualified consultant of the opportunity to voluntarily discontinue their certification pursuant to subsection (6) of this rule within 30 days of receipt of notice.

(2) If the department determines that a certified professional has failed to maintain, or otherwise no longer meets, the requirements for certification under these rules, then the department shall provide a written notice of intent to revoke to the certified professional by certified mail. The notice of intent to revoke shall clearly state the reasons why the department believes the certified professional no longer meets the requirements for certification, and shall inform the certified professional of the opportunity to voluntarily discontinue his or her certification under subrule (6) of this rule. A person may avoid revocation of his or her certified professional certification by submitting documentation to the department that demonstrates, to the department's satisfaction, compliance with all requirements set forth in these rules. The documentation to demonstrate compliance with the certification requirements shall be submitted within 30 days from the receipt of a notice of intent to revoke. Alternatively, the person may request in writing to voluntarily discontinue his or her certification pursuant to subrule (6) of this rule. If a person fails to provide the required documentation or to request discontinuance of certification within 30 days from receipt of notice of intent to revoke, then the department shall provide a written notice of revocation. Written notice of revocation shall be by certified mail. If the review committee determines that the documentation submitted is not adequate to remedy the deficiencies, the certified professional shall be given written notice, by certified mail, of the determination. The notice shall inform the certified professional of the opportunity to voluntarily discontinue their certification pursuant to subsection (6) of this rule within 30 days of receipt of notice. If a certified professional fails to request discontinuance of certification within 30 days from receipt of notice, then the department shall provide a written notice of revocation. Written notice of revocation shall be by certified mail.

(3) If a qualified consultant or certified professional performs an improper act or fails to perform a requirement specified in parts 213 or 215 of the act when obligated to do so and the act or failure to act constitutes a fraudulent practice as set forth in part 213 or part 215 of the act or meets the definition of "other causes" as defined in R 324.21501(h), or if a qualified consultant or certified professional submits information or causes information to be submitted and knew or should have known, based on the circumstances, that the information submitted is false or misleading, then the department shall provide a written notice of intent to revoke to the qualified consultant or certified professional stating its findings, and shall inform the qualified consultant or certified professional of the opportunity to voluntarily discontinue a certification pursuant to subsection (6) of this rule. A person may avoid revocation of a qualified consultant or certified professional certification by submitting documentation to the department that demonstrates, to the department's satisfaction, compliance with all requirements set forth in these rules. The documentation to demonstrate compliance with the certification requirements shall be submitted within 30 days from the receipt of a notice of intent to revoke. Alternatively, the person may request in writing to voluntarily discontinue his or her certification pursuant to subrule (6) of this rule. If a person fails to provide the required documentation or to request discontinuance of certification within 30 days from receipt of a notice of intent to revoke, then the department shall provide a written notice of revocation. Written notice of revocation shall be by certified mail. If the review committee determines that the documentation submitted is not adequate to remedy the deficiencies, the qualified consultant or certified professional shall be given written notice, by certified mail, of the determination. The notice shall inform the qualified consultant or certified professional of the opportunity to voluntarily discontinue their certification pursuant to subsection (6) of this rule within 30 days of receipt of notice. If a qualified consultant or certified professional fails to request discontinuance of certification within 30 days from receipt of notice, then the department shall provide a written notice of revocation. Written notice of revocation shall be by certified mail.

(4) If the department has determined that the public health, safety, or welfare is endangered, then the department may issue a notice of violation summarily suspending a qualified consultant or certified professional certification. Written notice of a violation shall be by certified mail, personal service, or facsimile. Upon receipt of a notice of violation summarily suspending a qualified consultant or certified professional certification, the qualified consultant or certified professional shall immediately cease conducting activities that require a qualified consultant or certified professional to perform under

part 213 or part 215 of the act and these rules. All data and work products created by the consultant relevant to the corrective actions at a site shall be made available to the department, if requested, under section 20117 of the act. A qualified consultant shall notify the department of all owners and operators for whom the qualified consultant is providing consulting services at the time a notice of violation and suspension is received. A person may respond to a notice of violation imposing suspension by submitting to the department, within 30 days from receipt of a notice of violation, written documentation that demonstrates compliance with all requirements set forth in these rules. If a person fails to provide the required documentation within 30 days from receipt of a notice of violation under this subrule, or if the review committee determines that the documentation submitted does not adequately remedy the issues resulting in the suspension, then the department shall provide a written notice of revocation and the suspension will remain in effect through completion of the hearing process as described in this rule, or through completion of the revocation process as described in this rule, whichever applies. Written notice of revocation shall be by certified mail.

(5) In investigating the conduct of a qualified consultant or certified professional, the department may use any available information in making a determination under this rule, including any information obtained before the effective date of these rules.

(6) A qualified consultant or certified professional may submit a written request to voluntarily discontinue a qualified consultant or certified professional certification at any time before receiving a written notice of revocation unless a notice of violation has been issued suspending certification. However, if the department issues a written notice of revocation before the department receives a request to voluntarily discontinue a qualified consultant or certified professional certification, then discontinuance shall not be allowed. Upon submitting to the department a request to voluntarily discontinue a qualified consultant or certified professional certification, the qualified consultant or certified professional shall immediately cease conducting activities that require a qualified consultant or certified professional to perform under part 213 or part 215 of the act and these rules. All data and work results created while under contract with the owner or operator shall be made available to the department, if requested, under section 20117 of the act. A qualified consultant shall notify the department of all owners and operators for whom the qualified consultant is providing consulting services at the time a request to discontinue is submitted. A qualified consultant or certified professional who has requested that a certification be discontinued shall submit an application before reinstatement. An application submitted subsequent to discontinuing certification is subject to the review process as set forth in these rules. An applicant shall not conduct work as a qualified consultant or certified professional until receiving a letter of certification from the department. An applicant may reapply no more than 1 time in any 12-month period after receipt by the department of a request to discontinue. The 12-month period begins on the date that the notice to voluntarily discontinue the certification is received by the department.

(7) A qualified consultant or certified professional who receives a notice of suspension and revocation from the department may request an informal hearing under section 92 of Act No. 306 of the Public Acts of 1969, as amended, being §24.291 of the Michigan Compiled Laws, not later than 21 days from receipt of the notice of revocation. If a qualified consultant or certified professional fails to submit a written request under this subrule within the 21-day period, then the informal hearing is waived. A written request for an informal hearing shall include all documentation specific to the improper activities that are the subject of the suspension or revocation notification.

(8) Within 30 days of receipt of a written request by the department, an informal hearing under this rule will be conducted by a review officer designated by the chief of the division so delegated to implement the qualified consultant and certified professional review program. Based upon findings of fact resulting from the informal hearing, the review officer shall make a recommendation to the department to either preserve the qualified consultant or certified professional certification or to uphold the suspension or revocation.

(9) A final determination shall be made by the department within 30 days of receiving a recommendation from the review officer and shall provide a qualified consultant or certified professional with written notification of the determination by certified mail.

(10) Upon receiving a final determination upholding suspension or revocation of a qualified consultant certification, a consultant shall cease conducting activities for which qualified consultant certification is required under part 213 and part 215 of the act within 21 days from the date of notice, unless a contested case hearing is requested within the 21-day period under subrule (14) of this rule. All

data and work product created by the consultant relevant to the corrective actions at a site, shall be made available to the department, if requested, under section 20117 of the act.

(11) The department shall reasonably attempt to provide written notification to the owners or operators for whom the qualified consultant was providing consulting service, if known, by the department.

(12) Upon receiving a final determination upholding suspension or revocation of a certified professional certification, a certified professional shall immediately cease conducting activities required to be performed by a certified professional under part 213 and part 215 of the act. If the certified professional is the only certified professional employed by the qualified consultant, then the qualified consultant shall be notified that he or she no longer meets the requirements for certification under section 21542 of the act. The suspension and revocation process under this rule will apply.

(13) The department may periodically print a list of suspensions and revocations.

(14) A qualified consultant or certified professional who receives a suspension and revocation notice from the department may, following a final determination from the department under subrule (9) of this rule, if applicable, request a contested case hearing under section 71 of Act No. 306 of the Public Acts of 1969, as amended, being §24.271 of the Michigan Compiled Laws, within 21 days of receipt of the notice. If a qualified consultant or certified professional does not request a hearing within the 21-day period, then a hearing is waived.

(15) A qualified consultant whose certification is revoked shall have the name under which it was certified removed from the list of qualified consultants.

History: 1998-2000 AACCS.

R 324.21515 Recertification.

Rule 15. (1) If a qualified consultant 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 qualified consultant prior to three years from the date of revocation. A certified professional whose certification is revoked shall not be allowed to reapply for certification as a certified professional prior to three years from the date of revocation. A qualified consultant or certified professional whose certification is suspended or revoked shall not conduct environmental services requiring certification under part 213 or part 215 of the act.

(2) A qualified consultant or certified professional convicted of fraud shall not be allowed to reapply for certification as a qualified consultant or certified professional if a certification is revoked.

History: 1998-2000 AACCS.

R 324.21516 Appeal of revocation and suspension.

Rule 16. Judicial review of a suspension and revocation of certification shall be conducted under section 101 of Act No. 306 of the Public Acts of 1969, as amended, being §24.301 of the Michigan Compiled Laws.

History: 1998-2000 AACCS.