



Implementation of the Environmental Advisory Rules Committee's (ARC) Recommendations

Quarterly Status Report

Fall 2013

This is the seventh of twelve quarterly status reports of the Department of Environmental Quality's (DEQ) progress in addressing the 77 recommendations contained in a report released by the Office of Regulatory Reinvention (ORR) on February 21, 2012. The recommendations were developed by the Environmental Advisory Rules Committee (ARC) whose members were appointed by the ORR and were tasked with conducting a comprehensive review of the department's regulations and offering recommendations for improvement. Please send comments or questions regarding this report to Dave Fiedler, DEQ's Regulatory Affairs Officer, at fiedlerd@michigan.gov or call 517-284-6705.

AIR QUALITY DIVISION

Recommendation A-1: Air Toxic Rules

To date, the Air Quality Division's (AQD's) Air Toxics Workgroup has held meetings on December 3, 2012; January 17, 2013; March 5, 2013; April 16, 2013; May 15, 2013; June 19, 2013; July 24, 2013; August 1, 2013; and September 25, 2013. On August 27, 2013, the workgroup received a draft Final Report of the Air Toxics Workgroup. The report (22 pages) includes the recommendations and draft proposed rule changes (as appropriate) for the nine issues that were addressed. Workgroup members were asked to share their thoughts on the draft at the September 25th meeting. Once the current Part 2 rule set identified as 2012-107EQ (See Recommendation A-6) is filed with the Secretary of State which is expected in late October, then a Request for Rulemaking will be submitted to ORR for the changes to the air toxics rules and permit exemptions rule changes (See Recommendation 3).

Contact: Joy Taylor, (517) 284-6765, taylorj1@michigan.gov

Recommendation A-2: Mercury Rules: Part 15 Rules (R 336.2501 – R 336.2514)

The AQD submitted a new request for rulemaking (RFR) to amend the Michigan Mercury Rules. It was submitted to the Office of Regulatory Reinvention (ORR) on March 14, 2013 and was approved on April 9, 2013. This rule package is identified as ORR 2013-021EQ. The AQD worked with stakeholders on drafting changes to the Michigan Mercury Rules. The ~~strike~~-bold draft rules and the Regulatory Impact Statement and Cost Benefit Analysis (RIS/CBA) was submitted to ORR on April 11, 2013. On May, 31, 2013, the AQD issued a [variance](#) suspending the portion of the state rules being changed. The public hearing took place on July 10, 2013. On September 23, 2013 the ORR submitted the rule set to the Joint Committee on Administrative Rules (JCAR) for consideration.

Contact: Mary Maupin, (517) 284-6755, maupinM@michigan.gov

Recommendation A-3. Additional Rule 201 (Permit to Install) Exemptions

The ten members of the Exemption Workgroup held their first meeting on December 20, 2012. The Exemption Workgroup held additional meetings on January 24, 2013; March 6, 2013; April 10, 2013; May 1, 2013; June 5, 2013; July 10, 2013; August 7, 2013; and August 26, 2013. Once the current Part 2 rule set identified as 2012-107EQ (See Recommendation A-6) is filed with the Secretary of State which is expected in October, then a Request for Rulemaking will be submitted to ORR for the changes to the permit to install exemption rules and air toxics rules (See Recommendation A-1).

Contact: Shane Nixon, (231) 876-4413, nixonS@michigan.gov

Recommendation A-4. Rule 206 Process Deadlines

An RFR was approved by the Office of Regulatory Reinvention (ORR) on September 17, 2012, for amending R 336.1206. The AQD's [discussion paper](#) outlines the proposed changes to Rule 206 and Rule 1817. The Air Advisory Council agreed on the language at their December 12, 2012 meeting. The draft strike-bold version of the rules and RIS/CBA were submitted to ORR on March 20, 2013. This rule package is identified as ORR 2012-107EQ. The public hearing was held on June 13, 2013. On September 23, 2013, the ORR submitted the rule set to the Joint Committee on Administrative Rules (JCAR) for consideration.

Contact: Mary Maupin, (517) 284-6755, maupinM@michigan.gov

Recommendation A-5: Dispersion Modeling Guidance Document

A draft policy and procedure was presented to the Air Advisory Council at their March 1 and May 9, 2013 meetings. This issue needs further discussion at the upcoming October 16th meeting of the Air Advisory Council.

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Recommendation A-14: Permit to Install Exemptions

See comments under Recommendation A-3.

Contact: Shane Nixon, (517) 231-876-4413, nixonS@michigan.gov

Recommendation A-19. Limiting Compounds Required for Annual MAERS Report

No final decision has occurred on recommendation although good discussion occurred at the Air Advisory Council on December 12, 2012. The topic will be discussed during the fall Air Advisory Council Meeting. See AQD's [Annual Emission Report Discussion](#) for more information. This recommendation is on the agenda of the Air Advisory Council's October 16th meeting.

Contact: Barb Rosenbaum, (517) 284-6759, rosenbaumB@michigan.gov

Recommendation A-20: Putting a Hold on the 18-Month Construction Window for a Permit to Install

See comments under Recommendation A-4.

Contact: Mary Maupin, (517) 284-6755, maupinM@michigan.gov

OFFICE OF DRINKING WATER AND MUNICIPAL ASSISTANCE

Recommendation W-17: Safe Drinking Water – Cross Connection Inspections of Residential, Commercial, and Industrial Properties

On February 13, 2013, the U.S. Environmental Protection Agency published the revised total coliform rule which will require the DEQ to make additions and changes to the “Supplying Water to the Public, Parts 1-28” Rules. Recommendation W-17 will also be addressed in these rule changes. Stakeholders will be assembled in December 2013 to begin draft rule development

Contact: Pat Cook, (517) 284-6514, cookP@michigan.gov

OFFICE OF OIL, GAS & MINERALS

Recommendation RM-9: Conformance Bond or Statement of Financial Responsibility Requirements for Mineral Well Operators

The Office of Oil, Gas and Minerals (OOGM) developed a draft MOU that was sent to the U.S. Environmental Protection Agency (EPA) for review on May 23, 2013. The MOU is moving into final review at EPA. They have made changes that the DEQ has not seen yet, so depending on the department’s concurrence that the changes are ok, it will move towards upper management/Attorney General approval of the document over next couple months.

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OFFICE OF WASTE MANAGEMENT & RADIOLOGICAL PROTECTION

Recommendation RM-1: Liquid Industrial Waste Regulations

The DEQ will be discussing legislative changes to Part 121, Liquid Industrial Wastes, of NREPA. The identification of possible stakeholders has commenced.

Contact: Jack Schinderle, (517) 284-6570, schinderleJ@michigan.gov

Recommendation RM-2: Beneficial Reuse

HB 5953 was introduced by Representative Huuki and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September, 27 2012. The bill amends and add sections to Part 115 (Solid Waste Management) and amends sections of Part 201 (Environmental Remediation) of the Natural Resources Environmental Protection Act, 1994 PA 451, (NREPA). The bill was not acted on in the 2012 legislative cycle.

The DEQ has been working with the Michigan Manufacturers Association and the Governor's office to perfect the legislation. A new bill is expected to be introduced sometime in October.

Contact: Duane Roskoskey, (517)284-6593, roskoskeyD@michigan.gov

Recommendation RM-3: Hazardous Waste Regulations

A request for rulemaking to amend the Hazardous Waste Management rules was approved by the Office of Regulatory Reinvention (ORR) on September 24, 2012. It is identified as [2012-108 EQ](#). A public hearing on the rule package was held on May 23, 2013. . The rules were filed with the Joint Committee on Administrative Rules (JCAR) on September 23, 2013 and the rules are expected to be filed with the Secretary of State in late October.

Contact: Ronda Blayer, (517)284-6555, blayerR@michigan.gov

Recommendation RM-5: Hazardous Waste Biennial Reporting

The DEQ has discussed the biennial reporting process with stakeholders and is pursuing an electronic reporting system based on free software developed by the state of Florida. The software is now available for testing and review by both the DEQ and stakeholders. The EPA has been briefed on the use of the software and the new reporting process to be used in Michigan.

Contact: Jack Schinderle, (517) 284-6570, schinderleJ@michigan.gov

Recommendation RM-6: Financial Assurance for Landfills

Senate Bill No. 404 was introduced this summer. The DEQ is working with the Michigan Waste Industries Association, representatives of industrial landfills, and the bill sponsor to address the department's concerns with the bill.

Contact: Steve Sliver, (517)284-6595, sliverS@michigan.gov

Recommendation RM-7: Hazardous Waste User Charge and Manifest Systems

The Hazardous Waste User Charge Work Group provided their recommendations for an updated fee schedule to the DEQ Director Wyant. Director Wyant evaluated the recommendations and in turn provided his input to the state budget office for consideration for the fiscal year 2014 budget cycle. The recommendation needs to be approved first by the Governor and then through the legislative process as part of the 2014 budget bill.

[ORR 2012-108EQ](#) does contain a rule change that will minimize the paperwork associated with manifests. The manifest itself is a federal form that the state cannot change. The rules package contains a revision that would eliminate the requirement for the generator to submit the initial copy of the manifest. The DEQ will retain the authority to require the generator to provide the final copy of manifest showing receipt by an out-of-state facility.

The DEQ intends to participate in activities related to the federal electronic manifest project. The DEQ is initiating an electronic manifest information submittal system with the licensed hazardous waste

treatment, storage and disposal facilities; however, this effort is occurring outside of a formal stakeholder group.

Contact: Jack Schinderle, (517) 284-6570, schinderleJ@michigan.gov

REMEDIATION AND REDEVELOPMENT DIVISION

Recommendation R-2: Part 201/213 Vapor Intrusion Policy and Procedure

The Part 201/213 Guidance Document for the Vapor Intrusion Pathway was finalized in May 2013, and posted to the [Remediation and Redevelopment](#) web site. The approval of the Department Policy and Procedure portion by Director Wyant is pending the outcome of the drafting of the criteria rules. A notice will be sent out on the DEQ list serve notifying interested parties when the new policy and procedure is finalized.

The DEQ is currently planning and developing a workshop on petroleum vapor intrusion that will be held on December 4th in Grand Rapids and December 5th in Ypsilanti. This day long workshop will focus on the assessment and evaluation of vapor intrusion from petroleum release sites and will include discussions with national experts.

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Recommendation R-3: Revising Part 201 Cleanup Criteria

On December 14, 2010, Governor Granholm signed legislation that amended Part 201 to, among other things, require the DEQ to evaluate and revise the cleanup criteria within 2 years after the effective date of the amendatory legislation. In addition, Recommendation R-3 proposes to revise the Part 201 cleanup criteria. Further work is necessary to reach consensus on revisions to the cleanup criteria. Accordingly, on December 22, 2012, Governor Snyder signed SB 1328 into law (2012 PA 446). Act 446 amended Part 201 by extending the deadline for revision of cleanup criteria rules from December 31, 2012 to December 31, 2013.

The DEQ staff have met with stakeholders through the Collaborative Stakeholder Initiative and subsequent stakeholder groups and discussed proposed updates to the rules, including: exposure assumptions, toxicity data, equations used to calculate the criteria values, and the vapor intrusion pathway. The generic criteria developed in the rules cover over 300 hazardous substances. A draft rule package was submitted to the Office of Regulatory Reform on October 14, 2013, and a public hearing will be scheduled for mid-November. The draft rule package includes updates to achieve consistency with the 2010 and 2012 amendments to Part 201, and the rescission of the Part 1 (General Provisions) and Part 5 (Response Activities) Rules. The cleanup criteria for groundwater based on protection of surface water resources from hazardous substances in venting groundwater was removed as provided for in the 2012 amendments to Part 201, and the draft rules eliminate the Acute Inhalation Screening Levels. The three criteria tables and the table of toxicological and physical-chemical properties remain in the rules.

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Recommendation R-6: Effective Solubility and Free Phase Contamination

The Petroleum Nonaqueous-Phase Liquid (NAPL) Management Policy and Procedure has been drafted and has been advertised for public comment via the DEQ listserv and is available on the DEQ, [Remediation and Redevelopment Division \(RRD\)](#) web page. The draft document includes NAPL definitions and NAPL management recommendations. The public comment period, which was the second external review, was closed on August 30, 2013 and the comments received have been summarized. In the next 4-6 weeks, the RRD will be evaluating the comments and revise the policy and procedure accordingly. Once the policy and procedure is finalized, this recommendation will be considered complete.

Contact: Nick Swiger, (231) 876-4458, swigerN@michigan.gov

Recommendation R-8: Definition of Background Concentrations for Hazardous Substance in Soil and Groundwater.

Act 446 amended Part 201 by amending the definition of "Background Concentration." A policy and procedure is in the development stage and the first draft should be completed by the end of October. It is being prepared for internal review and will then be advertised via the DEQ listserv and posted on the DEQ, RRD web page for comment by stakeholders. Once the policy and procedure is finalized, this recommendation will be considered complete.

Contact: Sara Pearson, (616) 356-0253, pearsonS@michigan.gov

Recommendation R-10: Soil Relocation Statute MCL 324.20120c and Associated Rules

Act 446 amended Part 201 by including provisions and notice requirements for relocating contaminated soil within a facility, and from a facility to an offsite location. In addition to clearly defining that only contaminated soils are regulated, the legislation exempts relocated soil from becoming a new facility under Part 201 or a solid waste under Part 115.

A new policy and procedure has been drafted to address this recommendation and is currently under internal review prior to distribution for stakeholder input. Pending finalization of this policy, RRD is implementing the revised soils relocation provisions of Part 201 on a site-by-site basis.

Contact: Phil Schrantz, (517) 284-5148, schrantzP@michigan.gov

Recommendation R-13: Part 201 Due-Care Plans Submitted As Response-Activity Plans for Small Business Administration (SBA) Loans (COMPLETED)

In many lending scenarios, including the SBA loans, a person is often required by the lender to obtain the DEQ's approval of an analysis of the Parts 201 and 213 "due care" obligations at the property. Neither Part 201 nor Part 213 contained a mechanism to obtain the approval. Act 446 includes new processes under both Part 201 and Part 213 whereby a person may submit due care documentation to the DEQ for approval.

The RRD Policy and Procedure titled, *Time Frame for DEQ Review of Due Care Plan/Report Submitted by SBA Loan Applicants* and identified as [No. RRD-17](#) has been rescinded citing the Act 446 amendments

where the expedited reviews of due care plans are applied to all due care documentation, not just SBA loan applicants.

The CSI Due Care stakeholder group has been expanded to include more representation from financial lenders, developers, and the Michigan Municipal League. The CSI Due Care Stakeholder Group has a draft outline for recommendations for statutory and policy changes; the outline will be fleshed out and complete in the next couple of months. There is not a hard timeline on it and it is not planned to be acted upon during this legislative session, but will easily be available for the next.

Recommendation R-13 was already completed when the 2012 amendments became law and an expedited Due Care review process was put into place for all reviews, including SBA loans. The current stakeholder process is above and beyond the recommendation.

Contact: Kathy Shirey, (517) 335-6245 or (517)284-5150 beginning October 28th, shireyK@michigan.gov

WATER RESOURCES DIVISION

Recommendation W-1: Part 5 - Spillage of Oil and Polluting Material Rules

Stakeholders have met on May 3, 2013; May 16, 2013; May 30, 2013; June 13, 2013; June 27, 2013; July 11, 2013; July 25, 2013; August 8, 2013; August 22, 2013; and September 12, 2013 to discuss changes to the rules. Final recommendations are expected at the end of October.

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Recommendation W-5: Nationwide Permitting Approach

The DEQ issued a [public notice](#) on September 9, 2013 for obtaining comments on adding county drains to the existing General Permit categories. Public comments are due by October 23, 2013. EPA comments, including approval or objection, of the proposed category are due in December. A blueberry production permit category will be drafted and a public notice issued after EPA comments are received on the county drain category.

Contact: Amy Lounds, (517) 284-5530, loundsA@michigan.gov

Recommendation W-10: Part 5 – Spillage of Oil and Polluting Material Rules

See Recommendation W-1.

Contact: Laura Verona, (586) 601-7693, veronal@michigan.gov or Matthew Goddard, (586) 753-3780, goddardM@michigan.gov

Recommendation W-12: Wetland Mitigation Banks

Development of rules under Act 98 of 2013 is on hold while EPA reviews the statutory amendments to determine if the changes in the program are consistent with federal law.

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Recommendation W-16: Construction Storm Water Exemption

A form and Frequently Asked Questions (FAQs) document for the implementation of this recommendation have been developed by the Water Resources Division. All documents should be available on the [storm water](#) web site by early November.

Contact: Christine Alexander, (517) 243-4670, alexanderC2@michigan.gov

Recommendation W-18: NPDES Water Treatment Additives

A form to complete this recommendation is being developed. By the end of November the form will be posted on the [DEQ Public Forms Database](#).

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