



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

Quarterly Status Report

Summer 2013

This is the sixth 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](mailto:fiedlerd@michigan.gov) or call 517-335-6927.

### AIR QUALITY DIVISION

#### **Recommendation A-1: Air Toxic Rules**

The first meeting of the Air Quality Division's (AQD's) Air Toxics Workgroup was held on December 3, 2012. The Workgroup was convened to review and consider the recommendations for the air toxics program made by the Environmental ARC and to review other air toxics rule issues that may be identified by the Workgroup and AQD. The Workgroup will meet monthly over the next six to nine months.

To date, the Air Quality Division's (AQD) Air Toxics Workgroup has held meetings on December 3, 2012, January 17, March 5, April 16, May 15, and June 19, 2013. The due date for final recommendations is August 1, 2013.

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

The AQD has submitted a request for rulemaking (RFR) to amend the Michigan Mercury Rules (MMR). The RFR describes the rule amendments as such, "The purpose of these revisions is to amend Rules 1503(2)(a) and (6), Rule 1509(1), Rule 1512 and Rules 1513(1)(a) and (3), to align the compliance dates with the federal Mercury and Air Toxics Standard (MATS). Rule 1514 will be amended to reflect the MMR requirements and will remain in effect on January 1, 2015, unless an applicable final federal rule to control mercury is legally enforceable and in effect. MATS is currently under challenge in federal court."

Under Michigan Rule 1512(1)(a)(i), companies are required to submit a permit application for each of the affected electric generating units (EGUs) by June 2012 with the earliest compliance plans due in June 2013 (Rule 1503). The AQD recognizes the uncertainty this places on the regulated community. The state rules remain in place as this provides a backstop necessary for Michigan to address the statewide

fish consumption advisories and the total maximum daily load (TMDL) requirements of the Clean Water Act.

On June 1, 2012, the AQD issued a [variance](#) for the permit application date. Section 5535 (MCL 324.5535 *Suspension of enforcement; reasons; variance*) of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), allows the DEQ to suspend enforcement of any rule that would be an unreasonable hardship upon the person, provided it is granted by variance and it does not violate the federal Clean Air Act (CAA). Altering this first milestone to coincide with the plan submission is reasonable and does not violate the Clean Air Act.

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. 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) has been submitted to ORR. The public hearing is scheduled for July 10, 2013. This rule package is identified as ORR 2013-021 EQ.

On May, 31, 2013, the AQD issued a [variance](#) suspending enforcement of portions of the state rules.

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### **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, March 6, April 10, May 1, and June 5, 2013. The due date for final recommendations is August 1, 2013.

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### **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 2012-107 EQ. ORR approved the RIS/CBA. The public hearing was held on June 13, 2013.

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### **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 July 17<sup>th</sup> meeting of the Air Advisory Council.

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**Recommendation A-9: Visible Emission Limitations (COMPLETED)**

A draft policy and procedure was presented to the Air Advisory Council at their March 1, 2013 meeting. The document was also discussed at the May 9, 2013, meeting. After incorporating the changes agreed upon during the meetings, the *Use of Visible Emission Limits Less than 20% Opacity in Permits to Install* Policy and Procedure is finalized. The new Policy and Procedure became effective on July 1, 2013 and is posted on the [DEQ Policy and Procedure Web page](#).

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**Recommendation A-11: General Nuisance Rule (COMPLETED)**

Discussion on this topic continued at the January 16, March 1, and May 9, 2013 meetings of the Air Advisory Council. After incorporating additional changes agreed on during the May 9<sup>th</sup> meeting, the *Application of Rule 901(b) in the Permit to Install Review Process* Policy and Procedure is finalized. The new policy became effective on July 1, 2013 and is posted on the [DEQ Policy and Procedure Web page](#).

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**Recommendation A-14: Permit to Install Exemptions**

See comments under Recommendation A-3.

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

See comments under Recommendation A-4.

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**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 the fall to begin draft rule development.

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## 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 for review on May 23, 2013. Attorneys will review the document with finalization expected late summer.

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## OFFICE OF WASTE MANAGEMENT & RADIOLOGICAL PROTECTION

### **Recommendation RM-1: Liquid Industrial Waste Regulations**

The DEQ will be pursuing legislative changes to Part 121, Liquid Industrial Wastes, of the Natural Resource and Environmental Protection Act, 451 PA 1994, (NREPA). The identification of possible stakeholders has commenced.

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### **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 will continue to work with industry on this issue with hope of getting a consensus bill drafted this fall.

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### **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 and the final rules were submitted to the Office of Regulatory Reinvention on June 11, 2013.

The purpose of the rulemaking is to (1) maintain federal authorization to administer the state's Hazardous Waste Management Program under NREPA, in lieu of the federal Hazardous Waste

Management Program under the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984 (RCRA); (2) to improve the overall quality of the rules, both in terms of clarification of existing requirements and areas of program coverage; and (3) to reduce some of the regulatory burdens on the regulated community by providing streamlined and flexible requirements, including the implementation of Recommendations RM-3 and RM-7.

This rule package is in process. The Office of Waste Management and Radiological Protection (OWMRP) is proposing the deletion of 17 discarded commercial chemical products; off-specification species; container residues; and spill residues thereof as toxic hazardous wastes listed in R 299.9226 (i.e., Table 205c). These 17 waste codes were proposed for deletion as they either duplicated federal listings. OWMRP had scientific information suggesting that their listing was no longer warranted, and/or the definition of the listing made it difficult to determine what should and should not be included in the listing (e.g., class listings).

OWMRP advanced the proposed deletions based on the science behind the listing and what they knew about the waste. OWMRP did not propose additional waste codes for deletion at this time since the remaining codes need to be further evaluated with respect to the basis of the original listing, prevalence in industry, presence at sites of environmental contamination, and science associated with the specific chemicals. OWMRO resources do not allow for that type of evaluation in the time period needed to advance the current rules package. They are committed to continuing the review of the remaining waste codes in subsequent rules packages.

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#### **Recommendation RM-5: Hazardous Waste Biennial Reporting**

Jack Schinderle is working with stakeholders to develop a draft biennial report to be shared electronically to a broad spectrum of the hazardous waste regulated community that have to develop the report. If there is consensus reached through this electronic sharing mechanism, significant time can be saved in updating the process.

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#### **Recommendation RM-6: Financial Assurance for Landfills**

The financial assurance provisions are all in statute, and the DEQ and stakeholders developed draft amendments that would increase the amount of financial assurance required of Type III landfills and provide more options for demonstrating the required financial assurance at all disposal area types. The amendments in SB 404, introduced this session, provide more options for satisfying the perpetual care fund requirement but do not address the fundamental deficiencies in the Type III landfill financial assurance requirements. We expect to work with Michigan Waste Industries Association and the bill sponsor this summer to address our concerns with the bill.

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### **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 2012-108 EQ does contain a rule change that will minimize the paperwork associated with manifests. The manifest itself is a federal form that we don't have the authority to amend. The rules package contains a revision that would eliminate the requirement for the generator to submit the initial copy of the manifest. The generator would not need to submit the final copy unless the waste is stored, treated, and/or disposed of out-of-state and the out-of-state designated facility fails to submit a copy of its manifest to the DEQ as required. In this case, the DEQ will retain the authority to require the generator to provide the final copy of manifest showing receipt by the out-of-state facility. We are not proposing any other rule revisions relative to minimizing manifest paperwork or electronic manifesting at this time. The DEQ has requested to the USEPA that we participate in activities related to the federal electronic manifest project. We are also trying to pilot 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.

Two specialists from the OWMRP attended a two-day electronic manifest meeting hosted by the US Environmental Protection Agency in early March 2013 to continue their efforts to move the electronic manifest informational submittal system forward in a way that works best for the Industry and the DEQ.

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## **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.

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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 Part 201 Cleanup Criteria workgroup is in the process of drafting rules language. This group includes members of the Collaborative Stakeholder Initiative (CSI) group and has been expanded to include some health practitioners whose expertise was requested in the pathway analysis process. The DEQ toxicology unit has been redrafting the set of rules based on discussions with the stakeholders. The workgroup has a target date of July 15, 2013, to submit the draft rules to the Legislative Service Bureau in order to have the rules promulgated by December 31, 2013.

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### **Recommendation R-6: Effective Solubility and Free Phase Contamination**

The Part 213 statutory amendments enacted May 2012, have updated the criteria associated with “free phase” employing current science and the best national practices, and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8 inch accumulation of petroleum in monitor wells and instituted the use of the term “light nonaqueous-phase liquid” (LNAPL), to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

The amendments have also adopted the nationally recognized American Society for Testing and Materials (ASTM) Risk-Based Corrective Action for characterizing and assessing risk associated with the sites where LNAPL is present which allows for greater flexibility in managing risks associated with its presence.

In addition to the statutory amendments redefining NAPL, using nationally recognized standards, and allowing for greater flexibility in managing risks associated with NAPL, the DEQ has adopted the nationally recognized and adopted Interstate Technology and Regulatory Council’s (ITRC) evaluative and management practices for LNAPL sites.

The 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 comments are due to the DEQ, RRD by August 30, 2013. Upon receipt of all comments, the DEQ, RRD will evaluate the comments and apply them to the draft document as appropriate. Once the policy and procedure is finalized, this recommendation will be considered complete.

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**Recommendation R-9: Due Care for Indoor Air Inhalation at a Property Subject to Michigan Occupational Safety and Health Administration (MIOSHA) Standards. (COMPLETED)**

Recommendation R-9 proposes to amend Part 201 so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of property, by applying MIOSHA and the United States Environmental Protection Agency workplace exposure criteria for both workers and non-workers in workplaces in lieu of generic Part 201 criteria and without regard to whether or not the extent to which the chemical in question is being used in the workplace.

Act 446 amended Part 201 by allowing facilities subject to MIOSHA to achieve compliance for indoor air criteria by complying with MIOSHA standards. Act 446 limits this compliance pathway to only manufacturing facilities regardless of whether the chemical is used at the facility.

The stakeholder process included the Deputy Director for MIOSHA and representatives from the Department of Community Health in developing the statutory language for indoor air inhalation due care considerations. This recommendation is considered completed.

DEQ has prepared the draft MIOSHA – Vapor Intrusion Implementation Policy and Procedure. The draft policy and procedure describes how the DEQ intends to implement this new addition to the program. It is anticipated to be available for comment in July 2013, with a 90 day deadline.

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

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 goal will be for statutory or Part 10 rule changes in the fall of 2013.

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**WATER RESOURCES DIVISION**

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

Stakeholders have met on May 3, 16 and 30, 2013 and June 27, 2013 to discuss changes to the rules. Final recommendations are expected in September.

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#### **Recommendation W-5: Nationwide Permitting Approach (COMPLETED)**

Michigan updated and issued new/revised Minor Project and General permit categories in August 2012 and again in March 2013 which correspond to the U.S. Army Corps of Engineers Nationwide Permits when possible while staying consistent with Michigan law and continuing a consolidated permit application process under several state statutes.

Act 98 of 2013 also requires the DEQ to propose development of two additional General Permit categories; for blueberry production in wetland, and for activities in designated county drains. The categories must be public noticed and also approved by the U.S. Environmental Protection Agency prior to issuance.

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#### **Recommendation W-8: Agricultural Activities under Parts 301 and 303 of NREPA (COMPLETED)**

Act 98 of 2013 clarified the agricultural exemptions in Parts 301 and 303, including fencing, conversion of wetland to agricultural use, and maintenance of agricultural drains.

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

See Recommendation W-1.

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#### **Recommendation W-12: Wetland Mitigation Banks**

Act 98 of 2013 requires the DEQ to update the Wetland Mitigation Banking rules to facilitate more economically efficient wetland mitigation banks.

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#### **Recommendation W-16: Construction Storm Water Exemption**

A form for the implementation of this recommendation has been developed by the Water Resources Division but they will need to develop instructions for its use before it can be posted online. This should be completed by August.

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**Recommendation W-18: NPDES Water Treatment Additives**

A form to complete this recommendation has been drafted. The form will be posted on the [DEQ Public Forms Database](#) in early August.

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**Recommendation W-20: Part 301 Inland Lakes and Streams – Permits Required for Drawdown Activities That Are Already Subject to Federal Energy Regulatory Commission (FERC) Authority (COMPLETED)**

Act 98 of 2013 created an exemption for permits from Part 301, Inland Lakes and Streams, of the NREPA for drawdowns of FERC regulated dams with specific requirements.

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