



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

Quarterly Status Report

Summer 2014

## AIR QUALITY DIVISION

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

The Air Quality Division's (AQD) Air Toxics Workgroup held nine meetings between December 3, 2012, and September 25, 2013. In September-October 2013 Workgroup members submitted comments to the AQD on two iterations of the Workgroup's final draft report. A few remaining issues were then resolved between the AQD and Workgroup members in December 2013, and the report is now in the process of finalization. Almost all of the ARC recommendations are being addressed via proposed rule changes or changes in AQD procedures, as appropriate. Submittal of the Request for Rulemaking to ORR for the Parts 1 and 2 rules revisions will be delayed for further revisions to the permit exemptions rules as described in Recommendation A-3.

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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, 2013; March 6, 2013; April 10, 2013; May 1, 2013; June 5, 2013; July 10, 2013; August 7, 2013; and August 26, 2013. The Exemption Workgroup report has been completed. At the request of the Air Advisory Council (AAC) at the May 28, 2014, meeting, the exemption rule revisions will be delayed and the Workgroup will be reconvened. The AAC recommends addressing U.S. Environmental Protection Agency (U.S. EPA) concerns with previously submitted exemptions in this same rulemaking package as well as developing a different mechanism for Rule 291 exemptions.

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### **Recommendation A-5: Dispersion Modeling Guidance Document**

A draft policy and procedure was presented to the AAC at their March 1, 2013; May 9, 2013; and January 29, 2014, meetings. On May 28, 2014, the AAC recommended additional meetings on the dispersion modeling policy to be held over the summer of 2014 and for this recommendation to be added to the October 22, 2014, AAC agenda.

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### **Recommendation A-7: Rule 801, Rule 803, and State Implementation Plan**

The federal Cross-State Air Pollution Rule that changed the federal emissions trading program was vacated by the Washington, DC, Court of Appeals on August 23, 2012. In April 2014 the U.S. Supreme

Court upheld the rule. Decisions on how to proceed with implementation of the rule have yet to be made by the U.S. EPA, and the Court of Appeals must still rule on outstanding legal arguments. This recommendation remains on hold for the time being.

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

See comments under Recommendation A-3.

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## **OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION**

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

The Department of Environmental Quality (DEQ) will be discussing legislative changes to Part 121, Liquid Industrial Wastes, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). A kickoff meeting of the stakeholders was held in June 2014 to provide recommendations to DEQ Director Dan Wyant.

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#### **Recommendation RM-2: Beneficial Reuse (COMPLETED)**

House Bill (HB) 5400 was introduced by Representative Wayne Schmidt and was signed into law by the Governor on June 16, 2014 (2014 PA 178). The bill amends and adds sections to Part 115, Solid Waste Management; Part 31, Water Resources Protection; Part 201, Environmental Remediation; and Part 85, Fertilizers, of the NREPA, to allow for the beneficial reuse of certain industrial byproducts if the products meet the environmental standards set forth in the legislation. The changes to Part 115 go into effect on September 16, 2014. HBs 5401 and 5402 amend sections of Part 201 to provide liability protection under Part 201 if the products are used in accordance with Part 85 or Part 115.

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## **OFFICE OF OIL, GAS, AND 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 Memorandum of Understanding (MOU) that was sent to the U.S. EPA for review on May 23, 2013. The draft MOU was returned from the U.S. EPA to the OOGM on January 13, 2014. The OOGM is currently reviewing the draft, which includes other programmatic agreements outside of the conformance bond issue. Depending on the DEQ's concurrence that the changes are ok, it will move toward upper management/Attorney General approval of the document during July 2014.

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## REMEDIATION AND REDEVELOPMENT DIVISION

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

Three of the four proposed solutions have been implemented. The Part 201/Part 213 (Leaking Underground Storage Tanks of the NREPA) Guidance Document for the Vapor Intrusion Pathway was finalized in May 2013 and posted to the [Remediation and Redevelopment Division](#) (RRD) Web site. This document allows for use of a conceptual site model. The RRD allows for data collection and evaluation processes consistent with the needs of business transactions, as described in recent presentations at various environmental professional workshops. The RRD has prioritized the collection of empirical data for Michigan sites, collaborating with practitioners and project managers to develop a database for future use. The RRD has engaged with stakeholders to evaluate vapor intrusion as related to the Cleanup Criteria Rules. The Criteria Stakeholder Advisory (CSA) Workgroup will develop recommendations to DEQ Director Wyant.

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### **Recommendation R-3: Revising Part 201 Cleanup Criteria**

#### Background

The Part 7 Cleanup Criteria Rules were rescinded on December 31, 2013. Taking their place are new criteria rules, numbered from R 299.1 to R 299.50, which became effective on December 30, 2013. A link to the new [Environmental Contamination Response Activity Rules](#) is available on the [Remediation and Redevelopment Division](#) Web site.

The Part 201 groundwater and soil cleanup criteria and screening levels, criteria footnotes, and the toxicological and chemical-physical properties of the hazardous substances are now located in the following rules:

- R 299.44 Generic groundwater cleanup criteria (Table 1)
- R 299.46 Generic soil cleanup criteria for residential category (Table 2)
- R 299.48 Generic soil cleanup criteria for nonresidential category (Table 3)
- R 299.49 Footnotes for generic cleanup criteria tables
- R 299.50 Toxicological and chemical-physical properties (Table 4)

As presented in the Cleanup Criteria Requirements for Response Activity Rules, some groundwater and soil cleanup criteria and screening levels were revised, as compared to the previous September 28, 2012, release of these tables under the Part 7 rules. These changes are noted in a document posted on the RRD Web site.

#### Criteria Stakeholder Advisory Workgroup

A CSA Workgroup was convened by the DEQ on March 26, 2014. The responsibilities of the CSA Workgroup include: developing guiding principles to serve as the basis for updating the existing criteria, reviewing background white papers, reviewing reports of the technical groups, and making recommendations to the DEQ Director. The DEQ has hired Public Sector Consultants to facilitate the stakeholder process. Three technical subcommittees have also been appointed by the DEQ to assist the CSA Workgroup; the Technical Advisory Groups (TAGs) are evaluating physical-chemical parameters and

toxicity data, exposure pathway assumptions, and vapor intrusion. A [Web page](#) for information and status of the CSA Workgroup is available on the RRD Web site.

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

The Part 213 statutory amendments enacted in 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 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.

The Petroleum Nonaqueous-Phase Liquid (NAPL) Management Resource Document was drafted and made available for public comment via the DEQ listserv and the [Remediation and Redevelopment Division](#) Web site. The draft document includes NAPL definitions and NAPL management options. The Resource Document is undergoing final management review.

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#### **Recommendation R-11: Source Control Requirements under MCL 324.20114(1) and R 299.5526(4)**

Senator Thomas Casperson introduced [Senate Bill 891](#) earlier this year. Under the proposed changes, a “source” would be defined as the place or container (e.g., landfill or underground storage tank) from which the release originated. The bill has passed the Senate and awaits action by the House.

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#### **Recommendation R-14: Boron Standard for Groundwater**

The RRD attempted to update the exposure assumptions and toxicity data through stakeholder engagement in 2012 and 2013; however, consensus was not achieved. The RRD has re-engaged with stakeholders to review the physical-chemical properties, toxicity endpoints, and exposure assumptions as related to the Cleanup Criteria Rules. The CSA Workgroup will develop recommendations to Director Wyant. Boron is one of the hazardous substances included in the criteria and will be addressed as a part of the review.

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## WATER RESOURCES DIVISION

No updates to report this quarter.

### 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. EPA published the revised total coliform rule that will require the DEQ to make additions and changes to Parts 1-28, Supplying Water to the Public Rules, of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended. Recommendation W-17 will also be addressed in these rule changes. Stakeholders met on December 17, 2013, to discuss the Part 14, Cross Connection Rules. The draft rules will include a statement recommending that backflow preventers installed on a residential lawn irrigation system should be, or can be, tested once every five years in certain situations. The draft rules package should be submitted to the ORR sometime in the summer of 2014. It will then have to go through the formal rulemaking process, including a public comment period and public hearings.

[House Bill 5317](#) was introduced by Representative Michael McCready. An amendment was adopted in the House that changed the proposed inspection frequency from no more than once every 3 years to no more than once every 10 years unless the system contains chemical injection or the backflow preventer has undergone repair. The bill is currently in Senate Regulatory Reform Committee. The DEQ will continue discussions with the bill sponsor and work to find an agreeable compromise between parties.

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