



Implementation of the Environmental Advisory Rules Committee's Recommendations

Quarterly Status Report

Winter 2013

This is the eighth 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

The Air Quality Division's (AQD's) Air Toxics Workgroup held nine meetings between December 3, 2012, and September 25, 2013. In the fall of 2013, Workgroup members submitted comments to AQD on two iterations of the Workgroup's final draft report. A few remaining issues were then resolved between AQD and Workgroup members in December, 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. A Request for Rulemaking (RFR) will be submitted to the ORR for the changes to the air toxics rules and permit exemption rules in late February.

Contact: Joy Taylor, 517-284-6765, taylorJ1@michigan.gov

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

Revisions to the Part 15 rules became effective on October 28, 2013. The purpose of these revisions was to align the compliance dates with the federal Mercury and Air Toxics Standards (MATS), and to reflect that the Part 15 requirements 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.

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

Recommendation A–3: Additional Rule 201–Permit to Install–Exemptions

The 10-member 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 is under development.

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

Recommendation A–4: Rule 206–Process Deadlines (COMPLETED)

Revisions to Rule 206 became effective on October 28, 2013. Rule 206 addresses processing of applications for permits to install. The revisions require the AQD to act on all permit to install applications within 180 days of receipt, unless public participation is required, in which case a 240-day deadline will be required. Extensions to these deadlines will be granted with mutual consent of both the applicant and the DEQ.

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 January 29, 2014, meeting of the Air Advisory Council.

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Recommendation A–12: Electronic Permit

Michigan Manufacturers Association (MMA) is taking the lead on this recommendation. It will be a discussion item at the January 29, 2014, Air Advisory Council Meeting.

Recommendation A–14: Permit to Install Exemptions

See comments under Recommendation A–3.

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

Recommendation A–19: Limiting Compounds Required for the Annual Michigan Air Emission Reporting System (MAERS) Report (COMPLETED)

Review of the uncontrolled emission factors for non-criteria pollutants in the MAERS emission estimator has been completed. All factors that did not originate from the U.S. Environmental Protection Agency (U.S. EPA) WebFIRE system and all that have been revoked from WebFIRE have been identified. An IT request has been submitted to remove or inactivate these factors. New WebFIRE factors not currently in MAERS have also been tabulated and will be evaluated to ensure their addition to MAERS is appropriate.

The above review and evaluation process will be carried out as time allows during 2014 and 2015 for newly-used Source Classification Codes in future MAERS submittals, controlled emission factors, and, lastly, all remaining unreviewed factors.

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 (COMPLETED)

The revision to Rule 201(4) became effective on October 28, 2013. The revision to Rule 201(4) provides for putting a hold on the 18-month construction window if the permit issuance has been appealed.

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. EPA published the Revised Total Coliform Rule that will require the DEQ to make additions and changes to 1976 PA 399, Michigan Safe Drinking Water Act, as amended, and Administrative Rules, Supplying Water to the Public, Parts 1 to 28. Recommendation W–17 will also be addressed in these rule changes. Stakeholders met on December 17, 2013, to discuss Part 14. Cross-Connections rules.

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 Memorandum of Understanding (MOU) that was sent to the U.S. EPA for review on May 23, 2013. The MOU is moving into final review at the U.S. EPA. Once the DEQ has reviewed and concurred with any proposed U.S. EPA changes, the MOU will be signed by DEQ Director Wyant and the Attorney General.

Contact: Adam Wygant, 517-241-1504, wygantA@michigan.gov

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 the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), with the MMA and the Michigan Chamber of Commerce representatives to identify possible stakeholders and issues.

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

Recommendation RM–2: Beneficial Reuse

The DEQ has been working with the MMA and the Governor's office to perfect proposed legislative changes to update Part 115, Solid Waste Management, of the NREPA. These changes should be introduced in February.

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

Recommendation RM–3: Hazardous Waste Regulations (COMPLETED)

The Hazardous Waste Management rules were amended partly to implement Recommendations RM–3 and RM–7. The rule set is identified as 2012-108 EQ and the rules were filed with the Secretary of State (SOS) on October 29, 2013.

The Office of Waste Management and Radiological Protection (OWMRP) has deleted 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 deleted as they duplicated federal listings, the 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).

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

Recommendation RM–5: Hazardous Waste Biennial Reporting (COMPLETED)

The DEQ has discussed the biennial reporting process with stakeholders and adopted an electronic reporting system based on free software developed by the state of Florida. The software was tested and reviewed by both the DEQ and stakeholders. The U.S. 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 (COMPLETED)

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 Senate Bill 404 revised by 2013 PA 250, effective December 26, 2013, provide more options for satisfying the perpetual care fund requirements. The DEQ will continue to work with industry and the legislative sponsors to assure proper funds are available for Type III landfills.

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

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

Public Acts 73 and 74 of 2013 were enacted into law extending the existing hazardous waste fees and simplifying the associated funds. The recently enacted legislation combined three funds (i.e., Environmental Pollution Prevention, Hazardous Materials Transporter Permit and Waste Reduction Fee Revenue) into one fund resulting in increased flexibility for use of the funds. Stakeholder discussions continue to occur regarding additional opportunities to create a fair, simple, and efficient fee structure for the future.

ORR 2012-108 EQ contained a rule change that minimizes the paperwork associated with manifests. The manifest itself is a federal form that the state cannot change. The rules package filed with the SOS on October 29, 2013, eliminates 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 a manifest showing receipt by an out-of-state facility.

The DEQ intends to participate in activities related to the federal Hazardous Waste Electronic Manifest Establishment Act, or "e-Manifest". The DEQ is initiating an electronic manifest information submittal system with 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: Vapor Intrusion Policy and Procedure for Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and Part 213, Leaking Underground Storage Tanks, of the NREPA

Three of the four proposed recommendations have been implemented. A Guidance Document for the Vapor Intrusion Pathway was finalized in May 2013 and posted to the [Remediation and Redevelopment](#) (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 attempted to include generic vapor intrusion criteria in the revision of Part 201; however, consensus with stakeholders was not achieved. The RRD will reengage with stakeholders in early 2014 to complete the rules update.

Contact: Matt Williams, 517-284-5171, williamsM13@michigan.gov

Recommendation R–3: Revising Part 201, Cleanup Criteria, of the NREPA

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 will reengage with stakeholders in early 2014 to complete the rules update.

Contact: Chris Flaga, 517-284-5098, flagaC@michigan.gov

Recommendation R–6: Effective Solubility and Free Phase Contamination (COMPLETED)

The statutory amendments enacted in May 2012 to Part 213 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 Non-Aqueous 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 LNAPL,” “mobile LNAPL,” and “migrating LNAPL,” 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 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 LNAPL Management Policy and Procedure has been drafted and advertised for public comment via the DEQ listserv, and is also available on the DEQ, [Remediation and Redevelopment Division \(RRD\)](#) Web page. The draft document includes LNAPL definitions and LNAPL management recommendations, and has completed public review. Comments have been incorporated into the document; however, some additional changes are now required in order to achieve consistency with the new Part 201 rules promulgated on December 30, 2013.

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

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

Part 201 was revised by 2012 PA 446 by amending the definition of “Background Concentration.” A policy on appropriate use of the Michigan Background Soil Survey has been drafted and is near completion. In addition, a student has been hired to research background soil concentration data within existing site files to expand the dataset. This effort will be completed summer/fall 2014.

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

Recommendation R–10: Soil Relocation Statute (MCL 324.20120c) and Associated Rules (COMPLETED)

Part 201 was revised by 2012 PA 446 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, the 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–11: Source Control Requirements under MCL 324.20114(1) and R 299.5526(4)

The recommendation will require additional discussion with stakeholders and a statutory amendment.

Contact: Bob Wagner, 517-284-5144, wagnerR1@michigan.gov

Recommendation R–14: Boron Standard

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 will reengage with stakeholders in early 2014 to complete the Rules update. Boron is one of the hazardous substances included in the criteria and will be addressed as a part of the update.

Contact: Chris Flaga, 517-284-5098, flagaC@michigan.gov

Recommendation R–17: Part 201 Cross References (COMPLETED)

As of December 31, 2013, the remaining Part 5 Rules and Part 7 Rules have been rescinded, leaving only the newly-promulgated Environmental Contamination Response Activity Rules and the Part 10 Compliance with Section 20107a, Due Care Rules. In the Part 10 Rules, there are a few remaining references to sections of Part 201 that have been repealed, and to subsections of 20107a that have been amended, and now have different meanings. There are 14 erroneous cross references that have been identified and will be put up for consideration in updating the rules in 2014.

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WATER RESOURCES DIVISION

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

Stakeholders 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. Whether changes will be made via rule or statute needs to be determined.

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

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 that 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.

Under 2013 PA 98 the DEQ is required to propose development of two additional General Permit categories—for blueberry production in wetlands and for activities in designated county drains. The categories must be publicly noticed and also approved by the U.S. EPA prior to issuance.

The DEQ issued a public notice on September 9, 2013, for obtaining comments on adding county drains to the existing General Permit categories. The U.S. EPA objected to the proposed county drain category on November 21, 2013. The DEQ is working with the drain commissioners and the U.S. EPA to try to resolve the objections. A blueberry production permit category has been drafted and a public notice was issued on [December 30, 2013](#). The U.S. EPA will have 90 days from the date of the public notice to comment on the proposed blueberry 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-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 February.

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

Recommendation W-18: National Pollution Discharge Elimination (NPDES) Water Treatment Additives

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

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

GENERAL RECOMMENDATIONS

Recommendation G-1: Rules More Stringent Than Federal

Director Dan Wyant, will be inviting stakeholders to identify DEQ rules that are more stringent than federal standards and there is no convincing reason that they should be more stringent. Stakeholders will be able to make their case to Director Wyant in person during a two-hour meeting to be scheduled on an annual basis in the spring. More details to follow.

During the process of promulgating new rules or amending existing rules, all State of Michigan Departments must also respond to the question contained in the Regulatory Impact Statement that is reviewed by the ORR.

Contact: Dave Fiedler, 517-284-6705, fiedlerD@michigan.gov

Recommendation G-2: Treatment of DEQ Non-Rule Regulatory Actions

The DEQ has reviewed and posted all of its public [forms](#) on the DEQ Public Forms database. Go to www.michigan.gov/deg | Key Topics | Forms.

Existing DEQ Policy and Procedure Nos. 01-019 and 09-012 have been superseded by a new department policy. The new policy, "Department Policy and Procedure, Division Policy and Procedure, and Administrative Procedures Act Guideline Development, Revision, Rescission, and Use, No. 09-013" will improve the consistency and accessibility of all of the department and division policy and procedures. External and some internal [policies](#) that are beneficial to the public are being posted on the Internet. Go to www.michigan.gov/deg | Key Topics | Policy and Procedures. Not all of the department's policies have been converted to the new template and posted. This is a work in progress.

DEQ divisions and offices are reviewing all of their publications. Outdated publications will either be removed or updated. This is also a work in progress.

Contact: Dave Fiedler, 517-284-6705, fiedlerD@michigan.gov

Recommendation G–3: Administrative Rule Approval Process (COMPLETED)

The DEQ is promulgating rules within 12 months as stipulated in the recommendation. Below are the time frames for rulemaking requested in 2013.

Rule Set Number	Rule Title	Division	Request for Rulemaking Approved by ORR	Rules Filed with the SOS	Number of Days for Rulemaking
2013-021 EQ	Part 15 -Mercury	AQD	3/14/13	10/28/13	227
2013-046 EQ	Water Quality Trading	WRD	3/28/13	8/27/13	151
2013-052 EQ	Part 11 – Continuous Emission Monitoring	AQD	6/5/13		In process
2013-056 EQ	Cleanup Criteria Rules	RRD	6/12/13	12/30/13	201
2013-065 EQ	Part 14 – Clean Corporate Citizens	AQD	7/10/13		In process
2013-101 EQ	Oil and Gas Operations	OOGM	11/1/13		In process
2013-109 EQ	Part 9 - Miscellaneous	AQD	12/9/13		In process

Contact: Dave Fiedler, 517-284-6705, fiedlerD@michigan.gov

Recommendation G–4: DEQ Citation of Legal Authority (COMPLETED)

In DEQ Policy and Procedure No. 04-003, Compliance and Enforcement, Appendix A, Section 2A, requires violation notices to contain a description in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted. DEQ staff have been reminded to follow this procedure.

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