Brownfield Continuous Program Improvement Workgroup
Committee Recommendations

Committee Name: Site Reclamation Rules

Issue Statement #1: Eliminate Site Reclamation Program Rules

The administrative rules for the Site Reclamation Program were created and approved by the Joint Committee on Administrative Rules in 1991. When the Clean Michigan Initiative was passed in 1988, the Site Reclamation Rules were applied to the new program (CMI did not require new rules to be created for the brownfield program). Many of the rules were rendered obsolete by agency reorganizations and name changes, statutory changes, and new technology and the DEQ has cherry-picked around obsolete rules. However, several of the rules remain relevant and should be codified or adopted by policy, and those recommended to be retained are described below.

Specific Action to be Taken:

☒Statutory ☒Rule ☐Policy ☐Governance (Process)

Recommendations:

1. Rescind Site Reclamation Rules.

2. Incorporate into Part 196 definitions for "eligible property", "measurable economic benefit", "measureable environmental benefit", and "project" as provided in legislative language section below.
    a. It should be noted that the definition of eligible property identifies the site as a facility. Loan projects can also be at sites that are "suspected to be" a facility. This concept will need to be captured somewhere in the legislation.

3. Currently Part 196 only provides specific detail on the CMI brownfield loan program, while the grant program details reside within the Site Reclamation Rules. With the elimination of the rules, specifics regarding grant requirements need to be incorporated into Part 196. Specific language has been provided in the Draft Legislative Language section below to address addition of the grant requirements. Some of the specific issues to address include:
    a. Section 19608a should be modified so that its contents apply to both grants and loans. Loan-specific text should be modified as necessary, for example changing / adding facility and development requirements to reflect those associated with grants.
    b. 19608a(2) allows an open application period for loans, and is consistent with the Site Reclamation rules. This should be made to apply to grants as well as loans.
    c. Section 19808a(6) addresses how loan funds are disbursed and should be modified to include the process for grant funds are disbursement. Specific language is provided below.

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4. Grant applicants (local units of government) are required to submit a resolution in support of a project with their grant applications. The committee agreed that while it is important to assure that the project has local support, a letter would be sufficient. Recommended language is provided below.

5. The committee determined that it was important to allow the DEQ the ability to not only revoke but also to suspend a grant or loan if a grantee or borrower is not in compliance with the contract, permits, and so on. This would allow for DEQ to withhold payment until compliance is reached, without having to resort to revoking the funding. Section 19612(2) should be modified to reflect this issue.

6. The Site Reclamation rules allow grants and loans for up to $2 million each per year, per community. The CMI limits grants and loans to $1 million per year, per community. Although this issue was referred to the Program Implementation Committee, we support flexibility in awarding more grant and/or loan than allowed under CMI, would indicate that awards may be limited, depending on funding availability.

7. The rules state that funds can't be used to relieve a potentially liable party of their responsibility for response activities, and that liable parties cannot benefit or profit from the investment of public funds. With elimination of the rules, this issue will need to be addressed within Part 196. This issue was referred to the Liability Committee, whom will provide the appropriate language. We want to reinforce our view that clarification is required on when and whether grant and loan funds can be used when there is a potentially liable party associated with an eligible property. The final wording should be clear so that the meaning of terms like "profit" and "relieve a potentially liable party from responsibility" are consistently interpreted.

Supporting Arguments:

I. Pros
- Obsolete or irrelevant rules will be eliminated.
- Good policies that benefit the state and the program should be retained, clarified, and codified.

II. Cons

Draft Legislative Language:

1. Definitions: The following definitions should be added to Section 19601:
   i. "Eligible property" means property that is a facility and that was used or is currently being used for commercial, industrial, public, or residential purposes.
   ii. "Measurable economic benefit" means the permanent jobs that are created or retained, the capital invested, and/or the increased tax base to the county, city, village, or township where the project is located."

iii. "Measurable environmental benefit" means the requirements of Part 201 and/or Part 213 are advanced at an eligible property where environmental conditions inhibit redevelopment or reuse.
iv. "Project" means the entire project to be undertaken, including the actual site remediation and resulting economic development.

2. 19608a(2) should be made to apply to grants as well as loans.

3. Add the following toSection 19608a(4): "A letter of support from the Chief Executive or highest ranking elected official of the applicant, including provisions that if funding is awarded, the project will be undertaken, and that the proposed development is consistent with local development or redevelopment plans, zoning ordinances and/or master plans."

4. Add the following underlined language to 19608a(4)(k): "<u>For loans</u>, a resolution from the governing body of the applicant committing to repayment.

5. Add the following to Section 19608a(6): "Grant funds will be disbursed on a reimbursement basis upon receipt of appropriate documentation. Loan funds will be disbursed in draws based on an approved work plan. Supporting documentation will be submitted after loan expenses are incurred. Documentation requirements will be specified by the department on a form prescribed for requesting reimbursement."

6. Add the following underlined language to Section 19612(2): "the department may revoke <u>or suspend</u> a grant or loan…"

Recommended Follow up Actions:

Asbestos abatement is prohibited by the Site Reclamation rules. DLAD Committee is addressing Asbestos abatement issue and will defer to their recommendation.
It should be noted that if the prohibition is to continue, it will need to be included in statute if the rules are eliminated, potentially under "eligible activities" in section 19608a(6) or in 19608 following items (4), (5), and (6) where other prohibitions on use of funds are identified.