



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

Quarterly Status Report

Spring 2015

**AIR QUALITY DIVISION**

**Recommendation A-1: Air Toxic Rules (IN PROCESS)**

*Response:*

The Air Quality Division's (AQD) Air Toxics Workgroup held nine meetings between December 3, 2012, and September 25, 2013. In September and 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 was finalized on January 31, 2014. Almost all of the Environmental ARC's recommendations are being addressed via proposed rule changes or changes in AQD procedures, as appropriate. The Request for Rulemaking (RFR) for amendments to the Part 1 and Part 2 rules were approved by the Office of Regulatory Reinvention (ORR) on December 9, 2014, and are identified as ORR rule set numbers 2014-153 EQ and 2014-154 EQ, respectively. Revisions to the RFRs were approved by the ORR on March 23, 2015.

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**Recommendation A-3: Additional Rule 201 (Permit to Install) Exemptions (IN PROCESS)**

*Response:*

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. The Air Advisory Council (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. The RFR for amendments to the Part 1 and Part 2 rules were approved by ORR on December 9, 2014, and are identified as ORR rule set numbers 2014-153 EQ and 2014-154 EQ, respectively. Revisions to RFRs were approved by the ORR on March 23, 2015.

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### **Recommendation A-5: Dispersion Modeling Guidance Document (COMPLETED)**

*Response:*

A draft policy and procedure was presented to the AAC at its March 1, 2013; May 9, 2013; and January 29, 2014, meetings. On May 28, 2014, the AAC recommended that additional meetings on the dispersion modeling policy be held over the summer of 2014, and for this recommendation to be added to the October 29, 2014, AAC agenda. A new version of the draft guidance document provided to the AAC on December 3, 2014, AQD Policy and Procedure No. AQD-22, "[Dispersion Modeling Guidance for Federally Regulated Pollutants](#)," was finalized on March 3, 2015. The AAC concurred with the new policy at their April 15, 2015 meeting.

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

See comments under Recommendation A-3.

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### **Recommendation A-15: Volatile Organic Compounds (VOC) Emissions from Pharmaceuticals (NOT TO BE COMPLETED)**

*Response:*

VOC emissions will be a discussion item at the October 29, 2014, AAC Meeting. An agreement was reached at the December 3, 2014, AAC meeting to have a small group work together over the next 90 days to discuss the nexus between the Maximum Achievable Control Technology and Rule 625, as well as State Implementation Plan (SIP) backsliding implications. At the April 15, 2015, AAC meeting, it was agreed not to pursue this recommendation.

## **OFFICE OF DRINKING WATER AND MUNICIPAL ASSISTANCE**

### **Recommendation W-17: Safe Drinking Water – Cross Connection Inspections of Residential, Commercial, and Industrial Properties (IN PROCESS)**

*Response:*

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, 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 Inspections of Residential, Commercial, and Industrial Properties, rules. The draft rules include a provision allowing backflow preventers installed on a residential lawn irrigation system to be tested once every five years in certain situations. The draft rules can be viewed on the ORR [Pending Rule Changes](#) Web page. See ORR rule set 2014-023 EQ, page 165. A public hearing on the rules was held on February 18, 2015.

In 2014, [House Bill 5317](#) was introduced by Representative Michael McCready. If enrolled by the Legislature, the bill would have limited a water supplier's ability to require testing of backflow preventers on untreated, residential irrigation systems to not more often than once every five years. Governor Snyder vetoed the bill due to an increased potential risk to public health.

To date, there has not been legislation introduced this session on this matter.

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## **OFFICE OF OIL, GAS, AND MINERALS**

Nothing new to report this quarter.

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

Nothing new to report this quarter.

## **REMEDIATION AND REDEVELOPMENT DIVISION**

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

#### *Recommendation:*

The DEQ should carefully address the important vapor intrusion pathway in a manner which protects human health consistent with the best scientific evidence available. In doing so, the DEQ should: (i) allow the initial use of a conceptual site model and other site evaluation techniques before concluding the presence of a complete exposure pathway and vapor intrusion risk; (ii) allow data collection and evaluation processes consistent with the needs of business transactions, which may include greater use of real-time sampling techniques; (iii) prioritize the compilation and comparison to initial screening levels (not generic criteria) of Michigan-based data from the many sites which are known to exist and are available to the DEQ; and (iv) develop generic vapor intrusion criteria (with variations based on soil type and other site-specific features) with meaningful input from resources outside of the DEQ with particular expertise in this important area.

#### *Response:*

Three of the four proposed solutions have been implemented. The Part 201, Environmental Remediation, and Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, 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 engaged stakeholders to evaluate vapor intrusion as related to the Cleanup Criteria rules. The Criteria Stakeholder Advisory (CSA) Workgroup provided recommendations

to DEQ Director Wyant with respect to Vapor Intrusion Criteria. The update to the criteria for all hazardous substances will be conducted in 2015, pursuant to the Director's response to the stakeholders' recommendations. The recommendations for the Vapor Intrusion pathway include a tiered approach which allows use of certain site specific conditions (e.g. soil type, temperature), consistent with the ORR Recommendation. The proposed rules will include generic criteria for vapor intrusion.

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### **Recommendation R-3: Revising Part 201 Cleanup Criteria (IN PROCESS)**

#### *Recommendation:*

The DEQ should evaluate the algorithms, exposure assumptions, and toxicity values used to establish generic cleanup criteria and screening levels under Section 20120a of Part 201 and Part 7, Cleanup Criteria, of the Administrative Rules, and revise those algorithms, exposure assumptions, and toxicity values as necessary based on best practices from other states, reasonable and realistic conditions, and good science. Consistent with any such revisions, the DEQ should then revise the generic cleanup criteria and screening levels established in the Part 7 rules.

#### *Response:*

#### Background

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

#### CSA Workgroup

A CSA Workgroup was convened by the DEQ on March 26, 2014. The responsibilities of the CSA Workgroup included: 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 hired Public Sector Consultants to facilitate the stakeholder process. Four technical subcommittees were appointed to assist the CSA Workgroup. The Workgroup completed their report and provided a total of 29 recommendations to the Director. The majority of the recommendations were supported by the DEQ, and four recommendations warranted further discussion with the CSA. The update to the criteria for all hazardous substances for all pathways (including vapor intrusion) is currently underway, pursuant to the Director's response to the stakeholders' recommendations.

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### **Recommendation R-8: Definition of Background Concentrations for Hazardous Substance in Soil and Groundwater. (IN PROCESS)**

#### *Recommendation:*

The DEQ should consider "industrial background" concentrations (otherwise known as anthropogenic contamination) when establishing cleanup goals for all hazardous substances. Specifically, R 299.5701 of Part 201, and the Part 5 and Part 10 Administrative rules should be amended, as necessary, to create a process whereby the DEQ will work with the regulated community in areas containing anthropogenic contamination. This process should include:

1. The DEQ should make existing data regarding anthropogenic contamination across the state available to the regulated community.
2. The DEQ should allow flexibility for the regulated community to develop data regarding anthropogenic contamination for particular sites.
3. At sites where anthropogenic contamination exists, there should be no obligation for an owner/operator to clean up the contamination. Rather the DEQ should work with the owner/operator to develop a due-care plan for the site.

#### *Response:*

Act 446 of 2012 amended Part 201 by amending the definition of "background concentration." Additional amendments to Part 201 in Senate Bill (SB) 891 were passed by the Legislature, and 2015 PA 542 was signed by the Governor on January 15, 2015, which further clarifies the definition of "background concentration." A policy on appropriate use of the Michigan Background Soil Survey is being drafted by the Soil Background Technical and Program Support team to include information on the revised definition of "background concentration." Additionally, the DEQ completed a two-year project of collecting background soil data from existing RRD files to add to the database of background data that was used for the 2005 Michigan Background Soil Survey. This new study is set to be published as an additional resource for identifying soil background concentrations.

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## **Recommendation R-14: Boron Standard for Groundwater (IN PROCESS)**

### *Recommendation:*

Amend R 299.5744 to use the drinking water standard as the criteria for boron. Prior to determining to the applicability of the drinking water standard at a site, the pathway must be reviewed to determine if the impacted portion of the receiving waters is being used for purposes of irrigation. If the impacted portion of the receiving waters is being directly used for irrigation, then a lower standard may be set at the discretion of the DEQ to protect potentially sensitive crops.

### *Response:*

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 reengaged with stakeholders to review the physical-chemical properties, toxicity endpoints, and exposure assumptions as related to the Cleanup Criteria Rules. The CSA Workgroup has developed recommendations and provided them to Director Wyant. The update to the criteria for all hazardous substances for all pathways is in progress, pursuant to the Director's response to the Stakeholders' recommendations. 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**

## **Recommendation W-1: Part 5 – Spillage of Oil and Polluting Material Rules (IN PROCESS)**

### *Response:*

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; September 12, 2013; and November 3, 2014, to discuss changes to the rules. The Water Resources Division (WRD) provided additional information to the stakeholders on December 5, 2014. On January 15, 2015, a subgroup of the stakeholders submitted a version of the Part 5 Rules for review by the WRD. A meeting was held on January 30, 2015, with a final meeting on March 3, 2015. The stakeholder process is concluded now, and final pieces are being put into place to proceed with legislation and/or rule process.

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**Recommendation W-10: Part 5 – Spillage of Oil and Polluting Material Rules (IN PROCESS)**

*Response:*

See Recommendation W-1.

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**GENERAL**

Nothing new to report this quarter