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STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



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DIRECTOR

**Air Toxics Workgroup (ATW) Meeting Summary  
January 17, 2013**

Members Present:

Stuart Batterman, U of M  
Greg Ryan, DTE Energy  
Brad Venman, NTH  
Kim Essenmacher, GM  
Kory Groetsch, MDCH  
Joy Taylor Morgan, AQD, Facilitator

John Caudell, Fishbeck Thompson Carr & Huber  
Steve Kohl, Warner Norcross & Judd  
Brad van Guilder, Sierra Club  
James Clift, MI Environmental Council  
Bob Sills, AQD  
Mark Mitchell, AQD for Mary Ann Dolehanty, AQD

Members Absent:

David Gustafson, Dow Chemical Co.

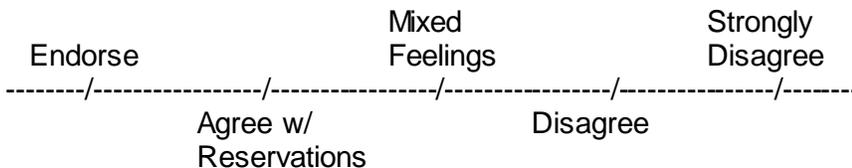
Guests/Observers Present:

Mary Maupin, AQD  
Vince Hellwig, AQD Division Chief

Mike Depa, AQD  
Dave Fiedler, Regulatory Affairs Officer, MDEQ

The meeting was initiated with introductions. A new participant will be Dave Fiedler, MDEQ Regulatory Affairs Officer, as requested by the MDEQ Director. Joy initiated the meeting with a review of the agenda, a reminder for members to review the first meeting summary, and a review of the charge and ground rules. A ground rule was added, "plain speaking" to avoid the use of acronyms as much as possible. Joy introduced a decision-making tool called "gradients of agreement." She stated while we have a very diverse group of members with a wide array of expertise and opinions, which will make this process more robust and all-inclusive, it also could lead to difficulty in coming to consensus. This tool's intent is to show that consensus does not necessarily mean complete agreement when making a "consensus decision" and the goal is to get as high a level of agreement as necessary to move forward as a group. So, using this tool, consensus can mean the level of agreement necessary to keep a group moving forward. The steps in using this tool are: 1) Decide what level of agreement is necessary for "consensus;" 2) State the proposal; 3) Poll the workgroup; 4) Explain (as necessary) member's views and opinions; 5) Modify the proposal as necessary; and 6) Poll again, until the agreed upon level of agreement is attained.

The members agreed that this tool could be useful and that the level of agreement necessary would be at the "mixed feelings" or to the left of the scale before an issue could be agreed upon with "consensus" and moved forward.



## Dave Fiedler's Presentation

Dave Fiedler provided the group with an overview of the ORR (Office of Regulatory Reinvention). He first provided some background on the ORR process and the formation of the Environmental Advisory Rules Committee (ARC) and mentioned that the members that also served on the Air Quality Subcommittee of ARC included John Caudell and Andy Such (co-chairs), James Clift, Brian Warner and David Gustafson. The Environmental ARC provided 77 recommendations to ORR that addressed all media. Dave mentioned that the DEQ has a "regulatory reinvention" web site ([http://www.michigan.gov/deq/0,4561,7-135-3306\\_61248---,00.html](http://www.michigan.gov/deq/0,4561,7-135-3306_61248---,00.html)) for tracking all Environmental ARC recommendations. To date, 30 recommendations have been completed and numerous rules (233) have been rescinded.

The air toxics rules recommendations, identified as A-1 in the ORR report, were made because individuals thought that the air toxics rules were outdated and in need of reform. There were also concerns that there might be redundancy with the federal program, delays in permitting and costs for stack testing. Dave went through each of the 9 air toxics rule recommendations that comprise A-1. The first recommendation states that the T-BACT requirement for VOCs in Rule 224 should be rescinded since it is also required in Rule 702. Dave said that VOCs were already exempt from Rule 224 so it appears that DEQ is already complying with this recommendation. More discussion of this issue ensued later in the meeting.

The second recommendation deals with limiting modification reviews to only those that would increase the Hazardous Air Index more than 10% above the permitted baseline. Dave mentioned that this recommendation is similar to the process of determining what is a meaningful change explained in a document developed by Jerry Avery in 1993 titled, "A Description of the New Air Toxic Permit Exemptions Relating to Pollution Prevention." This document explains how to calculate the Hazardous Potential for the existing and proposed change. If the proposed change is meaningful, then it would require a permit. An example of how to make this determination is found on page 3-19 of the "Permit to Install – Determining Applicability Guidebook".

The third recommendation states that if sources are subjected to the federal MACT (Maximum Achievable Control Technology) standards under the Clean Air Act (CAA), then they should be exempt from the air toxics rules. Rule 226(b) does exempt sources subject to a MACT which have had an EPA residual risk assessment after the MACT issuance [112(f)]. However, the exemption only applies to HAPs.

The fourth recommendation pertains to exempting sources that burn "clean fuels." Dave mentioned that not all fuel switches would require a permit to install.

The fifth recommendation states that pollution control projects should be exempt from the health based screening level requirements. Rule 285(f) exempts pollution control equipment from a permit to install requirement if the equipment itself does not generate a significant amount of criteria air pollutants or a meaningful quantity of toxic air contaminants (TACs).

The sixth recommendation limits the list of TACs to the HAP list. The HAP list is not an all-inclusive list of air toxics that may pose an unacceptable health risk.

Make the acceptable exposure limits consistent with the other states was the seventh recommendation. The AQD uses the occupational exposure limit for some TACs, like other states; but AQD will use the best available toxicity information for others. The eighth recommendation was concerned with costly stack tests, which were further discussed during the meeting. The last recommendation is to rescind

Rule 228. Dave mentioned that Rule 228 is intended to address more than one pollutant and routes of exposure other than inhalation, which is often the case in the environment; he said the rule is used sparingly.

A question was asked about whom in the Department ultimately needs to sign off on the recommended rule changes. The answer is Director Wyant. A question was also asked about whether or not the statute could be changed. The answer was that it could, and individuals would need to work with the state legislators and the DEQ legislative liaison to initiate this process.

### Bob Sills – Discussion of Benchmarking

Bob Sills then provided a handout (which will be posted on the ATW web site) titled, “EPA Region 5 States Benchmarking Comparison Table.” This handout pertains to recommendation number A-1 (7), which is to make the acceptable exposure limits consistent with other nearby states. Bob mentioned that we now have several documents on the ATW web site that summarize other state programs. One of those is titled, “Benchmarking of State Air Toxics Programs” that was assembled in 2010 that compares air toxics programs in all 50 states compiled by AQD. Some of the questions asked were: 1) Does your state go beyond the federal program? 2) What is the basis of your program? And 3) what air toxics are included?

They found that 30 states do something that goes beyond the federal program. In EPA Region 5 (which includes the states of MI, MN, WI, IL OH and IN), five of the states (all but IL) go beyond the federal program.

Also on the benchmarking link is a compilation of Region 5 state “Air Toxic Profiles” as requested by EPA Region 5. These reports, which were submitted to EPA in the fall of 2012, are the basis for Bob’s handout. IN and IL have relatively limited regulatory programs for air toxics in permitting, while MI, MN, OH and WI have relatively extensive air toxics regulatory programs for permitting new/modified sources. MN and WI also perform air toxics risk assessments for existing sources of air toxics.

All states have exemptions. Some states have a discreet list of air toxics. No state in the region uses only the federal HAP (hazardous air pollutant) list. In MN, a statutory requirement drives cumulative risk assessments for certain proposed projects in part of Minneapolis. In OH, they can look at combined impacts from the same facility, but not background.

Bob gave a summary on how cumulative air toxics impacts are evaluated by States in the region. None of the states routinely perform cumulative risk assessments, with the exception of MN (for certain projects in an area of Minneapolis). Michigan and Ohio consider cumulative impacts in some cases. In Michigan, the DATI (Detroit Air Toxics Initiative) cumulative air toxics assessments were conducted in 2005 and 2010. All of the R5 states have evaluated cumulative air toxics risks via monitoring data or emissions inventories and modeling exercises [EPA’s NATA (National Air Toxics Assessment) and School Air Toxics initiatives; Regional Air Impact Modeling Initiative (RAIMI)]. WI has a goal to reduce by fifty percent the number of people at a greater than one-in-one-million cancer risk from air toxics; their RAIMI studies have found that air toxics cancer risk is heavily driven by mobile sources.

Cancer and noncancer risk benchmarks also vary among states in the region. For MI, we have a default screening level of  $0.1 \mu\text{g}/\text{m}^3$  which is applied when even minimal toxicity data (LC50 or LD50 data) are absent; this is unique. When occupational exposure limits (OELs) are used to derive benchmarks, MI uses OEL/100; OH and WI use OEL/42.

## Question/Answers

Q: What would trigger a review of an existing source?

A: Public interest or in OH, the school air toxics program drove many reviews of existing sources of manganese and other metals.

Q: For IN, they can consider any contaminant?

A: Yes. And, generally, all states seem to have a statute or rule that provides a public health protection "back stop" similar to the AQD's R. 901, even if more specific statutes or rules are lacking.

Q: How can you consider background?

A: Air toxics background levels can be characterized from monitoring data or, from EPA's NATA; background estimates were developed for some air toxics.

Q: What other states have cumulative exposure related programs?

A: Some include CA (hot spot program), NJ, NY and SC.

Q: What is WI doing to reduce risk?

A: One key driver is mobile source emissions; improvement comes from fuels changes and improved emission controls.

Q: Does WI conduct modeling?

A: Yes, and background is included.

Q: Does Part 55 of the statute or the rules under Part 55 set a cancer target risk level?

A: This is established in the Part 55 administrative rules at  $10^{-6}$  (per chemical for a process) or  $10^{-5}$  (per chemical for a facility). In Part 201 (the cleanup program), the statute has a  $10^{-5}$  target risk level (per chemical), and the surface water discharge program also has a target risk level of  $10^{-5}$  (per chemical). For MI, this is applied as a two-step process for existing facilities proposing a new process. First, they can demonstrate meeting the IRSL ( $10^{-6}$  risk per compound). If they exceed that, then a second step would be to demonstrate that the emissions of that compound from the entire facility can meet the SRSR ( $10^{-5}$  risk per compound). However, for ambient air impacts in industrial land use areas and public roads, they can have a tenfold higher impact (which is not to say there is 10 times more risk, since the exposure potential is much lower). This was developed by the 1997 air toxics workgroup.

Q: For the higher allowed impacts on roads, how is protection assured for residential exposure close to the roads?

A: The modeled impacts anywhere off the roads or outside of the industrial areas, including any nearby residential areas, do not qualify for the 10X higher allowed impacts. The modeling demonstration for compliance with R. 225 would make the distinction between the land uses and the applicable benchmarks.

Q: Does this apply to over water?

A: We don't have a specific rule that allows for that, as we do for roads and industrial areas, however, we could address the lower exposure potential over water as part of a R. 226(d) evaluation. Over water, there would be a lower chronic exposure potential, and under R. 226(d) we could also consider the acute exposure potential and any available acute health protective benchmarks.

Q: Are the averaging times different in all the states? This can significantly affect how stringent the screening levels are.

A: Yes, there are differences. For example, OH uses a one hour averaging time for all their benchmarks.

#### Mark Mitchell – Discussion of A-1 (1) and (8)

##### A-1(1)

Mark stated that when we get an application, those VOCs (all of which are TACs) are NOT subject to T-BACT, so he is not sure what the issue is with the recommendation. VOCs are not subject to T-BACT. As the recommendation is currently written, AQD is complying with the recommendation. A suggestion was to possibly change R. 224(2) (2)(c) to remove the word “only” or to possibly re-phrase TAC wording under 702 is not subject to R.224.

A few individuals who were involved with the ARC – Air Toxics Subcommittee thought that perhaps the recommendations were not worded correctly and that their actual intent was not properly communicated in writing.

Some discussion took place on how VOCs are currently regulated and addressed under R. 702. The issue seems to be more of a control technology issue.

Q: What kind of background information and data was gathered to demonstrate that these rules recommended for revision or to be rescinded were burdensome?

A: The recommendations were really complaint driven and the toxicological expertise was not at the table; there was an assumption that the recommendations would be vetted more in the future.

##### A-1(8)

Mark initiated a discussion on stack testing. He stated that some federal requirements do require stack testing. He disagrees that AQD does not use stack test data. Regarding conducting research, AQD tries to limit the amount of testing. Initially, AQD may require testing of a couple of facilities, but the testing is not continued. They do negotiate stack testing in permits. The issue in A-1(8) was addressing asphalt plants and Mark stated that we stopped asking for routine testing, and we will share that information with the ATW.

Mark stated that there is currently some concern with the limited emissions data (including toxics) for wood pellet manufacturers (there is a formaldehyde concern), and stack testing can address that. Also with engine test cells, stack testing may be needed in order to characterize emissions.

Discussion covered the difficulty of obtaining stack test data, and the lack of an available common template for test results, and the data are not available electronically.

Joy asked the Workgroup members to then prioritize the remaining recommendations by voting on their top two priorities. There were eight votes for A-1(4) and seven votes for A-1(5) and one vote for A-1(6).

##### A-1(4)

The ATW then began discussions about what constitutes a “clean fuel” and a “biofuel.” The group generally agreed that natural gas fuels were “clean” with relatively little air toxics being emitted. A workgroup member wanted to see what other air regulations these sources would have to comply with (this was subsequently shared by Mark Mitchell).

There was some discussion around what are “biofuels,” “ultra low sulfur” fuels and “#2 fuel oils.” There was a comment that the EPA may have a good initial working definition for biofuels, in recent regulations.

Action Items to be Completed Prior to the Next ATW Meeting:

- John Caudell and Kim Essenmacher will review the previous notes and discussion from the ARC – Air Quality Subcommittee and draft what they think was their intent in recommendation A-1(1). (Because as written, the AQD is complying with this first recommendation.)
- Mark Mitchell will provide the group with the response to the Asphalt Pavement Association of Michigan (APAM) regarding stack testing (this document was posted to the ATW web site on 1/28/13.) Mark also committed to investigating what air regulations sources of natural gas combustion are subject to (this was sent out in a note to the ATW on 1/17/13.)
- Mark Mitchell and Bob Sills committed to investigating what air toxics are emitted from various fuels including low sulfur fuels.
- Brad Venman committed to sharing the definition of “biomass” contained in 40 CFR (this definition was sent to Joy 1/28/13.)
- Greg Ryan offered to contact Karen Kajiya-Mills, Supervisor Technical Programs Unit, AQD regarding developing a template for stack test data.

Meeting Summary prepared by: Joy Taylor Morgan, Facilitator 1-25-13  
JTM:Ih