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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

**Air Toxics Workgroup (ATW)
Meeting Summary
December 3, 2012**

Members Present:

Stuart Batterman, U of M
Greg Ryan, DTE Energy
Brad Venman, NTH
Kim Essenmacher, GM
Kory Groetsch, MDCH
Bob Sills, AQD
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
David Gustafson, Dow Chemical Co.
Lynn Fiedler, AQD for Mary Ann Dolehanty, AQD

Guests/observers present:

Dan Wyant, MDEQ Director
Mary Maupin, AQD
Vince Hellwig, AQD Division Chief

Jim Sygo, Deputy Director MDEQ
Mike Depa, AQD
Rob Nederhood, Deputy Director LARA,

The meeting was initiated with introductions. The ATW members also answered the question, "What do you think in your background will contribute to success in this process?" The ATW members' responses demonstrated that they collectively had well over one hundred years of experience and were knowledgeable in the following areas: respiratory therapy, toxicology, air permitting, engineering, air toxics research, chemical manufacturing, environmental policy and law, environmental advocacy, physics, public health and atmospheric modeling.

MDEQ Director Dan Wyant provided introductory comments; he welcomed the group and thanked them for volunteering to serve on the ATW. He stated that he will provide leadership for the ATW, and pointed out the MDEQ mission and the three guiding principles. The mission is, "The Michigan Department of Environmental Quality promotes wise management of Michigan's air, land, and water resources to support a sustainable environment, healthy communities, and vibrant economy." The three guiding principles are: 1) Be leaders in environmental stewardship; 2) Be partners in economic development, and; 3) Excel in customer service. He said that both the Governor and he believe that we can protect the environment as well as have a strong economy in our state and that they are both closely linked. He also mentioned that he is very interested in moving the ORR recommendations forward in a timely manner.

LARA Deputy Director Rob Nederhood followed and mentioned the role his department had in the process of providing the Office of Regulatory Reinvention (ORR) report to the Governor's office. He pointed out that when the environmental regulations were being evaluated one of the many factors they were to consider included the "health and safety benefits" of the rules. He said that the Governor recognizes the importance of getting stakeholders together to discuss the recommendations. He said that he hopes the ORR recommendations would be a priority, and that even though the ATW may have their differences he hopes the group can move quickly. He is also interested in the ATW comparing the air toxics program to other states' programs. Mr. Nederhood said that the rules should provide certainty, regulatory predictability and transparency.

Assistant Division Chief Lynn Fiedler provided an overview and handout on the current steps to promulgate air rules. She said while there are many steps that the AQD must go through to get rules promulgated, the ATW would just be included in two steps in the process, which include convening a stakeholder workgroup and holding meetings to develop the rule concepts and/or language. She said that the ATW process should take between six and nine months, and while it won't be easy, it will be a very important process to undertake. She sees three important reasons why we need air toxics rules: 1) regulatory structure to address the issue; 2) certainty for companies, and; 3) health protection for the public. She said that while we do have specific recommendations from the Air Quality Subcommittee of the Environmental Advisory Rules (ARC) Committee, we need to work at developing specific rule language, which includes being very clear and transparent. Also, the ATW is not only limited to those ideas made by the Subcommittee.

Lynn Fiedler then led a discussion regarding the proposed charge. Following significant discussion with the ATW members, the group agreed to the following charge language:

The Air Toxics Workgroup (ATW) of the Air Quality Division (AQD) will provide meaningful input to the AQD in addressing ORR Recommendation A-1 and other air toxics rule issues as identified by the ATW and AQD members. The ATW will help ensure that the rules are updated, streamlined, protective of public health and not excessively burdensome. By August 1, 2013, the ATW shall have recommendations to the AQD."

Joy Taylor Morgan presented the ground rules for the meetings, which the ATW agreed upon:

- Silence your cell phones.
- One person speaks at a time.
- Listen actively, with respect; please suppress side conversations.
- Participate to the fullest, please postpone texting or taking phone or email messages until break times.
- Divergent perspectives are welcome; our goal is not limited to agreement.
- Ask questions to clarify procedures or ideas.
- Think in new ways, break out of old patterns.
- Have great ideas by having many ideas.
- Build on the ideas of others - Hitchhiking, additions and remodeling are welcome.

Bob Sills then gave a two-part power point presentation that provided an overview of the current air toxics rules (Rules 224-232) and a historical perspective of the previous air toxics workgroup's reports and recommendations.

Some highlights of Bob's first talk on the current air toxics rules:

- The air toxics rules require that proposed emissions pass a control technology requirement and a health-based screening level (SL) requirement.
- Although the SL methodologies are in the rules, the health-based SLs are not promulgated in rules, which allow the Division more flexibility if they need to establish or update a SL.
- Approximately 1100 toxic air contaminant (TAC) SLs have already been developed.
- The air toxics rules only apply to new and modified sources, not existing sources (except when an applicant opts to meet the SRSL rather than the IRSL, in which case facility-wide emissions of that substance need to be accounted for).
- The air toxics rules complement the federal program, without being redundant.
- Rule 226(d) allows some exemptions from meeting the health-based SLs.
- Rule 227 – allows three ways to show compliance with the health-based SLs.
- Rule 228 – allows a case-by-case determination to require additional information beyond just meeting the health-based SL, beyond single-chemical and inhalation exposure only.
- Examples showed the range of air emission sources and air toxics, and how the rule requirements complement the federal requirements.

Highlights from the second part of the presentation, on the history of the program and the previous air toxics workgroups:

- In the 1970s, permit applicants were responsible for demonstrating the environmental acceptability of proposed air emissions, however, procedures and criteria were not available.
- In 1981, an advisory committee provided a report on a recommended framework for addressing air toxics in permitting.
- In 1989, another stakeholder committee proposed a set of rules for the regulation of air toxics emissions from proposed new and modified sources.
- In 1992, the air toxics rules were promulgated.
- In 1997, another stakeholder workgroup recommended improvements to the air toxics program.

In 1998, rule changes were promulgated and other steps were taken by the AQD to implement the 1997 recommendations.

Q and A

Some questions and discussions followed Bob's talk:

Question: Why a one in a million cancer risk target?

Answer: This was recommended by the 1989 committee, and promulgated in the 1992 air toxics rules, based on it being: 1) technically achievable; 2) an acceptably small risk, and; 3) it was coupled with a SRSL (1 in 100,000 lifetime risk) that was consistent with the water discharge permitting program (and now, also consistent with the clean-up program).

Question: So for an SRSL (that covers the entire plant), this really includes existing sources?

Answer: Yes, for that facility and for that carcinogen alone.

Question: Since health-based SLs are not promulgated, is there a predictability issue?

Answer: That has not been raised as a concern. The methodology is contained within the rules and is predictable. Screening levels can be changed quickly as appropriate, since they are not promulgated, and that has benefits.

Question: For Rule 228, because it is case-by-case, has the Division been sued on this rule?

Answer: No.

There is a concern that cumulative exposure is not being considered, nor are background concentrations. Also, multi-pollutant control is more effective and efficient. Rule 228 is very important because this allows for considering multiple pollutant exposure. Question: Do any other states consider multi-pollutant exposures?

Answer: Yes, there are a few examples. California does in their "hot spots" program, and Minnesota has a law requiring the characterization of cumulative air toxics risks for certain proposed sources in a part of Minneapolis. Some other states are believed to have some initiatives involving cumulative air toxics assessment.

Question: Shouldn't we be looking at how air toxics are regulated in other states nationally, and even internationally?

Answer: At least within the ORR process, only the Great Lakes states were considered because those are the states that compete the most with Michigan for businesses.

Question: What is the science to show that there is no harm (from cumulative impacts)?

Answer: Our approach has been that, when we have evidence of similar compounds with the same mode of action, in some cases we evaluate the emissions and impacts together. Examples are dioxin-like compounds and the carcinogenic PAHs. Other examples are seen by reviewing the footnotes of the SL list. This approach is generally limited to the project emissions. A more comprehensive assessment of cumulative impacts including background levels is relatively uncommon and has only occurred under Rule 228 and 226(d).

Question: Has Rule 228 ever resulted in a change in a permit decision?

Answer: The more detailed assessments that have been performed under Rule 228 have not resulted in a more restrictive permitted emission rate. However, the rule has been effective in providing additional information including deposition modeling, multi-pathway risk assessments, and cumulative impacts, and there may have been some impacts on T-BACT determinations which resulted in additional control technology being applied.

Question: If the ambient air impacts are over water bodies, are there higher allowable impacts than the SLs?

Answer: Not specified in the rules, but since that could result in lower exposure potential it would be relevant to account for that under Rule 226(d).

Question: What is the basis for the trace ITSL value of $0.1 \mu\text{g}/\text{m}^3$?

Answer: Originally it was recommended at $0.04 \mu\text{g}/\text{m}^3$ by the 1989 Air Toxics Policy Committee, based on a conservative estimate (5th percentile) of the range of toxicities of chemicals. That was promulgated in the 1992 air toxics rules (with an annual averaging time). The issue was revisited by the 1997 Air Toxics Subcommittee, and recalculated as $0.1 \mu\text{g}/\text{m}^3$ (annual averaging time). Similarly, it was intended to represent a conservative, low percentile (5th to 10th percentile) of the range of the available ITSL values. In 1998, the rule was changed from $0.04 \mu\text{g}/\text{m}^3$ to $0.1 \mu\text{g}/\text{m}^3$, based on the recommendation of the 1997 subcommittee. Next, the workgroup process and priorities were briefly discussed.

Workgroup Process Decision

It was agreed that the workgroup would meet monthly (at least initially), and would start by addressing the air toxics rules recommendations contained within the ORR report.

Meeting summary prepared by: Joy Taylor Morgan, Facilitator 12-6-12

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