DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURES

SUBJECT:	**POLICY DEVELOPMENT, REVISION AND RESCISSION**	**Number: 01-019**
Date:	**JANUARY 12, 2007**	**Page 1 of 4**

ISSUE:

The department desires to identify the circumstances under which a set of employee guidelines or requirements must take the form of a formal department policy; to establish the process by which a new department policy is developed, and existing policies are revised or rescinded; to establish a process for development, review and implementation of division-specific policies or procedures; and to establish a process for development, review and approval of a Memorandum of Understanding.

DEFINITIONS:

department policy: a written statement approved by the Department Director, providing direction regarding how the Department of Environmental Quality (DEQ) manages its programs and activities. The direction may be provided in various forms, from general principles guiding action to specific requirements that employees take or refrain from taking certain actions under described circumstances.

division: a DEQ Bureau, Division or Office (for ease of reference).

division policy: a written statement approved by a Division Chief that provides direction to DEQ employees relative to a specific regulatory program or function for which that division is responsible. Division procedures and operational memoranda are considered division policies.

Memorandum of Understanding (MOU): an agreement between two or more DEQ organizational entities or between the DEQ and one or more entities. Some MOU's may become part of the DEQ Quality Management Plan, as required by the U.S. Environmental Protection Agency.

rule *(from the Administrative Procedures Act, 1969 PA 306, as amended, Section 7, MCL 24.207)*: An agency regulation, statement, standard, policy, ruling or instruction of general applicability, which implements or applies law enforced or administered by the agency, or which prescribes the organization, procedure or practice of the agency, including the amendment, suspension or rescission of the law enforced or administered by the agency. Rule does not include any of the following:
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(g) An intergovernmental, interagency, or intra-agency memorandum, directive or communication that does not affect the rights of, or procedures and practices available to the public.
(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet or other material that in itself does not have the force and effect of law but is merely explanatory.
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POLICY:

1. Circumstances Requiring Development of a Department Policy

A department policy must be developed when the department requires employees in multiple divisions to take or refrain from taking an action, in cases where guidance or direction does not otherwise exist. It is not necessary to develop a department policy to require or prohibit an action when the action is already required or prohibited by relevant authority. For example, it is not necessary to develop a department policy to prohibit employees from exceeding the posted speed limit while driving a state vehicle on state business, since such an action is already prohibited by a statute. Examples of superseding requirements include any statute, rule, union contract, or a Department of Management and Budget Administrative Guide policy.

A department policy may also be developed when the department desires to provide general guiding principles to employees on a matter.

2. Elements of a Department Policy

A department policy should include a statement of the issue(s) to be addressed by the policy, any necessary definitions, the policy statement or statements and any procedures necessary to implement the policy. The policy statement should include a description of the actions that an employee may take, should take, must take or must refrain from taking and the circumstances under which the policy applies.

3. Process for Policy Development, Revision, or Rescission

A department policy must be developed, revised or rescinded using the following process:

A. Identification of Issue. An issue for which a department policy is appropriate may be identified by any DEQ employee. An employee may likewise identify a need for a policy revision or rescission. An employee should raise the issue (policy development, revision or rescission) for approval through the employee's chain-of-command to the appropriate Deputy Director and the Director's Senior Executive Assistant.

B. Approval of Issue. If a Deputy Director or Director's Senior Executive Assistant approves the issue for policy development, revision or rescission, he or she may direct the requesting division to draft a new or revised policy, or otherwise assign responsibility for drafting the policy. In the case of a proposal to rescind a policy, the division requesting rescission should prepare a briefing memorandum explaining the proposal to rescind the policy. The briefing memorandum should follow the format for a briefing memorandum contained in the DEQ Correspondence Guidelines, and incorporated here as Attachment A.

C. Review and Approval of Policy Draft by Executive Management. The division or person preparing the draft must submit the policy draft to the appropriate Deputy Director and the Director's Senior Executive Assistant for review and approval. The draft must be accompanied by a briefing memorandum, using the format contained in the DEQ Correspondence Guidelines, briefly explaining the issue and summarizing the new or revised policy. Policy revision drafts should be done in a strike/cap or other format that clearly shows the proposed revisions.

D. Review and Comment on Policy Draft by Senior Management Team (SMT). If the Deputy Director or Director's Senior Executive Assistant approves the draft or proposal, the originating division or person should forward the proposal, including the briefing memorandum, to the Senior Management Team for review and comment. The SMT should be allowed at least 2 weeks to review the proposal and provide comments to the originating division. The SMT members, at their discretion, may share the proposal with staff members to obtain staff member comments. The originating division should collect the comments from the SMT and either 1) make revisions to the proposal to incorporate the comments, or 2) if it is the opinion of the originating division that the comments cannot be incorporated, contact the member(s) of the SMT who made dissenting comments to discuss the comments in more detail and attempt to resolve the concern(s). In the event the originating division and the dissenting SMT member(s) cannot reach agreement, they should consult the appropriate Deputy Director(s) in order to resolve the concern(s). The Deputy Director(s) may request that the Director also review the matter.

A Deputy Director or Director's Senior Executive Assistant may submit a draft policy or proposal to rescind a policy to the Director for signature without review and comment by the SMT in the event it is determined that the department needs to move quickly to address a policy need. In such a case, the policy will be labeled as an "interim" policy, and reviewed by the SMT as described in preceding paragraph as soon as practical.

A division may also submit a policy revision to the Director for signature, without review by the SMT, if the proposed revision is inconsequential in nature. An example of an "inconsequential" revision includes a revision made for the sole purpose of updating the name of a position or organizational entity named in the policy, or any other change that does not change the policy statement(s) or direction given to staff in the policy. A revision proposed in this manner must be submitted to the Director through the appropriate Deputy Director or Director's Senior Executive Assistant, with a cover briefing memorandum as described above, including an explanation of why review by the SMT is not needed.

E. Approval and Maintenance. Once approved by the Director, the original, signed copy of the policy will be maintained on file by the Financial and Business Services Division Departmental Specialist, who will also announce adoption of the policy to all department employees by means of an electronic mail and ensure that the policy is posted on the DEQ Internet and Intranet.

4. Division Policies

A division may develop a division policy using a variety of forms (e.g., policy and procedure document, operational memoranda) subject to the following limitations:

A. A division developing a policy that affects a program, policy, or employees of another division must consult with and incorporate comments from the affected division(s) prior to adoption of the policy. Any issue that cannot be agreed upon between involved divisions must be referred to the appropriate Deputy Director(s) for resolution prior to adoption of the policy.

B. A division cannot develop a policy that would constitute a rule. The definition of a rule recognizes that the agency can develop internal instructions and interpretations provided such materials do not bind parties outside the agency. For example, a division policy may describe what the DEQ will find acceptable for meeting a statutory requirement, but an outside party may propose an alternative means of meeting that requirement. Accordingly, any division policy that instructs staff on implementation or interpretation of a statute or rule must contain

the following language printed in the footer of each page of the policy: *This document provides guidance to DEQ staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law.*

C. A division policy that provides guidance to staff regarding implementation or interpretation of a law or rule must be reviewed and approved by the appropriate Deputy Director prior to adoption. The transmittal to the Deputy Director should include a short statement explaining: 1) The purpose of the policy (to the extent it is not summarized in the policy itself); 2) The extent to which parties outside the DEQ were involved in the development of the policy; and 3) The extent to which the policy has received legal review. The Executive Division will implement a system to track and ensure timely review of policies submitted for approval with the expectation of completing review within 15 days.

5. Memorandum of Understanding.

General Requirements for All MOUs: An MOU should be drafted by the organizational entity most familiar with the subject of the agreement and should be reviewed by all DEQ organizational units affected by the MOU. Any MOU containing financial arrangements, such as transfer of funds or payment terms, must be reviewed and approved by the DEQ Chief Accountant prior to final approval of the MOU. The DEQ Chief Accountant will conduct this review within 10 working days of receipt of the draft MOU. The original, signed copy of all MOU's will be maintained on file in the FBSD; FBSD will also post MOU's on the DEQ Intranet for employee reference. The division that drafted the MOU is responsible for providing the original, signed copy of the MOU to the FBSD Policy Specialist, and is responsible for ensuring that all parties affected by the MOU receive a signed copy of the document.

Authority to Sign Memorandum of Understanding Between 2 or more DEQ Organizational Units: An MOU between 2 or more DEQ organizational units may be signed by the respective Division Chiefs.

Authority to Sign Memorandum of Understanding Between the DEQ and Non-DEQ Entities: An MOU between the DEQ and one or more other entities must be signed by the DEQ Director. An MOU to be signed by the Director should be presented to the Director through the appropriate Deputy Director(s) with a cover briefing memo from the Division Chief(s) explaining the need for the MOU, the review process used and any changes made to the MOU as a result of the review.

Approved: _____ Date: 1-23-07