

Open Burning Rule Amendment Workgroup Meeting Summary May 13, 2009

Participants:

Tom Frazier (MI Townships Assoc)	Jim Ostrowski (DEQ)
Eric Davis (MI Assoc of Counties)	Matt Flechter (DEQ)
Cara Clore (Clinton Co)	Rhonda Oyer-Zimmerman (DEQ)
Patty O'Donnell (Northwest MI Council of Gov) (<i>phone</i>)	Jerry Avery (DEQ)
Don Pyle (U.P Recycling Coalition) (<i>phone</i>)	Laura DeGuire (DEQ)
Vickie Webster (Muskegon Co Health Dept) (<i>phone</i>)	Robert Schmeling (DEQ) (<i>phone</i>)
Paul Kollmeyer (MI Dept of Natural Resources) (<i>phone</i>)	Dave Fiedler (DEQ)
Kory Groetsch (MI Dept of Community Health)	Marcia Horan (DEQ)
	Jessica Gasiorek (DEQ)

General Business:

- Meeting agenda and material was distributed and discussed.
- Jim Ostrowski provided quick review of previous meeting

Status of Action Items from 5/13/09 Meeting

Timeline for rule development –

- Jim O provided a more detailed timeline for amendment of the existing open burning rules. According to the timeline, the DEQ intends to send draft rules along with the Regulatory Impact Statement to the State office of Administrative Hearings and Rules ([SOAHR](#)) by August 15. It is expected that the rules will be finalized by May 20, 2010.
- Workgroup members expressed concern over the timing and location of the public hearings. The Michigan Township Association (MTA) suggested that a second hearing be held in Northern Michigan if possible and that a public information session regarding the intent of the rule change be provided prior to the hearing.
- It was also noted by a workgroup member that the hearing window includes the Thanksgiving Holiday, which the DEQ should take into consideration when scheduling dates.
- It was suggested that the DEQ develop a way to collect comments via the web and that the DEQ should find other means to advertise the hearings beyond what is required.
- Workgroup comments were noted. DEQ will follow up with workgroup on what options are available for hosting a public hearing and the means for distributing the information.

Access to waste disposal –

- Matt Flechter presented the status of the DEQ's progress on identifying waste disposal opportunities for residents throughout the state. Jessica Gasiorek, an intern at DEQ, is currently developing a detailed database of waste disposal alternatives for residents in all of Michigan's counties. The spreadsheet contains information about waste haulers, landfills that accept residential drop off, and drop-off/transfer stations. Jessica sent a survey out to each county's solid waste planning contact and she received comments from approximately half of them on the availability of waste disposal services in their county. DEQ intends to have the information on waste access finalized by August 15.

- The Michigan Association of Counties (MAC) volunteered to follow up with counties on the survey and help to get more responses.

Citation Authority under Part 115 of Act 451 of 1994

- Rhonda Oyer-Zimmerman presented her findings regarding whether or not local officials could cite a resident (write a ticket) for a violation of the state open burning rules. Rhonda confirmed that a local official can write a ticket for a violation of Part 115 under authority of section [324.11549](#) of Act 451. DEQ believes that the person writing the ticket must be “deputized;” however, it was not clear who that might include (e.g. health officials or code enforcement officers that are deputized by Sheriff). DEQ can provide assistance to locals with writing citation. Further investigation is needed to determine what type of “local authority” can use this citation power.
- Comment was made that normally a warning has to be given prior to the issuance of a ticket for the case to have any standing before a judge.
- Workgroup members expressed that this tool is a valuable enforcement mechanism for local governments that do not have an ordinance that addresses the activity; however, DEQ needs to provide outreach on who can cite and how.

Impact of Rule change on DNR Forest Fire Law (Part 515 of Act 451)

- At previous meeting, DNR had expressed concern that proposed rule amendments may conflict with language in [Part 515](#) which allows the burning of household waste in a burn barrel without a burn permit.
- This issue was presented to the Attorney General’s office. It was determined that Part 515 “does not, by its terms or intent, preclude the additional regulation of that activity by DEQ under Parts [55](#) or [115](#).”
- Jim O explained to workgroup that although there is not a legal conflict present with the rule amendment, the DEQ recognizes DNR concerns regarding the availability of DNR resources to enforce and educate residents in Northern Michigan about the changes to the DEQ rule. DEQ will continue to work with DNR on implementation of this rule change.

Workgroup Discussion

Rule Effective Date

- The workgroup agreed that the effective date currently identified in the rule (January 1, 2011) does not allow enough time for implementation based on the DEQ expected finalization date of May 20, 2010. The workgroup decided to move the effective date of the rule change to April 1, 2011. Matt F will check on DEQ’s ability to change this date again if needed, should there be delays in the finalization of the rule.

Enforcement

- Questions were raised as to whether this activity could be regulated by the County. This depends on whether or not a Township within the county has an ordinance. If the Twp has an ordinance then that will take precedence.
- Whether or not a township chooses to regulate the activity varies. Many townships may choose not to regulate since it is a politically sensitive issue.
- The workgroup agreed that providing local gov with the ability to write citations under the state law is a good tool for those communities that choose not to regulate. State rule provides a means for locals to deal with violators without having to enact their own ordinance.
- Group debated why a local gov would even want to regulate the activity if they could simply write a citation under the state law. Members commented that money collected from penalties could stay in local gov. Also, writing citation and follow up is usually easier if ordinance exists (i.e., they would not have to contact DEQ for assistance).

- Workgroup recommend that DEQ develop charge card for local law enforcement that explains how to write up violator under state law as well as guidance on who can write citation and when.
- Discussion moved to other options DEQ might have to help residents dealing with neighbors open burning when local officials are unwilling to enforce. Options included: filing a civil suit, contacting state police, sheriff, or county prosecutor's office. MAC stated that they will look into what counties have taken action against residents for open burning related violations.

Outreach

- Workgroup agreed that there is a need for comprehensive outreach to local officials, law enforcement, and the general public regarding open burning and how it is regulated. Suggestions were made as to how best to provide outreach including: enlisting the help of a college advertising/marketing class; partnering with foundations or other non-profit organizations, such as American Lung Association; sending information with utility bills, etc.
- A comment was made suggesting the need for an outreach subgroup that could expand on this topic. DEQ does have resource limitations and will have to check on how they can work to implement some of these suggestions.

Regulatory Impact Statement

- Steve Kish provided an overview of what is needed to compile the required regulatory impact statement (RIS) for rule development.
- DEQ is in need of specific numbers pertaining to the number of residents affected by the rule change and the cost to residents and local government. Workgroup members were encouraged to contact Steve if they have data that may be of use.
- The DEQ will seek the workgroups support of the RIS before it is submitted; therefore, it is important that workgroup members provide as much input as they can to ensure the data is as accurate as possible.

Other Matters

Tom Frazier (MTA) summarized some of the comments he received in response to an [article](#) sent to MTA members on the proposed rules changes. Many of those who responded had concerns about enforcement and a possible increase in illegal dumping. Eric Davis (MAC) stated that they could send a similar article to their members.

Action Items

- DEQ will determine best time for next meeting based on review of action items. Meeting will most likely be scheduled in Mid August.
- DEQ will continue to develop waste access database.
- DEQ will confirm details on who is able to cite for a violation under Part 115
- DEQ will investigate options for developing outreach subgroup
- DEQ will update the effective date in rule text and determine whether or not date can be changed after draft rules and public comment has occurred.
- DEQ will determine options for public hearings (i.e., locations, public info session, advertising)
- DEQ will continue to work on development of RIS
- Workgroup members will provide DEQ with what data they have that might help with the completion of RIS

Summary created by Jim Ostrowski