

Open Burning Rule Amendment Workgroup Meeting Summary August 3, 2009

Participants:

Tom Frazier (MI Townships Assoc) (<i>phone</i>)	Jerry Avery (DEQ)
Steve Essling (Waste Management and MWIA)	April Lazarro (DEQ)(<i>phone</i>)
Cara Clore (Clinton Co)	Laura DeGuire (DEQ)
Vickie Webster (Muskegon Co Health Dept) (<i>phone</i>)	Joy Taylor Morgan (DEQ)
Paul Kollmeyer (MI Dept of Natural Resources)	Dave Fiedler (DEQ)
Kory Groetsch (MI Dept of Community Health)	Tina Straw (DEQ)
Jim Ostrowski (DEQ)	Jessica Gasiorek (DEQ)
Matt Flechter (DEQ)	

Status of Action Items from 6/29/09 Meeting

Access to waste disposal –

- Matt Flechter and Jessica Gasiorek presented the status of the DEQ's progress on identifying waste disposal opportunities for residents throughout the state. Currently a spreadsheet and database are under development that contains information about waste haulers, landfills that accept residential drop off, and drop-off/transfer stations. DEQ intends to have the information on waste access finalized in the next couple of weeks. DEQ hopes to transfer data onto a Michigan map that include the service points and a radius surrounding each point. If areas are found to not have adequate service based on current data, DEQ will follow up locally to determine how residents are disposing of their waste (i.e. DEQ may not have data on a disposal service for that area). Once finalized the DEQ intends to make the information available to the general public via the web.
- A comment was added by workgroup that DEQ needs to be aware that some transfer stations may not be available for the general public to use but may be reserved for specific populations (e.g., campground, subdivision)
- It was suggested that waste haulers be contacted to identify specific service areas; however, MWIA explained that those service lists are usually held as proprietary.
- Steve Essling stated he believes that every county in the lower peninsula has a waste hauler that is willing to go into areas that we identify as not having service. He does not have much information on the U.P. since that is not the Michigan market. He believes curbside pick up is not as readily available in U.P. and that most residents use drop off sites for waste disposal.

Enforcement

- In previous meetings Rhonda Oyer-Zimmerman explained 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).
- Lt. Tina Straw with DEQ's Office of Criminal Investigations (OCI) clarified that the Penal Code normally uses the term "peace officer" when identifying a person that has authority for writing a ticket. The code language can be accessed at <http://legislature.mi.gov/doc.aspx?mcl-750-215>.
- Lt. Straw explained that a ticket may be written for a violation of a Rule or Statue; however, the ticket requires an MCL (Michigan Compiled Law) citation. Most peace offices will not know how to cite an open burning violation since it is not clear what MCL citation to use. A violation of Part

115 is a misdemeanor violation meaning it has to occur in the officer's presence. This means that the officer must witness the burning or have other evidence that it occurred (i.e., credible witness – fire chief, ordinance office, pictures, etc.)

- Considerable effort will need to be made by DEQ to educate local officials on the correct citation procedure. Lt. Straw explained that OCI may include this as part of their training to police officers that they provide on a regular basis.
- Further coordination will be made with OCI to provide outreach to local officials on ticket writing authority.
- Paul Kollmeyer expressed concern that DEQ may be overestimating the interest of local enforcement officials to enforce any trash burning violations.
- Paul K also stated that DNR has started discussing the possibility of opening Part 515 (forest fire law) for revisions and may be changing the definition of domestic purpose to remove reference to rubbish and refuse. Currently forest fire officers may write a ticket under Part 515.
- Tina Straw was questioned whether it would be better to enforce open burning as a civil infraction. Lt. Straw stated that DEQ prefers to enforce as a misdemeanor since a record is kept of the violation. A civil infraction does not require a record of the crime be kept.
- Vikki Webster stated that deputized health inspectors have trouble getting courts to recognize ticket if MCL is not included. She recommended that in addition to the MCL, we suggest that officers include rule citation in comment section of ticket to ensure that the court is clear on the regulation that is being violated.
- Tom Frazier asked what a township could do if they do not have a "peace officer" but rather a code enforcement official. Lt. Straw stated that they need to be authorized by the township to write ticket. These individuals are often referred to as "constables" and identified as "peace officers" in the [Michigan Penal Code](#).

Rule Text

- Jim Ostrowski highlighted changes to rule text since last meeting, which included:
 - Changing the effective date to April 1, 2011
 - Addition clarification to the new exemption in R 336.1310 pertaining to prescribed burning to make reference to the Part 515 of Act 451.
- Jerry Avery announced that he had received a request from apple producers to include an exemption that would allow the burning of diseased wood crates (similar to the bee keeping exemption). DEQ is looking into possibly adding an exemption.
- Matt Flechter clarified that we could make changes to the effective date after the public hearing had taken place as long as the effective date was extended.

Public Hearings

- Jim O explained that DEQ can provide public hearings in more than one location and that a public information session can also be held prior to those public hearings.
- MTA and other workgroup members indicated support for holding public hearings in Lansing and in Gaylord or other northern Michigan Location and possibly in U.P and including a public info session prior to each hearing.
- Paul K. stated that DNR held public hearing for the prescribed burning rules in Lansing, Gaylord, and Marquette.

Review of Regulatory Impact Statement (RIS) and Rulemaking Policy Analysis Form (RPAF)

- Steve Kish started a draft of the RIS and RPAF for R 336.1310. Once the language is clarified for R 336.1310, similar language will be used for the RIS and RPAF for R 299.4128.
- Jim O reviewed the draft versions of both documents and workgroup members provided comments.

- DEQ will provide all workgroup members with a copy of the draft RIS and RPAF within the next week. Workgroup members were encouraged to provide comments that the DEQ could consider as the final version of both documents are developed.

Outreach

- Several workgroup members expressed concern over the DEQ's development of an outreach plan to educate the public and local officials about the open burning regulations. Workgroup members would like to see formal development of an outreach strategy as soon as possible as opposed to waiting further into the rule making/implementation process.
- Jim O explained that the DEQ can commit to using resource to assist in the education of local officials (townships, fire departments, counties, enforcement agencies), with the expectation that the information will be carried down to the residential level. However, due to resource constraints, the DEQ can only play a limited role in the outreach and education to the general public.
- Workgroup members expressed a desire to form a subcommittee that would work on the public education and outreach component. Committee members could decide on education initiatives they want to pursue and then rely on those members to assist with the implementation of those initiatives. It was suggested that DEQ play a role in coordinating this subgroup.
- Jim O stated that he will solicit the workgroup for interested members of an E/O subcommittee and then plan a subcommittee workgroup meeting.
- Kory Groetsch suggested that MDCH may also be interested in playing a role in coordination of this subcommittee.

Action Items

- DEQ will finalize waste access database
- DEQ will send RIS and RPAF to workgroup for comments
- DEQ will finalize RIS and RPAF
- DEQ will begin coordination of an open burning education and outreach subcommittee

Summary created by Jim Ostrowski