



Implementation of the Environmental Advisory Rules Committee's Recommendations

Status Report

Winter 2013

This is the fourth of twelve quarterly reports of the Department of Environmental Quality's (DEQ) progress in addressing the 77 recommendations contained in a report released by the Office of Regulatory Reinvention (ORR) on February 21, 2012. The recommendations were developed by the Environmental Advisory Rules Committee (ARC) whose members were appointed by the ORR and were tasked with conducting a comprehensive review of the department's regulations and offering recommendations for improvement. Please send comments or questions regarding this report to Dave Fiedler, DEQ's Regulatory Affairs Officer, at fiedlerd@michigan.gov.

AIR QUALITY DIVISION

Recommendation A-1: Air Toxic Rules

The first meeting of the Air Quality Division's Air Toxics Workgroup was held on December 3, 2012. The Workgroup was convened to review and consider the recommendations for the air toxics program made by the Environmental Advisory Rules Committee and to review other air toxics rule issues that may be identified by the Workgroup and AQD. The Workgroup will meet monthly over the next six to nine months.

Recommendation A-2: Mercury Rules

The AQD has submitted a request for rulemaking (RFR) to amend the Michigan Mercury Rules. The RFR describes the rule amendments as such, " The purpose of these revisions is to amend Rules 1503(2)(a) and (6), Rule 1509(1), Rule 1512 and Rules 1513(1)(a) and (3), to align the compliance dates with the federal Mercury and Air Toxics Standard (MATS). Rule 1514 will be amended to reflect the Michigan Mercury Rules (MMR) requirements will remain in effect on January 1, 2015, unless an applicable final federal rule to control mercury is legally enforceable and in effect. MATS is currently under challenge in federal court."

Recommendation A-3. Additional Rule 201 (Permit to Install) Exemptions

The ten members of the Exemption Workgroup held their first meeting on December 20, 2012.

Recommendation A-4. Rule 206 Process Deadlines (COMPLETED)

The AQD's [discussion paper](#) outlines the proposed changes to Rule 206 and 1817. The Air Advisory Council agreed on the language at their December 12, 2012 meeting. An RFR was approved by the Office of Regulatory Reinvention (ORR) on September 17, 2012. The draft rule will be sent to ORR for informal review in January 2013.

Recommendation A-8. Michigan Continuous Emission Monitoring Rules (COMPLETED)

This recommendation has been completed. A [Rule 1170 discussion paper](#) has been prepared.

Recommendation A-13. Stakeholder Involvement in SIP Development (COMPLETED)

This recommendation has been completed. A [SIP discussion paper](#) has been prepared. Although not part of the recommendation, the Air Advisory Council raised a concern about the current set of rules differs from the rules in the SIP. Externs working for the DEQ have been identifying these inconsistencies which AQD will address with the U.S. Environmental Protection Agency.

Recommendation A-19. Limiting Compounds Required for Annual MAERS Report

No final decision has occurred on recommendation although good discussion occurred at the Air Advisory Council on December 12, 2012. See AQD's [Annual Emission Report Discussion](#) for more information.

Recommendation A-20. Putting a Hold on the 18-Month Construction Window for a PTI

Discussion continues on this recommendation between the AQD and the Air Advisory Council. The Air Advisory Council has not made a final decision on whether to pursue the proposed rule change. See AQD's [Rule 201](#) Discussion Update.

REMEDIATION AND REDEVELOPMENT DIVISION (RRD)

Recommendation R-1: Groundwater/Surface Water Interface (GSI) (COMPLETED)

The passage of 2012 PA 190 amended Section 20120e of Part 201, Environmental Remediation, of NREPA. The legislative changes became effective on June 20, 2012, and create flexibility in allowing for more progressive options in addressing groundwater venting to surface water including mixing zones, alternative monitoring points, and ecological and /or modeling demonstrations.

On December 22, 2012, Governor Snyder signed SB 1328 into law (2012 PA 446). Act 446 amended Part 213, Leaking Underground Storage Tanks, of the Natural Resources Environmental Protection Act (NREPA) and provides for the option of using Part 201, in lieu of Part 213, for evaluation and corrective actions related to the venting groundwater pathway (GSI).

Recommendation R-2: Part 201/213 Vapor Intrusion Policy and Procedure

A draft vapor intrusion policy and procedure was made available to stakeholders in May of 2012. Comments on the document were due on August 1, 2012. RRD staff are revising the policy and procedure to incorporate the comments. A responsiveness summary is being finalized, and the final policy and procedure will be issued in January 2013. When this occurs, this recommendation will be completed.

Recommendation R-3: Revising Part 201 Cleanup Criteria

Act 446 amended Part 201 by extending the deadline for revision of cleanup criteria rules from December 31, 2012 to December 31, 2013.

Recommendation R-4: Part 201 Rules (COMPLETED)

Act 446 amended Part 201 by rescinding 32 rules in total, upon the effective date of the Act which was December 22, 2012. Below is a summary of the rules rescinded.

Part 1. General Provisions (portions of)
Part 4. Alternative Water Supplies (all)
Part 5. Response Activities (portions of)
Part 7. Clean-Up Criteria (portions of)
Part 9. Baseline Environmental Assessment (all)

Additional Part 1, 5, and 7, rules, 35 in total, will be rescinded on December 31, 2013.

Recommendation R-5: Risk-Based Closures and Site Specific Criteria (COMPLETED)

Act 446 amended Part 201 by broadening the use of site-specific criteria to include non-numeric criteria, in addition to numeric criteria, in evaluating the toxicity and exposure risk for sites. Site-specific criteria may be used in a response activity if it can be demonstrated that this criteria better reflects the best available information related to that substance and site conditions.

Recommendation R-6: Effective Solubility and Free Phase Contamination (COMPLETED)

The Part 213 statutory amendments enacted May 2012 have updated the criteria associated with “free phase” employing current science and the best national practices, and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8 inch accumulation of petroleum in monitor wells and instituted the use of the term light nonaqueous-phase liquid (LNAPL) to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

The amendments have adopted the nationally recognized American Society for Testing and Materials (ASTM) Risk-based Corrective Action for characterizing and assessing risk associated with the sites where LNAPL is present which allows for greater flexibility in managing risks associated with its presence.

In addition to the statutory amendments redefining NAPL, using nationally recognized standards, and allowing for greater flexibility in managing risks associated with NAPL, the DEQ has adopted the nationally recognized and adopted Interstate Technology and Regulatory Council’s (ITRC) evaluative and management practices for LNAPL sites.

The RRD is working on policy and procedures that will address NAPL definitions and NAPL management.

Recommendation R-7: Storage Tank Programs (COMPLETED)

Recommendations R-7b, 7c, 7d, 7f, 7g and 7h involve the relocation of the storage tank programs from the DEQ to LARA and amendment of corresponding rules. Executive Order 2012-14, which made this relocation possible, became effective on December 4, 2012. RRD staff are assisting with the transition process.

Recommendation R-8: Definition of Background Concentrations for Hazardous Substance in Soil and Groundwater. (COMPLETED)

Act 446 amended Part 201 by amending the definition of “Background Concentration.”

Recommendation R-9: Due Care for Indoor Air Inhalation at a Property Subject to MIOSHA Standards. (COMPLETED)

Act 446 amended Part 201 by allowing facilities subject to the Michigan Occupational Safety and Health Administration (MIOSHA) achieve compliance for indoor air criteria by complying with the MIOSHA standards. Act 446 limits this compliance pathway to only manufacturing facilities.

Recommendation R-10: Soil Relocation Statute MCL 324.20120c and Associated Rules (COMPLETED)

Act 446 amended Part 201 by including provisions and notice requirements for relocating contaminated soil within a facility and from a facility to an offsite location. In addition to clearly defining that only contaminated soils are regulated, the legislation exempts relocated soil from becoming a new facility under Part 201 or a solid waste under Part 115.

Recommendation R-13: Part 201 Due-Care Plans Submitted As Response-Activity Plans for SBA Loans (COMPLETED)

In many lending scenarios, including the Small Business Administration loans, a person is often required by the lender to obtain the DEQ’s approval of an analysis of the Part 201 and 213 “due care” obligations at the property. Neither Part 201 nor Part 213, contained a mechanism to obtain the approval. Act 446 includes new processes under both Part 201 and Part 213 whereby a person may submit due care documentation to the DEQ for approval.

RRD Policy and Procedure titled, *Time Frame for DEQ Review of Due Care Plan/Report Submitted by SBA Loan Applicants* and identified as No. [RRD-17](#) creates an expedited review of due-care plans.

Recommendation R-14: Boron Standard for Groundwater

Act 446 amended Part 201 by extending the deadline for revision of cleanup criteria rules from December 31, 2012 to December 31, 2013.

OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION (OWMRP)

Recommendation RM-2: Beneficial Reuse

[HB 5953](#) was introduced by Representative Huuki and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September, 27 2012. The bill amends and add sections to Part 115 (Solid Waste Management) and amends sections of Part 201 (Environmental Remediation) of the Natural Resources Environmental Protection Act, 1994 PA 451, (NREPA). The bill was not acted on in the 2012 legislative cycle. The DEQ will continue to work with industry on this issue with hope of getting a consensus bill drafted this spring.

Recommendation RM-3: Hazardous Waste Regulations and Recommendation

A request for rulemaking to amend the Hazardous Waste Management rules was approved by the Office of Regulatory Reinvention (ORR) on September 24, 2012. It is identified as [2012-108 EQ](#). This rule package is in process. OWMRP is proposing the deletion of 17 discarded commercial chemical products; off-specification species; container residues; and spill residues thereof as toxic hazardous wastes listed in R 299.9226 (i.e., Table 205c). These 17 waste codes were proposed for deletion as they either duplicated federal listings, OWMRP had scientific information suggesting that their listing was no longer warranted, and/or the definition of the listing made it difficult to determine what should and should not be included in the listing (e.g., class listings).

OWMRP advanced the proposed deletions based on the science behind the listing and what they knew about the waste. OWMRP did not propose additional waste codes for deletion at this time since the remaining codes need to be further evaluated with respect to the basis of the original listing, prevalence in industry, presence at sites of environmental contamination, and science associated with the specific chemicals. OWMRP resources do not allow for that type of evaluation in the time period needed to advance the current rules package. They are committed to continuing the review of the remaining waste codes in subsequent rules packages.

Recommendation RM-4: Rescind/Repeal Michigan PCB Regulations (COMPLETED)

Recommendation RM-4 proposed that the 19 PCB rules should be rescinded and that Part 147 of NREPA should be amended as necessary to remove PCB regulations from Michigan statute. [SB 1328](#) (2012 PA 446) was signed into law by the Governor on December 22, 2012. The bill repeals Subpart 1, PCB Compounds, of Part 147. The bill also rescinds R 299.3301 to R 299.3319 that pertain to PCBs, pursuant to this recommendation.

Recommendation RM-7: Hazardous Waste User Charge and Manifest Systems (COMPLETED)

The Hazardous Waste User Charge Work Group provided their recommendations for an updated fee schedule to the DEQ Director Wyant. Director Wyant evaluated the recommendations and in turn provided his input to the state budget office for consideration for the fiscal year 2014 budget cycle. The recommendation needs to be approved first by the Governor and then through the legislative process as part of the 2014 budget bill.

ORR 2012-108 EQ does contain a rule change that will minimize the paperwork associated with manifests. The manifest itself is a federal form that the DEQ does not have the authority to amend. The rules package contains a revision that would eliminate the requirement for the generator to submit the initial copy of the manifest. The generator would not need to submit the final copy unless the waste is stored, treated, and/or disposed of out-of-state and the out-of-state designated facility fails to submit a copy of its manifest to the DEQ as required. In this case, the DEQ will retain the authority to require the generator to provide the final copy of manifest showing receipt by the out-of-state facility. The DEQ is not proposing any other rule revisions relative to minimizing manifest paperwork or electronic manifesting at this time. The DEQ has requested to the USEPA that it participate in activities related to the federal electronic manifest project. The OWMRP is also trying to pilot an electronic manifest information submittal system with the licensed hazardous waste treatment, storage and disposal facilities; however, this effort is occurring outside of a formal stakeholder group.

Recommendation RM-8: Medical Waste Storage Accumulation Limitation

[SB 1334](#) was introduced by Senator Robertson and referred to the Committee on Health Policy on September 27, 2012. This bill amends Sections 13809 and 13811 of the Public Health Code, 1978 PA 368. This bill was not acted on in the 2012 legislative cycle.

WATER RESOURCES DIVISION

Recommendation W-5: Nationwide Permitting Approach; W-8: Agricultural Activities under Parts 301 and 303 of NREPA; and W-12: Wetland Mitigation Banks

[HB 5897](#) was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA. This bill was not acted on in the 2012 legislative cycle. The DEQ will continue to work on these issues with the hope of getting a consensus bill drafted this spring.

W-6: Implementation of General Federal Nationwide Permits: State 401 and Coastal Zone Management Certification of U.S. Army Corps of Engineers (USACE) Nationwide Permits. (COMPLETED)

Under federal law, states must review and either approve, condition or suspend the USACE Nationwide Permit (NWP) categories every five years based on the applicability of the category to the state and the potential impacts on state resources under a Clean Water Act (CWA) 401 certification and Coastal Zone Management (CZM) consistency process. Certification under CWA 401 and CZM is predicated on a proposed category's compliance with many state laws, not only those related to the 404. It is also important to note, in most parts of the state a permit is not required from the USACE due to Michigan's assumption of the 404 program.

The newest list of NWP categories were published in the Federal Register on February 21, 2012. Due to delays in the federal process and conflicts with the statutory requirements for the state review, the DEQ only had eight work days to review and provide certification on all categories. Because of this short timeframe, it was impossible to involve stakeholders in the review. The DEQ certified without additional comments 11 categories and certified with comments 26 categories. The DEQ denied certification on 15 categories. The categories denied were due to (1) lack of applicability in Michigan; (2) category suspended by the USACE Detroit District; or (3) conflicts with Michigan statutes or state permit requirements.

Following Michigan's certification of the NWP categories, the DEQ and the USACE Detroit District worked together to coordinate issuance of the district's Regional Permit Conditions and DEQ's Minor Project and General Permit categories, so that state and federal requirements are the same. This coordination results in a more efficient and transparent permitting process in areas where both state and federal permits are required.