

Part 201 Criteria Stakeholder Advisory Group Meeting No. 2

Wednesday, April 16 | 9 AM–12:30 PM
Public Sector Consultants, Lake Superior Conference Room
230 N. Washington Square, Suite 300

AGENDA

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| I. Welcome, Introductions and Agenda Overview | Jack Bails, PSC |
| a. Recap Meeting No. 1 | |
| II. Survey Results | Jack Bails, PSC |
| III. Part 201 Overview/History | Jack Bails, PSC |
| a. History of 201 Program and Generic Screening Criteria | Brad Venman |
| b. Stakeholder Processes and Challenges since 2010 Amendments | Ed Peterson |
| c. How Cleanup Criteria are Established | Eric Wildfang |
| d. Overview of Risk Assessment/Risk Management | Karen Hathaway |
| e. Part 201 Challenges – Regulators and Industry Perspectives | Group |
| IV. Overview of Process for Developing Guiding Principles | Jack Bails, PSC |
| V. Selection of Technical Advisory Group Members | Bob Wagner |
| VII. Next Steps | Jack Bails, PSC |

Part 201 Criteria Stakeholder Advisory Group Meeting No. 2 – Summary

Wednesday, April 16 | 9:00 AM–12:30 PM
Public Sector Consultants, Lansing, Michigan

Criteria Stakeholder Advisory Group	Representing
Attendees	
Ravi K. Adibhatla, Consumers Energy	Energy
James Clift, Michigan Environmental Council	Environmental Group
Troy Cumings, Warner, Norcross & Judd LLP	Office of Regulatory Reform, Admin. Rules Committee
Karen Hathaway, Horizon Environmental	Environmental Consulting
Ian Ladomer, Marathon Petroleum Company	Petroleum
Matthew Naud, City of Ann Arbor	Local Government
Eric Pessell, Kent County Health Department	Public Health
Edward Peterson, General Motors	Automotive
Rob Rouse, Dow Chemical Company	Chemical
James Trosko, Michigan State University	Academia
Brad Venman, NTH Consultants, Ltd.	Environmental Consulting
Absent	
Kristin Mariuzza, Lundin Eagle Mine	Resource Extraction
Corinne Miller, Mich. Department of Community Health	Public Health
Invited Observers	
Sarah Schillio, aide to Rep. Jeff Irwin	Michigan Legislature
Robert Lee, DTE Energy	Energy

MDEQ Staff
Anne Couture, Senior Policy Adviser
Sue Erickson, Asst. Division Chief, RRD
Paul Owens, District Supervisor
Jim Sygo, Deputy Director
Bob Wagner, Division Chief, RRD
Eric Wildfang, Toxicologist

PSC Staff
Jack Bails
Mark Coscarelli

AGENDA

I. Welcome and Overview

Bails opened the meeting at 9:05 AM and welcomed participants. Several housekeeping items were addressed. Bails said the agenda had changed slightly and that the first white paper, addressing chemical-specific toxicity and chemical-physical data used to generate the generic Part 201 cleanup criteria, will be discussed at the next meeting. Bails also mentioned the Michigan Department of Environmental Quality

(MDEQ) would be posting Criteria Stakeholder Advisory Group (CSA) meeting summaries on a website dedicated to the project. Bails also circulated a flow chart highlighting the key steps occurring over the course of the project, including when future CSA and Technical Advisory Group (TAG) meetings would occur. Attendees then introduced themselves.

II. Survey Results

Bails presented results from a recent survey of the CSA members designed to help build a common understanding and knowledge base among CSA members regarding the Part 201 program. Questions focused on members' knowledge of Part 201 history, generic screening criteria, cleanup criteria, risk assessment versus risk management, and ongoing challenges related to the Part 201 program. Questions also focused on whether members believe current criteria are a deterrent to redevelopment of brownfield sites and business investments in Michigan; what economic concerns and issues should be considered related to cleanup criteria; if the current cleanup criteria adequately protect human health; what public health and/or environmental concerns should be considered related to current and future cleanup criteria; and the role of Part 201 cleanup criteria in the management of contaminated sites.

III. Part 201 Overview/History

Brief presentations were made by CSA members and MDEQ staff members on the following subjects:

- History of the Part 201 Program and Generic Screening Criteria
- Stakeholder Processes and Challenges since the 2010 Amendments
- How Cleanup Criteria Are Established
- Overview of Risk Assessment and Risk Management
- Part 201 Challenges—Perspectives from Industry and Regulators

Discussion by CSA members followed each of the presentations. Highlights of the discussion include:

- Defining “how clean is clean” has always been a challenge for the program.
- Developing risk-based standards has always been a goal of the program.
- These ongoing discussions and updates to Part 201 should be viewed as a journey, not an end in itself.
- More progress has been made in the last three years than in the previous 15 years.
- There appears to be an inherent conflict between “certainty” and “flexibility” embodied in the Part 201 program. One observer compared the process and evolution of the Part 201 cleanup criteria to the U.S. tax code.
- Development of “generic criteria” seeks to define a set of criteria that are protective of public health.
- The U.S. Environmental Protection Agency (EPA) continues to struggle with risk assessment as it relates to risk management. For example, economic and social justice issues can create complexity.
- Site cleanup numbers need to be viewed in the full context of actual site conditions rather than having them considered unassailable
- Generic numbers: 1) lead to cleanup criteria; 2) can be used as a bright line to determine “facility” status; and 3) inform a determination if further evaluation is required at a site. One noted that generic criteria should be focused primarily on no. 3.
- We need to be aware of and be consistent in the use of the term “screening criteria.” For example, the EPA uses “screening criteria” slightly differently than states to allocate finite resources to promote site cleanup.
- One suggested that Michigan consider changing the term “generic cleanup criteria” to “screening levels.”
- One of the most significant challenges from a regulators' perspective is having to utilize cleanup criteria that may not be appropriate for a particular site (e.g., soil and groundwater volatilization models do not apply to 60 percent of sites in Southeast Michigan).

- The U.S. Department of Housing and Urban Development creates challenges related to Part 213 by affecting the ability to obtain funding prior to addressing off-site contamination issues.
- There is often a significant disconnect between cleanup standards and actual site conditions. For example, site conditions with extremely high background levels of arsenic, which is naturally occurring substance, can drive up road project costs considerably due to remediation requirements.
- The state should consider a process to incorporate new data into a cleanup process in a more timely fashion, if such data would modify cleanup activities. Because a responsible party has the ability to introduce new data, then another interested party be able to do the same. One noted that the current rules do contain a “motherhood” clause that allows for the introduction of new information that may affect a site cleanup.
- One member noted that the notion of allowing “expedited rule-making” in light of new information has been discussed for years, but the definition of, and agreement on, standards for scientific data continue to be debated.
- There is a desire to formalize a process for updated current rules while clarifying how often it will be done. This process also should consider how the state deals with numbers that are updated by the federal government (e.g., the Integrated Risk Information System).
- It was suggested that the current screening levels are too conservative.
- There are issues involving the practicality of applying a single number that may come from a single and isolated (soil) sample to the entire site.
- MDEQ staff indicated that the department received and reviewed only 3 site-specific reports in 2013.
- There is a considerable stigma among industry representatives related to “site-specific” cleanup criteria, primarily due to the cost and uncertainty involved with obtaining MDEQ approvals, which can take years. A goal should be to level the playing field with respect to generic screening criteria and applying cleanup criteria at the site-specific level.
- It was noted that the “stigma” among industry representatives is largely a perception issue related to the history of MDEQ’s program administration.
- It was noted that landfill costs in Michigan are some of the cheapest in the country, which is a deciding factor for site owners determining if cleaning up a site with generic criteria is preferable to using site-specific criteria.

Several questions also emerged during the discussion, including:

- How do we “simplify” the process while making cleanup criteria more site-specific? A member commented that the goal of the process is to make the program more “simple” in its current form rather than to “simplify” it.
- Is MDEQ using the right set of numbers to establish generic criteria? For example, soils can vary considerably across the state, which affects local site conditions and potential impacts.
- What is the proper role of state government beyond overseeing the application of “screening criteria”?
- Is the state prepared to increase staffing capacity if more “flexibility” emerges for site cleanup, which will require additional resources?
- How do we best take advantage of new science and data with respect to establishing and updating cleanup standards?

IV. Overview of Process for Developing Guiding Principles

Bails circulated a discussion document related to development of guiding principles, which will be utilized to help facilitate the discussions of the CSA. The term “guiding principles” was defined and examples offered. Bails also outlined the application of guiding principles and how they can be used to achieve consensus, including potential impediments. Examples of guiding principles were circulated to

CSA members and they were asked to note which ones they believed are most relevant to the discussions going forward. Their views are summarized below.

Potential Areas for Guiding Principles

PART 201 Rules—Stakeholder Review Process

Michigan’s generic cleanup criteria and exposure prevention practices as they relate to:

Votes	Topic (would most like to discuss)
9	the mandate that they be based on sound science
6	minimizing the risk of unacceptable public health or environmental exposures
4	comparable practices by the EPA or adjacent Great Lakes states? (Cost and time needed to clear sites for new use, level of human health and environmental protection, extent of any required remediation)
4	public acceptability, and relative risk of voluntary and involuntary exposures to contaminants
3	minimizing the transactional costs to preserve resources for remediation and/or redevelopment
3	potential effects on the value of, or damages to private property of, non-responsible parties
1	application to remediation by responsible party, redevelopment by third party, public remediation or reuse, or as they are applied in different areas (urban versus rural)
0	how lenders (public and private) evaluate loans for redevelopment of potentially contaminated sites

Others Added

- Closure or No Further Action (NFA)—how that affects other laws and rules of the state (i.e., private drinking water programs)
- Taking into account triple bottom line
- Should be capable of screening out sites of minimal risk
- Should reflect statutory provisions of reasonable and relevant pathways, and reasonable and realistic conditions
- Allow flexibility to reflect actual conditions to the extent practical
- Identify what is considered acceptable risk to public health and exposure

Votes	Suggested Underlying Assumptions
2	Michigan will continue to use generic cleanup criteria to clear properties for redevelopment and to identify those that need additional review to assure protection of public health and environment from unacceptable exposure to hazardous substances
2	The basis for the generic cleanup criteria will be periodically reviewed and updated to assure that the best available scientific information is used

Others Added

- Transparency in the criteria and site-specific process

V. Selection of Technical Advisory Group Members

Wagner distributed a proposed list of TAG members for review and discussion by the CSA. He indicated that MDEQ staff members sought to have balanced participation on each group by members from

industry, academia, and government. Wagner mentioned that the members would be contacted following the meeting to seek their participation. Additional names may be considered, if any of those invited from the initial list are not able to participate. Bails mentioned that the TAGs are not voting bodies and are advisory to the CSA on technical issues. TAG members may offer policy recommendations during the course of their deliberations, but such views will not be solicited by the CSA.

VI. Next Steps

Bails said the next meeting will be held on Wednesday, April 30, at 9:00 AM at the offices of Public Sector Consultants in Lansing. The agenda will be devoted to discussion of guiding principles and the first two white papers focusing on chemical-physical parameters and toxicity data and exposure assessments.