Michigan’s Collaborative Stakeholder Initiative

Abridged Recommendation Summary

March 15, 2012
CSI Coordinating Committee
Michigan’s Collaborative Stakeholder Initiative

ABRIDGED RECOMMENDATION SUMMARY

BACKGROUND
The Michigan Department of Environmental Quality (MDEQ) partnered with Michigan State University Extension and external consultants in November 2011 to create a collaborative governance process designed to “spark” durable change in the way the MDEQ cleanup and redevelopment program makes and implements decisions.

This spark—the Collaborative Stakeholder Initiative, or CSI— is the culmination of previous collaborative efforts related to State of Michigan environmental programs and programs conducted pursuant to Part 201 and Part 213 of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended (NREPA). The CSI was designed to align with Governor Snyder’s goals, including “Relentless Positive Action,” to expedite the development of durable and actionable recommendations for presentation to the MDEQ to help move Michigan’s cleanup and redevelopment program forward.

The MDEQ selected seven areas within Parts 201 and 213 on which to focus recommendations for improvement. CSI participants (or “leaders”) then were assigned to an Issue Group responsible for one of the seven areas. Each group was composed of between 8-12 members, and included MDEQ staff and external practitioners with expertise and experience relevant to the issue.

The following are the seven Issue Groups, listed alphabetically:

A. Brownfield Redevelopment
B. Cleanup Criteria
C. Due Care Obligations
D. Free Product /Source Removal/ Csat
E. Groundwater Surface Water Interface
F. Part 201 Rules
G. Vapor Intrusion

The Coordinating Committee has reviewed the recommendations provided by the Issue Groups and developed a summary of major themes reflected in the recommendations. Given the purpose and timing of the CSI, this is not a precise or complete summation, but it is provided as a tool. Because not all recommendations are included in this summary, the actual Issue Group recommendations should be reviewed to capture the depth and breadth of the Issue Group work.
While the Initiative was initially conceived to deliver statutory, rule and policy/guidance changes to improve program efficiencies in seven focal areas, changes in governance (how decisions are made and implemented) was added as a second major goal in order to fully re-invent the cleanup and redevelopment program. Most of the recommendations from the Issue Groups fall under one of these two goals. The many recommendations can then be further grouped into eight major themes. Categorizing them in this manner should provide a clearer path to move issues to action.

**SUMMARY OF THEMES**

The majority of the Issue Groups recommended alternative approaches to reduce real risks to human health and the environment. There appears to be a shift toward improving upon the program’s guiding objectives in statutes (Part 201 and Act 381); strengthening the statute and program by refining key program terms and definitions; and clarifying and consolidating requirements. Utilization of other state and federal program models and practices also is recommended.

An overarching theme highlights the need to reduce the use of rules in program implementation to afford more flexibility in risk management. Instead, there emerges from the recommendations a focus on improved program guidance, with the goal of expediting response activity based on “what matters.” Guidance tools such as conceptual site models are favored. This program guidance, led by MDEQ, would be established through collaborative stakeholder processes and implemented with the assistance of more training and outreach programs, both internal and external.

Since this work was so expedited and more time and collaboration was felt to be necessary, a number of the recommendations call for a meeting of members from each of the Issue Groups to address any cross-cutting issue areas needing more clarity and work. Another suggested approach calls for convening one representative from each of the Issue Groups to work through areas that are not in agreement; determining timelines for what gets done first; and drafting a final set of integrated recommendations. A third and frequent recommendation is for additional and expanded stakeholder processes/representation. Expanding the stakeholder representation would allow for the inclusion of additional expertise in the development of recommendations.

Overall, it is evident from comments about the process (see section V Appendices, Leaders and Legends Feedback of the CSI Report), and from the Issue Group recommendations contained in that report, that MDEQ staff and stakeholders agree that a collaborative decision-making processes will be imperative in achieving the mutual goals of stakeholders and MDEQ: cleaning up the environment and redeveloping brownfield sites “to move Michigan forward.”

The report can be located by clicking on the CSI link at: [http://www.michigan.gov/deqrrd](http://www.michigan.gov/deqrrd)

**THEME TITLES AS THEY RELATE TO CSI GOALS:**

**GOAL ONE:** Improved climate of trust, cultural understanding and cooperation among stakeholders and state agency staff

1. Continue Collaborative Governance
2. Seek Legal Counsel
3. Expand Stakeholder Process
4. Broaden Authority and/or role of Local Units of Government (LUGs)

Goal Two: Swift and durable implementation through development of recommendations to the MDEQ that address seven key issue groupings

5. Modify Statutory Revisions (Part 201 and Act 381)
6. Modify Part 201 Rules, DEQ Procedures/Develop Guidance
7. Revamp Funding Provisions
8. Utilize more federal standards and practices

List of Recommendation Themes
Following is a list of numerous recommendations that fall under these eight general themes. This listing is not inclusive of all recommendations, but is provided as a general overview of the types of recommendations that are included in the CSI report.

Acronym Glossary

CC: Cleanup Criteria
CSI: Collaborative Stakeholder Initiative
DC: Due Care
GSI: Groundwater/Surface water Interface
FP: Free Product
LUG – Local unit of government
NAPL: Non-Aqueous Phase Liquids
VI: Vapor Intrusion

1. Continue Collaborative Governance
a. Implement GSI with support of Water Resource Division (GSI).
b. All issue groups should have interaction and opportunity to review and comment upon the CSI recommendations and collaborate in areas of overlap (DC, Rules).
c. Facilitate ongoing involvement of CSI participants during implementation of recommendations (DC, Rules).
d. Department of the Attorney General seek additional technical input from MIOSHA, MDEQ, and MDCH staff who develop and implement exposure criteria regarding the equivalent protectiveness issue (also part of CC recommendation #2a).
e. Further discussion of adopting chemical-specific data used to generate cleanup criteria and the criteria themselves without rulemaking to reach consensus. Discussion should include representatives from the Attorney General's Office that are familiar with Part 201 and APA rulemaking requirements, representatives from other areas of the Remediation Division that implement and enforce Part 201, as well as members from the stakeholder community (including at least one attorney) outside of the Department (CC).
2. **Seek Legal Counsel**
   a. Seek a legal opinion from the Michigan Attorney General on whether MIOSHA standards apply to protection of the worker population in a workplace where chemicals of concern for the VI pathway are not used in production or processes and whether those standards meet the requirements for protection from non-residential exposures under Part 201 (VI & CC).

3. **Revamp Funding Provisions**
   a. Funding of small scale control for contemporary releases with low interest loan fund (See FP/NAPL other issues).
   b. Where state TIF is approved, 3 mills of the SET are captured to fund brownfield projects under State Brownfield Redevelopment Fund. This would continue for the duration of state TIF capture (Brownfield).
   c. Allow LSRRF to capture MEGA state and local up to 5 years in the same manner as MDEQ. The captured amount goes to the state brownfield redevelopment fund, and if approved by the state as part of an Act 381 work plan, 50% goes to the LSRRF (Brownfield).
   d. Consider incentive (e.g. increase admin fee) for regionalized BRA management/administration (Brownfield).
   e. Allow DEQ to retroactively approve state TIF for the costs associated with emergency removal activities. Require consultation with DEQ prior to undertaking activities (Brownfield).
   f. Shift portion of the MDEQ loan funds to grants (Brownfield).
   g. Eliminate full faith and credit requirement under MDEQ loans (Brownfield).

4. **BROADEN AUTHORITY AND/OR ROLE OF LOCAL UNITS OF GOVERNMENT (LUGS)**
   All the following recommendations pertain to Brownfield Redevelopment:
   a. If legally permissible, allow the qualified local governmental unit to designate itself as the BRA; or the qualified local governmental unit can delegate the approval of the brownfield plan to the BRA.
   b. For preliminary assessment activities (investigation, BEA, preparing due care plan, etc.), allow approval of both local and state tax increment revenues by qualified local governmental unit for expenses incurred prior to the approval of the brownfield plan.
   c. Allow qualified local governmental unit to approve local tax increment revenues for reimbursement of any eligible costs incurred prior to the approval of a Brownfield Plan.
   d. Require developer to provide annual report to the qualified local governmental unit each year that the project receives reimbursement. Allow the qualified local governmental unit the discretion to terminate reporting requirements earlier.
   e. Delegate MEGA work plan approval to the Chair of MEGA, or designee for projects with total MEGA eligible activities of $500,000 or less, including interest.

5. **Modify Part 201 Rules, DEQ Procedures/Develop Guidance**
a. Rescind obsolete or unnecessary rules (Rules)
b. Consolidate rule definitions, and define cleanup criteria to better reflect multiple purposes (e.g., screening levels, “facility” determination and closure) (Rules)
c. Develop GSI guidance (internal and external) (GSI).
d. Cross division and district training in GSI (GSI).
e. Empower staff to make decisions with a reasonable amount of data (GSI).
f. Govern all program decisions based on risk assessment and risk management principles (See FP/NAPL recommendation #1).
g. Require that decisions be based on adequate conceptual site model (CSM) relying on best practices such as most current ASTM, IRTC and MDEQ guidance (with stakeholder input) (See FP/NAPL recommendation #2).
h. Issue policy that diverts reliance on Csat and similar factors in favor of the recommended process and develop administrative rules that implement the recommended process (See FP/NAPL recommendation #3).
i. Develop guidance on NAPL impacts site specific risk analysis and clarify toxicological assumptions of generic criteria (See FP/NAPL recommendation #3).
j. Issue policy for evaluating and determining when NAPL recovery will be required and when the exception may be allowed – rule changes may be required to implement this process as a legally enforceable procedure (See FP/NAPL recommendation #7).
k. Recommend adopting the ADAF as it uses Best Available Information (CC).
l. Identify the child as the receptor for generic residential land use. Incorporate exposure assumptions for ages 0-2 and 2-6 year old into the algorithms for calculating cleanup criteria (CC).
m. After updating the generic cleanup criteria as required by MCL 324.20120a(18), MDEQ develop an ongoing schedule for updating cleanup criteria so that they do not all require updating at the same time (CC).

n. Algorithms remain in the administrative rules (CC).
o. Allow MEGA to approve state TIF for reimbursement of any reasonable MEGA costs incurred prior to Brownfield plan approval. Provide guidance so that it is clear that there is no expectation that MEGA is obligated to approve these costs (Brownfield).
p. Move reporting due date from qualified local governmental unit to Treasury from March to year end. (Brownfield)
   i. Copies of reports to be provided to MEDC/DEQ.
   ii. Provide resources for monitoring by Treasury.
   iii. Consolidate state reporting to Tax Commission and legislature.
q. Consider adopting consultancy approach to facilitate redevelopment projects at the state level (Brownfield).
   i. Strive for seamless inter-departmental approach.
   ii. Association of Brownfield Redevelopment Authorities (ABRA) may provide assistance.
r. Support the creation and development of the ABRA. (Brownfield)
s. Eliminate requirement for separate accounting and handling of state TIF fund (i.e. act 381 work plans and separate accounting) for LSRRF (Brownfield).
t. MDEQ develop guidance for a tiered approach vapor intrusion assessment addressing (VI)
i. Property transactions
ii. Due care
iii. Remedies and response actions
iv. Closure
v. Sampling Methodologies (getting the data)
vi. CSM (conceptual site model) process
vii. Data evaluation process (making decisions with the data)
viii. Monitoring

u. DEQ should carefully address the important vapor intrusion pathway in a manner which protects human health consistent with the best scientific evidence available. In doing so, the DEQ should (VI):

i. allow the initial use of a conceptual site model (CSM) and other site evaluation techniques before concluding the presence of a complete exposure pathway and vapor intrusion risk;
ii. allow data collection and evaluation processes consistent with the needs of business transactions, which may include greater use of real-time sampling techniques;
iii. prioritize the compilation and comparison to initial screening levels (not generic criteria) of Michigan-based data from the many sites which are known to exist and are available to the DEQ; and
iv. develop generic vapor intrusion criteria (with variations based on soil type and other site specific features) with meaningful input from resources outside of the DEQ with particular expertise in this important area.


w. Modify existing Rules 299.5714 and 299.5724 consistent with recommendation #1 from the VI group and add an additional rule to address the development of soil-gas criteria; write the rule changes needed in order to implement recommendation #1 (VI).

x. Develop a process for the easier development, implementation and approval of site-specific criteria (DC).

y. DEQ should review and provide a response under Section 20114b for a due care plans submitted in support of an SBA loan within 45 calendar days. The Department should strive to provide the same response time for Due Care plans submitted in support of all transactions, effective no later than January 1, 2013 (DC).

6. **EXPAND STAKEHOLDER PROCESS**

   a. Cross cutting rule revisions (e.g., GSI, BEA, DC, Soil Management)(Rules).
   b. An adequate conceptual site model (CSM) based on best practices such as most current ASTM, IRTC and MDEQ guidance is developed by MDEQ with stakeholder input. (See FP recommendation #2).
c. Establish stakeholder steering committee to guide and plan trainings for MDEQ and environmental professionals (See FP/NAPL recommendation #5)

d. Separate study group suggested to evaluate the various drivers that influence the development of (soil) criteria. DEQ and outside stakeholder involvement (CC recommendation #1).

e. Recommend formation of an interagency and stakeholder workgroup to look at this issue (MIOSHA standards and VI) with the goal of establishing appropriate standards for regulating indoor air in these workplaces (CC & VI).

f. Permit or require education and outreach materials on Due Care, such as implementation requirements and recommendations, to be reviewed by stakeholders prior to publication (DC).

7. MODIFY STATUTORY REVISIONS (PART 201 AND ACT 381), SUCH AS:

   - Develop consistent criteria across statutes and/or common standards
   - Eliminate certain exemptions
   - Shared understanding across criteria
   - Consolidate and refine definitions and program objectives

a. Amend part 201: Use proposed 213 definitions (which are based IRTC Guidelines) to define NAPL, DNAPL, LNAPL, Nobile NAPL and residual NAPL (FP recommendation #6).

b. Amend part 201 to incorporate recommended definitions of “Source.”(FP recommendation #4).

c. Consolidate definitions and notice provisions (VI, Rules & FP/NAPL)

d. Provide for a MDEQ certification of response activities upon request (Rules).

e. Provide for No Further Action (NFA) on portions or all of the facility (Rules).

f. Encourage the support of self-implementation of response activities (Rules).

g. Allow for site specific criteria to be developed consistent with USEPA cancer risk target range and risk management framework (Rules).

h. Use EPA standards of amount of mercury in water that would trigger a response activity (200 ppt) (GSI).

i. Amend Part 201 to permit use of site-specific criteria for implementation of due care without MDEQ approval, but require person to disclose due care documentation to Department (DC).

j. Amend Part 201 to condition the partial exemptions for state and local units of government from the obligations under MCL 324.20107a1(b) and (c) at a facility acquired pursuant to MCL 324.20126(3)(a) on providing notice to the DEQ (DC).

k. Amend Part 201 to eliminate the due care exacerbation exemption for State and Local Units of Government (DC).

l. Amend Part 201 to eliminate the partial due care exemption for the state and local units of government for property voluntarily acquired prior to June 5, 1995 (DC).

m. Provide that due care obligations would apply to facilities created by migration of hazardous substances from offsite sources (DC).
n. Amend statutory language in Section 324.20120e of Part 201 to include more options for addressing storm sewers and using alternative mechanisms for managing the GSI pathway in the cleanup program to facilitate closures while still remaining protective of surface water resources (GSI).

o. Act 381 (Brownfields):
   i. Eliminate Act 381 sunset provision. Add reporting requirements that evaluate the program on an annual basis.
   ii. Eliminate Act 381 statutory requirement for 2 public notices in a newspaper and defer to local process.
   iii. Act Add to the definition for “Additional response activities” to include contaminated sediment transportation and disposal. Or, the preferred route is to have DEQ establish cleanup criteria for sediment.
   iv. Add to the definition for “infrastructure” to include “multi-level” and “underground” parking structures, whether private or public.
   v. Add urban storm water management systems whether public or private.
   vi. Add a new category for limited eligible activities to achieve energy efficiency and sustainability, whether public or private.
   vii. Evaluate the merits of the list of “qualified local governmental units” for MEGA eligible activities.

8. USE OF FEDERAL STANDARDS

a. Allow for site specific criteria to be developed consistent with USEPA cancer risk target range and their risk management framework (Rules).

b. Utilize EPA method 245.1 detection limit for mercury as an action level for groundwater plumes relative to GSI (GSI)

c. Look to OSHA/MIOSHA as a means to establish risk standards for non-residential exposures from the vapor intrusion pathway, when chemicals are not used in the workplace. (CC)

d. Utilize other federal standards and practices when calculating cleanup criteria. (CC)

Thank you for your interest and allowing us to partner with MDEQ in the design and implementation of this initiative, a step in re-inventing Michigan’s government intended to protect our environment and assist in the state’s economic recovery.

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