ORR Recommendation R‐13

Subject: Part 201 Due‐Care Plans Submitted As Response‐Activity Plans For SBA Loans

Recommendation: Develop a Policy Guidance Document that creates an expedited period for reviews of due‐care plans in the SBA‐loan context. Further, it would be helpful to the regulated community if the DEQ created a Policy Guidance Document outlining the content that the DEQ believes would comply with the due‐care‐plan requirement for SBA loans.


Appendix A
No. R‐13
Subject: Part 201 Due‐Care Plans Submitted as Response‐Activity Plans for SBA Loans

Remedy: ☒ Process ☐ Rules ☐ Statute

Background/Issue: One of the 2010 amendments to Part 201 was to eliminate the provision regarding DEQ approval of BEAs. This created an issue for loans made by the U.S. Small Business Administration (SBA). With the 2010 changes, SBA was no longer willing to fund loans for sites with BEAs without DEQ involvement. After negotiations, the SBA agreed that a due‐care‐plan reviewed by the DEQ as a response‐activity plan was an acceptable alternative. Moving forward, to ensure the due‐care‐plan review process associated with SBA loans remains a functioning part of the Part 201 program, steps should be taken to address expedited review times and appropriate reviews. Specifically, the department should be provided up to 30 or 45 days to complete a due‐care‐plan review in this context. The statutory limit of 150 days would not allow transactions to proceed in a commercially‐reasonable timeframe.

Also, to ensure the regulated community provides the information needed to obtain an affirmed due care plan, the DEQ could develop a guidance document outlining the content that the DEQ believes would comply with a due‐care‐plan requirement for SBA loans. This guidance must account for the fact the due‐care‐plans are being prepared by non‐liable parties and not subject them to the same level of investigation or response‐activity requirements as a liable party. Provisions should also be in place for making reasonable assumptions based on expected contaminant levels and locations as well as applicable pathways.

Proposed Solution: Develop a Policy Guidance Document that creates an expedited period for reviews of due‐care plans in the SBA‐loan context. Further, it would be helpful to the regulated community if the DEQ created a Policy Guidance Document outlining the content that the DEQ believes would comply with the due‐care‐plan requirement for SBA loans.

Rationale for Change: By ensuring the timing and technical review issues are addressed, small and medium‐sized businesses deploying SBA‐backed loans to meet their business needs will continue to help the state move forward in its economic recovery.