

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDATION AND REDEVELOPMENT DIVISION**

CLEANUP PROGRAM REDESIGN FREQUENTLY ASKED QUESTIONS

March 2, 2009

These questions have been submitted as part of the input process regarding the cleanup program redesign proposal. The answers are provided as an informal mechanism to share information regarding RRD's intent or otherwise provide clarifications to statements made during the presentation of the proposal. The answers are not intended to be a final, formal response. They represent the current MDEQ thinking and may need to be updated as the input process progresses. Copies of the redesign presentations are available upon request.

Q1: *Under the proposed redesign would all commercial and industrial land use categories be considered non-residential, or would some (i.e., schools, day care centers, etc.) be lumped into the residential category?*

A1: Under the proposal, there will be two categories of cleanup criteria developed 1) residential criteria and 2) non-residential criteria. The resulting proposed cleanup categories will be (1) unrestricted residential, (2) restricted residential, (3) restricted non-residential, (4) unrestricted site-specific, and (5) restricted site-specific. It is not proposed to designate the current commercial I uses (e.g., schools, day care centers, or care for the elderly) as residential uses; however, since the exposures are similar to residential exposures, the residential criteria will be applied to these uses. The use of residential criteria will result in residential category cleanups at these properties. We recognize the terminology may lead to some confusion, but currently cleanups may occur as restricted or unrestricted residential categories, using residential criteria, at properties where the existing land use is commercial or industrial.

Q2: *What site conditions would have to be met to qualify for limited liability relief and what happens if there is a change in land use after getting limited liability relief?*

A2: The redesign proposes to provide parties with relief from liability for a facility where a long term exposure risk exists but no current unacceptable exposure exists due to the existing land use or pathways being incomplete due to existing property use, e.g., there is a municipal drinking water supply and groundwater is not used for drinking water at the property. The proposal includes that parties would be required to: 1) perform sufficient cleanup of a facility to eliminate any source and unacceptable exposures based on existing property use, without utilizing any remediation that includes a constructed exposure control, 2) place deed restrictions on affected properties to inform new owners of the site conditions and safe use, 3) obtain MDEQ concurrence with these conclusions based on available information, and 4) disclose upon transfer of a property interest.

Once MDEQ concurs with the conclusions, the liable party would not have liability for conditions identified and addressed for their compliant land use. If a subsequent owner or operator modifies the land use, for example changes at an industrial or commercial property to residential use that render the original remediation no longer an acceptable

means of exposure control, the liable party who received remedy approval will not be subject to additional liability.

Q3: *Under the redesign proposal for remedial obligations, must delineation of contamination be based on unrestricted residential criteria even if the area is commercial?*

A3: For remedial decisions, delineation of the extent of contamination, vertically and horizontally, will continue to be necessary to levels that do not exceed residential criteria. Contaminant levels that make a property a facility, which trigger due care or remedial obligations, are not land use related. Contaminants in concentrations that exceed residential criteria, whether the property is residential or non-residential and that presently defines a facility, are not proposed to change. Therefore, the redesign proposal does not change the fundamental need to identify the area affected by a release that exceeds the residential criteria that makes property a facility, including potential off-site migration above residential criteria regardless of the land use off-site.

The existing statutory language to define the nature and extent of contamination has led to what has been characterized as “routine technical disagreements” on what constitutes sufficient delineation. To reduce the disagreements and guide appropriate self-implementation of investigations, the proposed redesign remedial obligations provisions will include further definition of delineation obligations. In addition, it is expected that the redesign’s emphasis on early source removal will reduce the efforts necessary to delineate the resulting contamination. We will be seeking additional input on the proposed remedial obligations topic.

Q4: *Will alternate approaches be considered to evaluate the GSI pathway?*

A4: The redesign proposal does not include changes in the necessary evaluation for groundwater that is venting to surface waters; however, the redesign proposal will address recommendations made during the Discussion Group process. A session of the Complexity Subgroup was devoted to the GSI pathway. As presented during that discussion, the requirements for evaluation of the GSI pathway (R 299.5716) are directly related to the Federal Clean Water Act, and Part 31 requirements, including specific requirements for contaminated groundwater entering regulated storm sewers. As part of the Discussion Group process, the MDEQ re-evaluated its’ position on the ability to allow the development of mixing zone-based GSI criteria for discharges to regulated storm sewers and determined there was no prohibition to the development and use of mixing zone criteria (recommendation #50). Therefore, the MDEQ will allow mixing zone based criteria to be developed based upon the flows within the surface water to which the storm sewer discharges.

A GSI “off ramp” regarding evaluation of utility corridors as preferential groundwater migration pathways was proposed by members of the Discussion Group (recommendations #51-55). The proposal intended to produce generic conditions that could be used to determine that groundwater migration did not need to be evaluated (e.g., 10 times the generic GSI, ½ mile from the surface water). The proposal was determined not to be valid as a generic proposal because additional site specific inputs are necessary for such modeling to be valid. Development of a counter proposal for inputs to the model

was not pursued because of the limited circumstances when such a model would be applicable. For instance, the model was not intended to address a storm sewer corridor since the assumptions of the proposal included that the flows did not enter the pipe; additional examples are that the model was not intended to address metals, and did not address breakdown products. For utility corridors, other than backfill associated with a storm sewer, appropriate modeling may currently be proposed to evaluate the likelihood of the contamination reaching surface waters above GSI criteria. Information to input into a model would have to be site-specifically generated. The results of the model would require some field verification in accordance with existing rule provisions. Nothing in the redesign proposal would change or prohibit the appropriate use of modeling for this evaluation.

Additional GSI pathway recommendations were made regarding the mercury GSI criterion (recommendations #59-60). The MDEQ did not endorse the recommendation to establish a cleanup criterion for mercury at 10 parts per billion as there was no scientific basis for it to represent a risk based value. The MDEQ did support the use of site-specific mercury variances for venting groundwater in accordance with the existing Part 31 rule provisions. The MDEQ also reviewed the existing process to establish a site specific mercury criterion and determined that there was no prohibition to its use for venting groundwater although it would be a lengthy and very costly process. No statutory or rule changes were necessary to implement these recommendations. The MDEQ has received, as part of a remedial action plan, a request for a variance from the mercury water quality standard. While the review of the RAP is not yet complete, the review of the site specific variance request has been conducted and the variance can be supported.

Q5: *How will audits be conducted? What happens if the MDEQ audits a report and finds the approach/implementation severely lacking? If presently the work proposed is often not approvable how will removing the requirement for approval improve the cleanup outcome?*

A5: As critical elements of the redesigned statute remain to be developed, a detailed proposal for the audit process has not been prepared. The MDEQ's overall compliance monitoring strategy will be similar to that employed by other MDEQ programs and will be based on a number of factors, including but not limited to environmental/public health risk, site status, and site location. Generally speaking, the audit strategy is expected to include both neutrally-selected and for-cause audits and will be comprised of both file audits and on-site inspections. Determinations of non-compliance will be communicated to the responsible parties in a timely manner and in all but the most egregious circumstances, parties will be given further guidance and an opportunity to correct the deficiencies noted. Additional information regarding audit expectations is expected to be included with upcoming discussion regarding due care and remedial obligations.

The proposal does not eliminate the necessity to interact with the MDEQ for conditions that require permit or permit exemptions, including response activities that rely upon mixing zone based criterion, or in-situ injections. Other mandatory interactions will be identified as part of the development of the remedial obligations, and will be included in upcoming discussions.