FINAL

RECOMMENDATIONS

OF THE

OFFICE OF REGULATORY REINVENTION

REGARDING

ENVIRONMENTAL REGULATIONS

December 23, 2011

Office of Regulatory Reinvention
Environmental Advisory Rules Committee

Richard Barr
Attorney, Environmental Law Department
Honigman Miller Schwartz and Cohn LLP

Skiles Boyd
Vice President of Environmental Management and Resources
DTE Energy

John Caudell
(Co-Chair, Air Subcommittee)
Senior Consultant
FTC&H

James Clift
Policy Director
Michigan Environmental Council

Troy Cumings
(Chair, Remediation Subcommittee)
Attorney & Lobbyist
Warner Norcross & Judd LLP

Randy Gross
Director of Policy and Legislative Affairs
Department of Environmental Quality

David Gustafson
Regulatory Affairs Leader
The Dow Chemical Company

Linda Hilbert
Manager of Renewable Energy
Consumers Energy

Carol Isaacs
Chief Deputy Attorney General
State of Michigan

John McCulloch
(Chair, Water Subcommittee)
Water Resources Commissioner
Oakland County

Rob Nederhood
(Committee Chair)
Deputy Director
Office of Regulatory Reinvention

Andrew Such
(Co-Chair, Air Subcommittee)
Director of Environmental and Regulatory Affairs
Michigan Manufacturers Association

Brian Warner
Director of Environmental Services
Wolverine Power Cooperative

*The ORR would also like to thank David Fiedler, Regulatory Affairs Officer for the Department of Environmental Quality, for his work on behalf of the Committee.

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1. EXECUTIVE SUMMARY

a. Background

This report contains the recommendations of the Office of Regulatory Reinvention for changes to Michigan's environmental regulations. These recommendations consist of the final recommendations of the Environmental Advisory Rules Committee (ARC), an additional recommendation from the ORR, and additional rule rescissions and amendments recommended by the ORR and Department of Environmental Quality (DEQ).

The Environmental ARC was created by the Office of Regulatory Reinvention in accordance with Executive Order 2011-5. The mission of the ORR is to ensure that Michigan's regulatory environment is simple, fair, efficient, and conducive to business growth and job creation. The purpose of the Environmental ARC was to produce advisory recommendations to the ORR for changes to Michigan's existing environmental regulations.

NOTE: This document is not part of the rulemaking process. Any proposed changes to administrative rules recommended by this report will be made as part of the rulemaking process, and any proposed changes to Michigan statute will be made through the legislature.

b. Scope

The Environmental ARC was tasked with evaluating and making recommendations for changes to Michigan's environmental regulations, including existing administrative rules, non-rule regulatory actions, regulatory processes, and as necessary, statutes. Evaluations and recommendations were based on the application of the seven factors described in Executive Order 2011-5. Those seven factors are as follows:

1. Health or safety benefits of the rules;
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;
5. Extent to which the regulations exceed national or regional compliance requirements or other standards;
6. Date of last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation; and
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

Recommendations range from the general (e.g., identification of processes which need improvement) to the specific (e.g., language changes to existing rules). Because of the size and scope of Michigan's environmental regulations, the Environmental ARC focused its work on specific areas within the existing regulations.

c. Process

The Environmental ARC met for the first time on June 15, 2011, and immediately formed three subcommittees – Air Quality (co-chaired by Andrew Such and John Caudell), Remediation (chaired by Troy Cumings), and Water (chaired by John McCulloch) – to address the issues identified by the committee members. The members of the Environmental ARC also began soliciting other members of the regulated community (including trade groups, chambers of commerce, companies, and local governments) to identify existing Michigan regulations which were duplicative, obsolete, or unduly burdensome.

Over the course of the next five months, the committee members submitted over 100 potential recommendations for consideration by the Environmental ARC, organized in individual "Issue Papers" and categorized as a "General," "Air Quality," "Resource Management," "Remediation," or "Water" issues. Between June 15 and November 17, the Environmental ARC and its subcommittees held 33 meetings, during which they discussed and developed potential recommendations, and rejected certain proposals. The Environmental ARC was granted an extension by the ORR to continue its work beyond its initial 120 day term, which expired on October 15.

At its meetings on October 6, October 20, October 27, November 3, November 8, and November 17, the Environmental ARC approved a total of 79 recommendations, which are contained in this report.

2. RECOMMENDATIONS

The following pages contain the final recommendations of the Environmental ARC. The recommendations are categorized by topic area. In order to provide guidance for implementation, the recommendations within each category have been listed in order of priority, based on the importance of the recommendation to the state's future. Copies of the final Issue Papers, providing background and rationale for each recommendation, are included in Appendix A to this report.

a. AIR QUALITY RECOMMENDATIONS

Recommendation A-1

Subject: Air Toxics Rules

Recommendation: The Committee makes the following recommendations regarding Air Toxics rules:

- The parts of R 336.1224 dealing with compounds that are considered volatile organic compounds (VOCs) should be rescinded. Portions of R 336.1224 are redundant because R 336.1702 requires a control technology review for VOCs. VOC-based emission control is more effective under R 336.1702 and this entire regulation exceeds federal standards.

- R 336.1225 should be amended and specifically include the following:
  - Limit permit modification reviews to those increases in a Hazard Index exceeding 10% above the previously permitted baseline.
  - Exempt sources that are identified in a MACT source category.
  - Exempt clean fuels such as natural gas, low sulfur #2 fuel oil, and non-chemically treated biofuels.
  - Exempt pollution control projects for existing sources from the air toxic regulations.
  - Limit the number of air toxics to the federal HAPS list.
  - Make the acceptable exposure limits consistent with other nearby states.
  - Stop requiring permit holders to conduct elaborate and costly stack tests to provide emissions research data, since the DEQ does not use this information for subsequent permit reviews.

- R 336.1228 should be rescinded. This rule allows the Air Quality Division to go beyond the requirements of the rule for any reason.

Justification: See Issue Paper "A-1" in Appendix A on Pg. A-4.

* James Clift did not concur in this recommendation.

Recommendation A-2

Subject: Mercury Rules: Part 15 Rules, (R 336.2501 – 2514)

Recommendation: Amend Part 15 rules to add a statement that stays compliance with Rules 336.2512, 336.2503(2)(a) & (6), 336.2509(1) and 336.2513(1)(a) & (3) until January 1, 2015. The Michigan Mercury Rules requirements will be effective on this date unless an applicable federal rule to control mercury has been published in the Federal Register. Once the applicable federal rule to control mercury has been published, the Michigan Mercury Rules should be rescinded.

Justification: See Issue Paper "A-2" in Appendix A on Pg. A-7.

* James Clift did not concur in this recommendation.

Recommendation A-3

Subject: Additional Rule 201 (Permit to Install) Exemptions

Recommendation: Michigan should adopt a new exemption rule for minor sources with *de minimis* potential to emit. This exemption rule should be similar to the minor new source review thresholds adopted by the U.S. Environmental Protection Agency (USEPA) for its own permitting program in Indian Country (40 CFR, Subpart C), and should read as follows:

"New sources with a potential to emit less than the following amounts in an attainment area would be exempt from the requirement to obtain a permit to install:

CO	10 tpy
NOx	10 tpy
SO2	10 tpy
VOCs (non-carcinogenic)	5 tpy
PM	10 tpy
PM10	5 tpy
PM2.5	3 tpy
Lead	0.1 tpy
Fluorides	1 tpy
Sulfuric Acid Mist	2 tpy
Hydrogen Sulfide	2 tpy
Total Reduced Sulfur	2 tpy
Reduced S Compounds	2 tpy
MSW Combustors	2 tpy
MSW Landfills	10 tpy

In non-attainment areas, the NAA compound-specific thresholds would be:

CO	5 tpy
NOx	5 tpy
SO2	5 tpy
VOCs (non-carcinogenic)	2 tpy
PM	5 tpy
PM10	1 tpy
PM2.5	0.6 tpy
Lead	0.1 tpy"

Justification: See Issue Paper "A-3" in Appendix A on Pg. A-8.

* James Clift did not concur in this recommendation.

Recommendation A-4

Subject: Rule 206 Process Deadlines

Recommendation: R 336.1206 must be more specific and must include a definition for "administratively complete". The rule should be amended to:

- Include a definition of "administratively complete" in Part 1.
- Require the Air Quality Division (AQD) to make an "administratively complete" determination within 10 days of the receipt of the application.
- Require AQD to act (issue or deny) on all minor source Permit to Install (PTI) applications within 180 days of receipt. This should include "opt-out" PTIs.
- Require AQD to act (issue or deny) all major source and major modification PTI applications within 240 days from the date of receipt.
- Allow for the extension of these deadlines with the mutual consent of both the applicant and the DEQ.

Justification: See Issue Paper "A-4" in Appendix A on Pg. A-10.

* James Clift did not concur in this recommendation.

Recommendation A-5

Subject: Dispersion Modeling Guidance Document

Recommendation: The DEQ should organize a stakeholders group by January 1, 2012 to develop a new Policy Guidance Document (PGD) that considers the new National Ambient Air Quality (short-term) Standards (NAAQS) for NOx and SO2. Finalization of the new PGD should become effective no later than March 1, 2012. This PGD should be modified, with stakeholder consensus, within 90 days of USEPA's promulgation of any subsequent new or revised NAAQS.

Justification: See Issue Paper "A-5" in Appendix A on Pg. A-11.

Recommendation A-6

Subject: Averaging Times and Compliance Testing – AQD Operational Memorandum No. 18

Recommendation: The DEQ should review Air Quality Division's Operational Memorandum No. 18 to ensure it is consistent with federal test methods and make changes to the Memorandum if necessary. Stakeholder input should be included in any change to the Memorandum.

Justification: See Issue Paper "A-6" in Appendix A on Pg. A-12.

Recommendation A-7

Subject: Rule 801, Rule 803 and State Implementation Plan

Recommendation: The Air Quality Division (AQD) should amend R 336.1801 and R 336.1803 and the SIP, to only include electrical generating units (EGU's) that contribute electricity to the grid. A stakeholder group should commence rules development activities by January 1, 2012 and submit a proposed rules package for public comment by no later than April 1, 2012.

Justification: See Issue Paper "A-7" in Appendix A on Pg. A-13.

* James Clift did not concur in this recommendation.

Recommendation A-8

Subject: Michigan Continuous Emission Monitoring Rules (Part 11)

Recommendation: R 336.2170 should be amended to be consistent with the federal reporting requirements and limited to semi-annual reporting of excess emissions. The present Michigan rule requires quarterly reporting.

Justification: See Issue Paper "A-8" in Appendix A on Pg. A-14.

Recommendation A-9

Subject: Visible and Particulate Emission Limitations

Recommendation: The Air Quality Division (AQD) should develop a Policy Guidance Document addressing the use of visible emissions limits of less than 20% opacity in permit conditions. The process for developing the document should include stakeholder input and require any opacity limits that are more stringent than what is allowed by R 336.1301(1)(a) to be negotiated between the applicant and the AQD. The guidance document should be developed by June 1, 2012.

Justification: See Issue Paper "A-9" in Appendix A on Pg. A-15.

Recommendation A-10

Subject: R 336.1330

Recommendation: The Air Quality Division should engage with USEPA to determine what it would take to get USEPA approval to rescind R 336.1330. Based upon that feedback, the DEQ should engage with stakeholders to determine whether to rescind or modify the rule, or take no further action.

Justification: See Issue Paper "A-10" in Appendix A on Pg. A-16.

Recommendation A-11

Subject: R 336.1901 - General Nuisance Rule

Recommendation: With stakeholder involvement, rulemaking should be undertaken to clarify how R 336.1901 is to be used in the Permit to Install process. R 336.1901 should be limited to responding to and resolving *known* odor issues and other nuisances. As part of this review, all templates and standard language will be reviewed to assure the appropriate use of R 336.1901.

Justification: See Issue Paper "A-11" in Appendix A on Pg. A-17.

* James Clift did not concur in this recommendation.

Recommendation A-12

Subject: Electronic Application for New Source Review

Recommendation: Develop and implement an electronic Permit to Install application system by December 31, 2012. Development of this system should be done primarily by the private sector with quality assurance and regulatory guidance from the DEQ. The funding for this project should be found outside of the current DEQ budget.

Justification: See Issue Paper "A-12" in Appendix A on Pg. A-18.

Recommendation A-13

Subject: Stakeholder Involvement in SIP Development

Recommendation: The Air Quality Division of the DEQ should conduct stakeholder reviews to solicit more non-agency input in drafting State Implementation Plans (SIPs).

Justification: See Issue Paper "A-13" in Appendix A on Pg. A-20.

Recommendation A-14

Subject: Addition of New Permit to Install Exemptions and Clarification of Existing Exemptions

Recommendation: Amend the R 336.1201 permitting requirements to add new exemptions, and further clarify the current exemptions included in R 336.1278 – R 336.1290.

Justification: See Issue Paper "A-14" in Appendix A on Pg. A-21.

Recommendation A-15

Subject: VOC Emissions from Pharmaceuticals (R 336.1625)

Recommendation: Amend R 336.1625 to provide that if a MACT standard applies to the sources identified in R 336.1625 and also establishes VOC limitations, then the requirements in R 336.1625 are not applicable.

Justification: See Issue Paper "A-15" in Appendix A on Pg. A-22.

Recommendation A-16

Subject: Volatile Organic Compounds (VOCs) – R 336.1611 and R 336.1707(3)-(4)

Recommendation: The DEQ should work with stakeholders to simplify the process for demonstrating compliance with these rules for Renewable Operating Permit facilities.

Justification: See Issue Paper "A-16" in Appendix A on Pg. A-23.

Recommendation A-17

Subject: Rule 703, Gasoline Storage Tanks (>2000 gal)

Recommendation: Amend R 336.1703 to be clear and consistent with new USEPA regulations, while ensuring continued attainment of air quality standards.

Justification: See Issue Paper "A-17" in Appendix A on Pg. A-24.

Recommendation A-18

Subject: R 336.1349

Recommendation: R 336.1349 is obsolete and should be rescinded.

Justification: See Issue Paper "A-18" in Appendix A on Pg. A-25.

Recommendation A-19

Subject: Limiting Compounds Required For Annual MAERS Report

Recommendation: Continue to use the existing default MAERS air toxics emission factors as an optional calculation tool for industry, but clearly identify which air toxics have been calculated using USEPA-supplied emission factors in the annual MAERS reports. Furthermore, the DEQ should be prohibited from developing new air toxics rules using D and E-rated emission factors.

Justification: See Issue Paper "A-19" in Appendix A on Pg. A-26.

* James Clift did not concur in this recommendation.

Recommendation A-20

Subject: Putting a Hold on the 18-Month Construction Window for A PTI

Recommendation: Amend R 336.1201(4) to provide for a "hold" on the 18-month timeframe if a permit decision has been appealed. The following bold language should be added to Rule 336.1201(4):

> *"If the installation, reconstruction, or relocation of the equipment, for which a permit has been issued, has not commenced within, or has been interrupted for, 18 months, then the permit to install shall become void, unless* ***(a)*** *otherwise authorized by the department as a condition of the permit to install, or* ***(b) the installation permit is the subject of an appeal by a party other than the owner or operator of the air contaminant source that is the subject of the installation permit, in which case the date of termination of the permit is not later than eighteen months after the effective date of the permit plus the number of days between the date in which the permit was appealed and the date on which all appeals concerning the permit have been resolved.***

Justification: See Issue Paper "A-20" in Appendix A on Pg. A-27.

* James Clift did not concur in this recommendation.

b. REMEDIATION RECOMMENDATIONS

The rules currently organized under the Remediation Division consist of 16 separate rule sets. These sets can be categorized based on subject matter as follows:

- Part 201 program – Six sets.
- Fire Prevention Code – Six sets.
- Underground Storage Tank program – Three sets.
- Site reclamation grant and loan program – One set.

The committee reviewed these rule sets according to the criteria set forth in Executive Order 2011-5. Based on that review, the committee recommends rescission of three rule sets because they provide little to no value or were otherwise never used. In addition, the committee recommends that the rule sets related to fire safety and promulgated under the Fire Prevention Code be transferred from the DEQ to the Bureau of Fire Services and revised to conform to the referenced national codes. Also, the committee recommends a full review of all the rule sets relating to the Part 201 and Underground Storage Tank programs and offers recommendations on specific issues that should be addressed within these rules. Finally, the committee recommends various statutory and implementation improvements that should be made to the Part 201 and 213 programs.

Recommendation R-1

Subject: Groundwater/Surface-Water Interface (GSI)

Recommendation: Seek amendments to Part 31, Part 201, and R 299.5716 to address the following goals regarding the GSI pathway:

1. GSI compliance evaluation should be based on surface water and not groundwater.
2. Prohibit excessive data demands.
3. Focus on designated uses and surface-water-quality standards in the surface water and not in groundwater or pore water.
4. Expand the bases for site-specific criteria, including non-numeric criteria.
5. Evaluate appropriate plume characteristics, such as using plume-average concentrations except where there is, or will likely be, an acutely toxic effect occurring in surface water.
6. Expressly recognize that natural attenuation may be acceptable in lieu of active treatment. Generally describe what is needed to show natural attenuation.
7. Use sustainability parameters in the response-activity choice factors.
8. Expressly state that no permit is needed under Part 31 for a GSI response activity.
9. Surface water subject to GSI regulation should not include all wetlands or storm-water retention ponds.
10. Develop new rule provisions or statutory changes for groundwater plumes infiltrating storm sewers based on the quality of the water exiting the storm sewer outfall and its impact on surface waters.

Justification: See Issue Paper "R-1" in Appendix A on Pg. A-28.

* James Clift did not concur in this recommendation.

Recommendation R-2

Subject: Part 201/213 Vapor Intrusion Criteria

Recommendation: The 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: (i) allow the initial use of a conceptual site model 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.

Justification: See Issue Paper "R-2" in Appendix A on Pg. A-31.

Recommendation R-3

Subject: Revising Part 201 Cleanup Criteria

Recommendation: The DEQ should evaluate the algorithms, exposure assumptions, and toxicity values used to establish generic cleanup criteria and screening levels under Section 20120a of the Part 201 statute and the Part 7 rules and revise those algorithms, exposure assumptions, and toxicity values as necessary based on best practices from other states, reasonable and realistic conditions, and good science. Consistent with any such revisions, the DEQ should then revise the generic cleanup criteria and screening levels established in the Part 7 rules.

Justification: See Issue Paper "R-3" in Appendix A on Pg. A-35.

Recommendation R-4

Subject: Part 201 Rules

Recommendation: On or before April 1, 2013, the DEQ should rescind all rules (Parts 1, 4, 5, 7, 9, and 10) promulgated under Part 201 except the portion of the Part 7 rules related to establishing generic cleanup criteria and screening levels. Concurrent with this process, DEQ should promulgate a streamlined and efficient rule package that contains only rules that are:

- necessary for program implementation; and
- performance-based rather than prescriptive.

Justification: See Issue Paper "R-4" in Appendix A on Pg. A-36.

* James Clift did not concur in this recommendation.

Recommendation R-5

Subject: Risk-Based Closures and Site-Specific Criteria

Recommendation: Consistent with the increased flexibility to create site-specific criteria under the 2010 Part 201 amendments, the DEQ should encourage the increased use and approval of risk-based site-specific closure limits in order to facilitate closure of more sites. In addition, Part 201 and the Part 201 rules should be amended to allow for non-numeric site-specific criteria.

Justification: See Issue Paper "R-5" in Appendix A on Pg. A-38.

* James Clift did not concur in this recommendation.

Recommendation R-6

Subject: Effective Solubility and Free Phase Contamination

Recommendation:

1. The DEQ should immediately discontinue applying the unpromulgated alternative criteria for gasoline that are based on USEPA effective-solubility formulas and that are attached to the DEQ Draft Q&A document dated May 12, 2011, and should use the existing promulgated criteria.
2. To the extent the DEQ believes that new criteria are appropriate for "free phase" contamination, it must seek the appropriate changes to Part 213 or promulgate new criteria under Part 201 pursuant to the Administrative Procedures Act.
3. In developing any new criteria to address free-phase contamination, the DEQ should use science and look to national best practices.
4. The DEQ should allow regulatory flexibility when evaluating "free phase" situations where there is no demonstrated impact to groundwater present.

Justification: See Issue Paper "R-6" in Appendix A on Pg. A-39.

Recommendation R-7a

Subject: Underground Storage Tank Inspection Delegation and Certification (R 29.2071 – R 29.2077)

Recommendation: The rule set relating to Underground Storage Tank Inspection Delegation and Certification (R 29.2071 – R 29.2077) should be rescinded**.**

Justification: See Issue Paper "R-7a" in Appendix A on Pg. A-41.

Recommendation R-7b

Subject: Part 211 – Underground Storage Tank (UST) Regulations

Recommendation: The DEQ should review the current rules relating to Part 201 - Underground Storage Tank Regulations (R 29.2101 – R 29.2174) to determine the use and relevance of the current rules.

If the department determines the rules are relevant and should be kept in place then they should review the rules with stakeholders to determine if particular rules should be updated or modified and if they exceed federal standards.

When these determinations are made, the DEQ should work with stakeholders to modify the rules and eliminate those rules that exceed the federal standards, unless the DEQ can demonstrate that state-specific rules are necessary to protect human health and the environment.

Justification: See Issue Paper "R-7b" in Appendix A on Pg. A-42.

Recommendation R-7c

Subject: Transportation of Flammable and Combustible Liquids (R 29.2201 – R 29.2234)

Recommendation: The rule set relating to Transportation of Flammable and Combustible Liquids (R 29.2201 – R 29.2234) should be rescinded because it is redundant with existing transportation regulations.

Justification: See Issue Paper "R-7c" in Appendix A on Pg. A-43.

Recommendation R-7d

Subject: Compressed Natural Gas (CNG) Vehicular Fuel Systems (R 29.4601 – R 29.4652)

Recommendation: The Compressed Natural Gas (CNG) Vehicular Fuel Systems program (R 29.4601 – R 29.4652) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Justification: See Issue Paper "R-7d" in Appendix A on Pg. A-44.

Recommendation R-7e

Subject: Production, Storage, and Handling of Liquefied Natural Gas (R 29.4671 – R 29.4672)

Recommendation: The rule set relating to Production, Storage, and Handling of Liquefied Natural Gas (R 29.4671 – R 29.4672) should be rescinded because there are no applicable

facilities (existing or planned) in the state.

Justification: See Issue Paper "R-7e" in Appendix A on Pg. A-45.

Recommendation R-7f

Subject: Storage and Handling of Flammable and Combustible Liquids (R 29.5101 – R 29.5516)

Recommendation:

1. Transfer the Storage and Handling of Flammable and Combustible Liquids program (including Rules 29.5101 – R 29.5516) from the DEQ back to the Bureau of Fire Services (within LARA) through an executive order.
2. The Bureau of Fire Services should amend these rules to rescind the current Michigan-specific amendments to the national codes and then adopt by reference the current national codes (without state-specific amendments).
3. Concurrent with the rulemaking by the Bureau of Fire Services in Recommendation #2 above, the DEQ should determine if there are remaining environmental concerns specifically related to the PIPP Part 5 rules (R 324.2001 – R 324.2099) pertaining to aboveground storage tanks. If environmental concerns are identified, they should be evaluated against the best practices in neighboring states to determine whether additional regulations by the DEQ are truly necessary.

Justification: See Issue Paper "R-7f" in Appendix A on Pg. A-46.

Recommendation R-7g

Subject: Liquefied Petroleum Gas (LPG) (R 29.6001 – R 29.6097)

Recommendation: The Liquefied Petroleum Gas (LPG) program (R 29.6001 – R 29.6097) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Justification: See Issue Paper "R-7g" in Appendix A on Pg. A-48.

Recommendation R-7h

Subject: Storage and Handling of Gaseous and Liquefied Hydrogen Systems (R 29.7001 – R 29.7199)

Recommendation: The Storage and Handling of Gaseous and Liquefied Hydrogen program (R 29.7001 – R 29.7199) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Justification: See Issue Paper "R-7h" in Appendix A on Pg. A-49.

Recommendation R-8

Subject: Definition of "Background" Concentrations for Hazardous Substance in Soil and Groundwater

Recommendation: The DEQ should consider "industrial background" concentrations (otherwise known as anthropogenic contamination) when establishing cleanup goals for all hazardous substances. Specifically, the Part 201 statute, Rule 299.5701, and the Part 5 and Part 10 rules should be amended, as necessary, to create a process whereby the DEQ will work with the regulated community in areas containing anthropogenic contamination. This process should include:

1. The DEQ should make existing data regarding anthropogenic contamination across the state available to the regulated community.
2. The DEQ should allow flexibility for the regulated community to develop data regarding anthropogenic contamination for particular sites.
3. At sites where anthropogenic contamination exists, there should be no obligation for an owner/operator to clean-up the contamination. Rather the DEQ should work with the owner/operator to develop a due-care plan for the site.

Justification: See Issue Paper "R-8" in Appendix A on Pg. A-50.

Recommendation R-9

Subject: Due Care for Indoor Air Inhalation at a Property Subject To MIOSHA Standards

Recommendation: The Part 201 inhalation criteria and due care related rules (R 299.5714(6), R 299.5724(6) and R 299.51013(5)), and if necessary, Part 201, should be modified and amended so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of property by applying MIOSHA and federal (USEPA) workplace exposure criteria for both workers and non-workers in workplaces in lieu of generic Part 201 criteria and without regard to whether or the extent to which the chemical in question is being used in the workplace. This would include the deletion of the limitations contained in R 299.5714(6)(a)-(c), R 299.5724(6)(a)-(c) and R 299.51013(5)(a)-(c). In addition, if generic soil gas criteria are promulgated, the criteria should be based on indoor air or inhalation exposure limits established under MIOSHA if established for the chemical in question.

Justification: See Issue Paper "R-9" in Appendix A on Pg. A-51.

* James Clift did not concur in this recommendation.

Recommendation R-10

Subject: Soil Relocation Statute (MCL 324.20120c) and Associated Rules

Recommendation: The DEQ should implement Section 20120c to permit the relocation of contaminated soils within facility or property so long as due care or other measures are implemented which prevent human exposure or harm to the environment. In addition, the state should amend MCL 324 20120c and amend R 299.5542 to adopt proposed revised R 299.4110(l) in order to reduce regulatory burdens in connection with the proper relocation of soil under Part 201.

Justification: See Issue Paper "R-10" in Appendix A on Pg. A-53.

Recommendation R-11

Subject: Source Control Requirements under MCL 324.20114(1) and R 299.5526(4)

Recommendation: R 299.5526(4) should be amended to facilitate a clear understanding of the requirements of MCL 324.20114(1), including what constitutes a "source" subject to the Section.

Justification: See Issue Paper "R-11" in Appendix A on Pg. A-55.

Recommendation R-12

Subject: Relationship between Part 201 & Part 213

Recommendation: Combine Parts 201 and 213 into one statute and one program, merge staffs and focus on one set of administrative rules to govern the cleanup of contaminated sites in Michigan.

Justification: See Issue Paper "R-12" in Appendix A on Pg. A-56.

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.

Justification: See Issue Paper "R-13" in Appendix A on Pg. A-57.

Recommendation R-14

Subject: Boron Standard for Groundwater (R 299.5744)

Recommendation: Amend R 299.5744 to use the drinking water standard as the criteria for boron. Prior to determining to the applicability of the drinking water standard at a site, the pathway must be reviewed to determine if the impacted portion of the receiving waters is being used for purposes of irrigation. If the impacted portion of the receiving waters is being directly

used for irrigation, then a lower standard may be set at the discretion of the DEQ to protect potentially sensitive crops.

Justification: See Issue Paper "R-14" in Appendix A on Pg. A-58.

Recommendation R-15

Subject: Quality Review Team

Recommendation: Discontinue the DEQ's Quality Review Team process, focusing instead on educating District staff and monitoring appropriately. The DEQ's process to educate District staff and monitor decision-making should focus on achieving consistency, quality control, and collaboration with the regulated community.

Justification: See Issue Paper "R-15" in Appendix A on Pg. A-59.

Recommendation R-16

Subject: Flexibility When Site Exceeds Only Secondary Non-Health-Based Standards

Recommendation: The Part 201 statute and the Part 5 rules should be amended to provide the DEQ with the flexibility to approve a limited closure at a site where hazardous substances are migrating onto adjoining properties at levels that exceed only secondary non-health-based standards and where the affected property is hooked up to municipal water. Specifically, the amendments should authorize the DEQ to approve a closure at these sites according to the following process:

1. The owner/operator develops data regarding the plume-migration characteristics and information regarding property owners within the plume that are hooked up to municipal water.
2. The owner/operator sends notice to all identified property owners informing them that contamination exceeding secondary non-health-based standards is migrating onto their property and that the owner/operator has requested a no-further-action letter from the DEQ, and the property is a "Facility" subject to disclosure obligations under Part 201 or Part 213.
3. The notice should provide each landowner a period of time (such as 21 days) to respond if they feel that the DEQ should not issue the no-further-action letter.
4. If the DEQ does not receive any responses within that time period, the DEQ may move forward with issuing the no-further-action letter. On the other hand, if one or more landowners respond, the DEQ must review each response to determine whether the migrating contamination is reasonably anticipated to impair the use of the property. If no such impairment is found at any of the properties, the DEQ may issue the no-further-action letter.
5. The Part 201 statute and rules should explicitly state that this process in no way affects or limits any rights of a property owner.

Justification: See Issue Paper "R-16" in Appendix A on Pg. A-60.

Recommendation R-17

Subject: Review Part 201 Cross-References

Recommendation: The DEQ and Attorney General's office should review all cross-references contained in the Part 201 rules and correct any errors.

Justification: See Issue Paper "R-17" in Appendix A on Pg. A-61.

c. RESOURCE MANAGEMENT RECOMMENDATIONS

Recommendation RM-1

Subject: Liquid Industrial Waste Regulations

Recommendation: The DEQ should develop rules and/or changes to the statute(s) governing liquid industrial waste to make the process of handling these materials more streamlined and cost effective for the regulated community while protecting human health and the environment. In the development of these rules and recommendations, the department should look at what rules can be eliminated and how the various rules can be consolidated.

This rules package and/or statutory change recommendations must be evaluated in comparison to the federal standards and should be consistent with the programs in surrounding Great Lakes States. Any rules package and statutory changes should be presented to the Office of Regulatory Reinvention (ORR) by September 1, 2012.

The development of the liquid industrial waste recommendations must consider:

- The role of manifests in the hauling and disposal process.
- The development of an electronic manifesting system.
- *De minimis* and threshold quantities in determining applicability of the law or rule.
- Duplicative rules and standards between the various parts of the Act(s) governing liquid industrial waste.
- Whether certain insignificant materials such as used oil, wash water and other small or insignificant materials should be included in the Act.
- How liquid industrial waste is handled under the present laws and rules.
- Registration/licensing of liquid industrial waste haulers.
- The reasons for using a licensed hauler.
- Reasonable insurance and financial assurance requirements that reflect real risk and actual costs.
- Whether the current list of materials in the Act should continue to be listed.
- The option of regulating used oil as a universal waste.
- Consider regulating other LIW wastes streams as universal waste.

Justification: See Issue Paper "RM-1" in Appendix A on Pg. A-62.

Recommendation RM-2

Subject: Beneficial Reuse

Recommendation: The DEQ should develop, based on recommendations from stakeholders, a new comprehensive Beneficial Reuse Act. The recommendations of the stakeholder workgroup should be completed by April 1, 2012 and legislation prepared by May 1, 2012.

Justification: See Issue Paper "RM-2" in Appendix A on Pg. A-63.

Recommendation RM-3

Subject: Michigan Hazardous Waste Regulations

Recommendation: The DEQ should conduct a systematic review – including stakeholder and public comment – of the chemicals and wastes listed in R 299.9226, Table 205c ("U" listed); R 299.9219, Table 202 ("S" characteristic); and R 299.9223, Table 204b ("K" listed). The review should consider new information about the chemicals and wastes to determine if they should remain on the lists or be removed.

Justification: See Issue Paper "RM-3" in Appendix A on Pg. A-64.

* James Clift did not concur in this recommendation.

Recommendation RM-4

Subject: Rescind/Repeal Michigan PCB Regulations

Recommendation: Michigan's PCB rules (R 299.3301 – R 299.3319) should be rescinded. Make statutory amendments necessary to remove PCB regulations from Michigan statute (MCL 324.14701 – 324.14705).

Justification: See Issue Paper "RM-4" in Appendix A on Pg. A-65.

Recommendation RM-5

Subject: Hazardous Waste Biennial Reporting Required Under the Federal Resource Conservation Recovery Act (RCRA) of 1976

Recommendation: The DEQ should convene a stakeholder workgroup to develop electronic biennial reporting for hazardous waste generators to streamline the process and eliminate duplicative reporting.

Justification: See Issue Paper "RM-5" in Appendix A on Pg. A-66.

Recommendation RM-6

Subject: Financial Assurance for Landfills

Recommendation: Part 115 should be amended to allow for additional financial assurance mechanisms, and to streamline and create a more cost effective method of assuring proper funds are available for landfill emergencies and closure.

Justification: See Issue Paper "RM-6" in Appendix A on Pg. A-67.

Recommendation RM-7

Subject: Hazardous Waste User Charge and Manifest Systems

Recommendation: The DEQ should convene a stakeholder group to redesign the hazardous waste user charge system to make it fair, simple and timely, and to develop electronic methods for minimizing the paperwork associated with the verification of hazardous waste manifests.

Justification: See Issue Paper "RM-7" in Appendix A on Pg. A-68.

Recommendation RM-8

Subject: Medical Waste Storage Accumulation Limitation (Sharps Containers) Part 138, Medical Waste Regulatory Act, 1978 PA 368, As Amended

Recommendation: Amend the Act and/or rules governing the disposal of medical waste to require disposal of sharps that are used strictly for non-medical procedures (a) when the storage container is full, or (b) annually, whichever occurs first. The sector(s) receiving this exemption should be defined in the rules to avoid having sharps containers with different storage requirements within the same facility.

Justification: See Issue Paper "RM-8" in Appendix A on Pg. A-69.

Recommendation RM-9

Subject: Conformance Bond or Statement of Financial Responsibility Requirements for Mineral Well (Disposal Well) Operators; Part 625, R 299.2330

Recommendation: DEQ, with input from stakeholders, should attempt to enter into a memorandum of understanding with the USEPA to utilize the same conformance bond, and if successful, should rescind any duplicative rules.

Justification: See Issue Paper "RM-9" in Appendix A on Pg. A-70.

d. WATER RECOMMENDATIONS

Recommendation W-1

Subject: Part 5, Spillage of Oil and Polluting Materials, of the NREPA (PIPP, TRQs, 911 Notification, Release Reporting Related To Secondary Containment)

Recommendation:

1. Increase the threshold management quantity (TMQ) which triggers the need for a Pollution Incident Prevention Plan (PIPP) from 440 pounds (about 1 barrel) to a more reasonable level of 500 gallons. (R 324.2002(f)(iv)).
2. Revise the threshold reporting quantities (TRQs) in Table 1 to make all TRQs similar to the federal CERCLA RQs (many are currently only $1/10^{th}$ of the federal level), or eliminate Table 1 and reference the existing CERCLA RQs for the reporting thresholds. (R 324.2009 Table 1).
3. Revise MCL 324.3111b to eliminate the requirement to call local 911. When reporting is necessary, calls are already required to the National Response Center and the DEQ PEAS hotline.
4. Eliminate the reporting requirements related to releases that go to secondary containment. (R 324.2002(b)(i)).
5. Significantly increase the reporting threshold for salt to 1,000 pounds for solids and 1,000 gallons for liquids. (R 324.2002(g)(iii)).
6. Increase the mixture threshold from its current 1% level to more of a 25 – 50% range. (R 324.2002(a)(iv)).
7. In general, revise Part 5 rules to make them easier to understand and follow. Work with regulated community to establish rules that are understandable, technically feasible, and will achieve intended results.
8. Revise the conditional exemption in R 324.2003(1)(b) to reference the current version of the SPCC regulations at 40 CFR Part 112, currently dated October 14, 2010. The current rule reference is the 1997 SPCC regulation, making the current conditional exemption useless. (R 324. 2003(1)(b)).

Justification: See Issue Paper "W-1" in Appendix A on Pg. A-71.

* James Clift did not concur with parts of this recommendation.

Recommendation W-2

Subject: Mercury Rule for National Pollutant Discharge Elimination System (NPDES) Permits

Recommendation: Allow an NPDES permittee with a water quality-based effluent limit (WQBEL) for mercury in the permit to account for inlet loading concentration when their contribution to the effluent is negligible. Language should be added to R 323.1211(7)(a) that states:

"If the mean effluent concentration is less than 10% greater than the mean inlet

concentration (using 24 consecutive months of monitoring data) and does not exceed the mean inlet concentration by more than 0.5 PPT, then the permittee should be exempt from the PMP requirements and subject to annual monitoring."

Justification: See Issue Paper "W-2" in Appendix A on Pg. A-76.

Recommendation W-3

Subject: R 299.2933(4) Promulgated Under Part 41, Sewerage Systems, of the NREPA (MCL 324.4101 et seq.)

Recommendation: R 299.2933(4) should be rescinded.

Justification: See Issue Paper "W-3" in Appendix A on Pg. A-77.

Recommendation W-4

Subject: Part 22 Rules for Groundwater Discharges

Recommendation: R 323.2210 should list types of discharges which do not require groundwater permits – similar to what is done in the storm water regulations. That listing should address issues such as: potable water, fire protection water, irrigation drainage, lawn watering, air conditioning condensate, and foundation or footing drains.

Justification: See Issue Paper "W-4" in Appendix A on Pg. A-78.

Recommendation W-5

Subject: Part 301 (Section 30105) Inland Lakes and Streams; Part 303 (Section 30312) Wetlands Protection; and Part 325 (Section 32512) Great Lakes Submerged Lands of the NREPA

Recommendation: Amend Michigan's Inland Lakes & Streams, Great Lakes Submerged Lands, and Wetlands programs to adopt the USACE Nationwide permitting approach of allowing non-reporting general permits for minor projects below certain thresholds and individual permits for projects above those thresholds. Amend the Minor/General Permit Category revisions accordingly. To ensure consistent program implementation, these activities should be coordinated with any proposals from the Wetland Advisory Council.

Justification: See Issue Paper "W-5" in Appendix A on Pg. A-79.

* James Clift did not concur in this recommendation.

Recommendation W-6

Subject: Implementation of General Federal Nationwide permits: State 401 and Coastal Zone Management Certification of U.S. Army Corps of Engineers (USACE) Nationwide Permits

Recommendation: The DEQ should review, with stakeholder involvement, all 44 USACE Nationwide Permits to determine if the current MDEQ Nationwide permit denials or additional conditions make sense or if they are more stringent than the federal requirements. To ensure consistent program implementation, these activities should be coordinated with any proposals from the Wetland Advisory Council.

Justification: See Issue Paper "W-6" in Appendix A on Pg. A-80.

* James Clift did not concur in this recommendation.

Recommendation W-7

Subject: Sanitary Sewer Overflows Control

Recommendation: Revise the Part 21 rules (R 323.2101 et seq.) to explicitly direct the DEQ to permit the diversion of separate sanitary flow to a combined sewer retention treatment facility for settling, screening, disinfection and discharge in order to prevent sanitary sewer overflows (SSOs), provided such discharge to a combined sewer retention treatment facility does not violate water quality standards. In addition, the DEQ should permit a sewage system operator that is under an administrative order to abate storm water infiltration and inflow to its sanitary collection system, to divert flow from the separate sanitary system to a combined sewer retention treatment facility to provide the operator time to rehabilitate the sanitary collection system.

Justification: See Issue Paper "W-7" in Appendix A on Pg. A-81.

Recommendation W-8

Subject: Agricultural Activities under Parts 301 and 303 of the NREPA

Recommendation: The DEQ should work with the agricultural community to resolve issues related to the manner in which certain agricultural activities are regulated under Parts 301 and 303. These include:

- the extent to which permits are required for activities directly relating to exempt activities, such as fencing for grazing;
- the cutting of trees and bushes within wetlands; and
- whether it is appropriate to limit the USEPA's position regarding the *Huggett* ruling to only federal wetlands.

The primary consideration in resolving these issues should be to streamline the permit process, especially for activities that have a minimal impact on the environment.

Justification: See Issue Paper "W-8" in Appendix A on Pg. A-83.

* James Clift did not concur in this recommendation.

Recommendation W-9

Subject: Groundwater Discharge - Part 22, Groundwater Quality Rules

Recommendation: The DEQ should pursue changes to the groundwater-discharge program in the Part 31 statute and the Part 5 and Part 22 rules to focus on specific, significant threats to groundwater. These changes should include expanding the permit-by-rule categories and eliminating categories requiring groundwater-discharge permits for projects with minimal or no impact on groundwater.

Justification: See Issue Paper "W-9" in Appendix A on Pg. A-84.

Recommendation W-10

Subject: Part 5, Spillage of Oil and Polluting Materials Rules

Recommendation: Delete the condition in R 324.2003(1)(b) requiring facilities to submit SPCC plans in order to remain exempt from the Part 5 rules.

Justification: See Issue Paper "W-10" in Appendix A on Pg. A-85.

* James Clift did not concur in this recommendation.

Recommendation W-11

Subject: Unduly Restrictive Requirements for NPDES Permitting of Storm Water Runoff at Airports

Recommendation: Provide DEQ with additional flexibility in helping airports manage ADFs in storm water. Adopt rules that require DEQ to develop a sector-specific general permit for airports consistent with federal regulations and USEPA's Multi-Sector General Permit for Air Transportation facilities (Sector S-air transportation facilities) and that don't impose requirements stricter than required under federal law.

Justification: See Issue Paper "W-11" in Appendix A on Pg. A-86.

* James Clift did not concur in this recommendation.

Recommendation W-12

Subject: Wetland Mitigation Banks

Recommendation:

1. The DEQ should expand the service area of mitigation banks to encourage more bank development (including in urban areas) and increase access to mitigation banks while

maintaining watershed protection.

2. The DEQ should seek US Army Corps of Engineers approval of smaller mitigation banks if deemed economically feasible.
3. The DEQ should increase the on-line reporting of information on the program, including trading information, to foster greater utilization of the banking program.

Justification: See Issue Paper "W-12" in Appendix A on Pg. A-88.

Recommendation W-13

Subject: DEQ Annual Wastewater Report

Recommendation: Rescind R 299.9001 – R 299.9007, which require annual wastewater reporting to the DEQ.

Justification: See Issue Paper "W-13" in Appendix A on Pg. A-89.

Recommendation W-14

Subject: Local Regulation Of Wetlands: MCL 324.03308, MCL 324.30309, and MCL 323.30310

Recommendation: Amend Sections 324.03308, 324.30309, and 323.30310 of Act 451 of 1994 (NREPA), so that there is no authority for local wetland regulations.

Justification: See Issue Paper "W-14" in Appendix A on Pg. A-90.

* James Clift did not concur in this recommendation.

Recommendation W-15

Subject: Coordinating Storm Water Operators for Construction Sites with Local Enforcement of Soil Erosion and Sedimentation Control

Recommendation: Amend R 323.2190 to provide construction site owners the option of utilizing the services of the local Part 91 Soil Erosion and Sediment Control Inspectors to fulfill the inspection and compliance reporting requirements.

Justification: See Issue Paper "W-15" in Appendix A on Pg. A-91.

Recommendation W-16

Subject: NPDES Permitting for Construction Sites

Recommendation: The Part 21 rules governing storm water discharges from construction sites should be amended to allow for a process that will exempt sites where it can be demonstrated that there will be no discharge of sediment to a surface water body. This will eliminate the requirement that a certified storm water operator be hired for sites that are between 1 and 5

acres where it has been demonstrated that there will be no discharge of sediment to a surface water body, and will eliminate the requirement of a submittal and approval of an "application" for sites over 5 acres, in instances where there is no anticipated impact to surface waters.

Justification: See Issue Paper "W-16" in Appendix A on Pg. A-92.

Recommendation W-17

Subject: Safe Drinking Water – Cross Connection Inspections of Residential, Commercial and Industrial Properties

Recommendation: Amend R 325.10113 to set a standard for the frequency of testing residential cross-connections. The standard should be based on data that is compiled and analyzed to determine the number and frequency of failures and identification of cross connection problems in residential, commercial and industrial properties. A cost/benefit analysis should be undertaken as well.

Justification: See Issue Paper "W-17" in Appendix A on Pg. A-93.

Recommendation W-18

Subject: NPDES Water Treatment Additives

Recommendation: The DEQ should create a "notification only" process for well-defined water treatment additives (WTA) conditions that pose minimal toxicity concerns (e.g., the WTA would not be present at the discharge point to navigable waters in toxic amounts, including a conservative safety factor).

Justification: See Issue Paper "W-18" in Appendix A on Pg. A-95.

Recommendation W-19

Subject: Mercury Standard for Groundwater

Recommendation: DEQ should work with the USEPA to revise the Great Lakes Initiative with respect to the groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l, by applying current science.

Justification: See Issue Paper "W-19" in Appendix A on Pg. A-96.

Recommendation W-20

Subject: Part 301 - Inland Lakes and Streams – Permits Required For Drawdown Activities That Are Already Subject To Federal Energy Regulatory Commission (FERC) Authority

Recommendation: Eliminate the Part 301 permitting requirements related to temporary drawdown activities for entities that are already subject to a FERC license.

Justification: See Issue Paper "W-20" in Appendix A on Pg. A-97.

e. GENERAL RECOMMENDATIONS

Recommendation G-1

Subject: Rules More Stringent Than Federal

Recommendation: Identify existing DEQ state rules and specific requirements that are more stringent than federal. Evaluate these rules and specific requirements to determine the benefits received versus the additional cost of compliance. Then systematically review (based on priority) to revise or eliminate unjustified rules or specific requirements.

Justification: See Issue Paper "G-1" in Appendix A on Pg. A-99.

Recommendation G-2

Subject: Treatment of DEQ Non-Rule Regulatory Actions

Recommendation: Take the following actions with regard to DEQ guidance documents, educational documents and forms by the stated deadlines.

Guidance Documents

- Rescind DEQ Policy and Procedures No. 01-019 (Policy Development, Revision and Rescission [1/12/07]) and No. 09-012 (Policy Guidance Document Development, Revision, and Use [12/30/09]). **Complete by December 31, 2011.**

  Develop a new comprehensive DEQ policy that addresses department policy, division policy, guidance documents and guidelines. For the most part, department and division policies will address internal administrative or personnel procedures. "Guidance documents" will contain all rule and statute interpretations, and/or will contain any policy/procedure that provides guidance to those regulated by the DEQ. Guidance documents will provide a particular path to compliance with a rule or statute. The regulated community may choose this path or follow a different one. If the issue involves an interpretation of a rule and/or statute, stakeholder input will be obtained. For consistency, a template for guidance documents will be created and utilized by the divisions. Finally, the new DEQ policy will provide an alternative approach to a guidance document which is a "Guideline" as defined by Administrative Procedures Act, 1969 PA 306, as amended. **Complete by December 31, 2011.**

- Create a DEQ Web page for guidance documents which will be categorized by division or office. **Complete by December 31, 2011.**

- For those division policies that are draft or interim, the division should either rescind or finalize through the guidance document process. C**omplete by June 1, 2012.**

- Each division shall review their existing non-rule regulatory actions. Those meeting the definition of a guidance document (i.e., of interest to the regulated community and/or interpret regulations) shall be converted into the new template and posted on the Web page. If a division policy interprets rules or statute and had stakeholder input and no other substantive changes are being made, it can be directly converted into a guidance document without going through stakeholder input for a second time. Note: The DEQ Executive Division will provide each Division a spreadsheet containing all of the division's non-rule regulatory actions that was compiled for the ORR in July 2011. Those division polices not converted by the deadline shall not be relied on. **Complete by December 31, 2012.**

- Divisions shall review internal memos, letters and other documents and where appropriate, convert them into a guidance document following the procedures identified above. **Ongoing.**

Educational Documents and Forms

- Develop two new DEQ policies providing guidance to DEQ staff on the production of educational publications and forms. **Complete by December 31, 2011.**
- Update the DEQ Forms and DEQ Educational Publication online databases. **Complete by June 1, 2012.**

Justification: See Issue Paper "G-2" in Appendix A on Pg. A-100.

Recommendation G-3

Subject: Administrative Rule Approval Process

Recommendation: The Committee recommends setting an expectation or requirement for the DEQ to take no more than 12 months for a proposed environmental administrative rule change. The process should incorporate steps to ensure adequate public comments and other discussions with stakeholders over accelerated schedules, as well as the use of innovative public input tools to increase public input and awareness of the proposed rulemaking.

Justification: See Issue Paper "G-3" in Appendix A on Pg. A-102.

Recommendation G-4

Subject: DEQ Citation of Legal Authority

Recommendation: When making a written determination which affects the rights of a Michigan citizen or business, the DEQ should always cite the applicable legal basis (statute, administrative rule, or common law) for its determination.

Justification: See Issue Paper "G-4" in Appendix A on Pg. A-103.

f. ADDITIONAL RULE RESCISSIONS AND AMENDMENTS

In addition to the foregoing recommendations, the DEQ already has or will be rescinding or amending the rules identified in the tables below. Reasons for rescinding include: the rules are no longer enforceable; the statute providing promulgation authority has been repealed; or the rules are outdated and/or duplicative of federal regulation.

IDENTIFIED RULE RESCISSIONS		
PROGRAM	**RULES**	**SUMMARY**
Air Quality	R 336.1420	Rule 420 was promulgated under the former federal Clean Air Interstate Rule (CAIR), which has been vacated by the court.
Air Quality	R 336.1933	This rule sets emission limitations for hospital/medical/infectious waste incinerators, including a mercury emission limitation more stringent than in the Clean Air Act Section 111(d) emission guidelines for State Implementation Plans (SIPs). There are no longer any sources in Michigan subject to this rule.
Air Quality	R 336.2830 and R 336. 2910	Rule 1830 authorizes a person to request a contested case hearing if the person wants to challenge a DEQ permit decision for a major source of air pollution that is subject to the requirements for the prevention of significant deterioration (PSD) of air quality. The Michigan Court of Appeals determined that Rule 1830 was invalid. The Air Quality Division initiated deletion of this rule and Rule 1910 with similar opportunity for a contested case hearing upon learning the Court of Appeals decision. These rules were **rescinded on June 29, 2011**.
Remediation	R 299.5201 - R 299.5219	Part 201, Part 2. Site Identification and Tracking rules were **rescinded on May 20, 2011.**
Remediation	R 299.5601 – R 299.5607	Part 201, Part 6. Selection of Remedial Action rules were **rescinded on May 20, 2011.**
Remediation	R 299.5801- R 299.5823	Part 201, Part 8. Site Assessment Model rules were **rescinded on May 20, 2011.**
Remediation	R 299.5901- R299.5919	Part 9. Baseline Environmental Assessments rules were made obsolete due to the Part 201 amendments enacted in December 2010.
Remediation	R 324.1401- R 324.1422	Environmental Laboratory Recognition Program rules were **rescinded on August 1, 2011.**
Remediation	R 324.21501 – R 324.21516	Michigan Underground Storage Tank Qualified Consultants and Certified Professionals rules should be rescinded due to the administrative burden it places on the DEQ and the professionals.
Resource Management	R 299.4801 – R 299.4807	Solid Waste Management Act Administrative Rules, Part 8. Grants. Funds have not been appropriated for the grants under these rules for more than 20 years.

Resource Management	R 299.12101 – R 299.12701	Solid Waste Alternatives Program – Funds are no longer available and the program has been completed.
Resource Management	R 325.421 – R 325.426	Outhouses. Rules are obsolete.
Resource Management	R 325.2581 – R 325.2591	Marina Facilities. Act repealed.
Resource Management	R 325.5111a, b and c and more	Ionizing Radiation Rules are no longer needed due to the change in the U.S. Atomic Energy Act.
Resource Management	R 325.5901	Peacetime Nuclear Incident rules have not been enforced since the federal regulations are more comprehensible.
Water Resources	R 281.816	Part 301, Inland Lakes and Streams. These rules address minor project categories which may become obsolete due to statutory changes.
Water Resources	R 322.1013	Part 325, Great Lakes Submerged Lands. These rules address minor project categories which may become obsolete due to statutory changes.
Water Resources	R 323.3001 – R 323.3027	Water Quality Trading. These rules are overly complex and result in an ineffective and inefficient program.
Water Resources	Portions of R 323.3104 and R 323.3107	Aquatic Nuisance Control
Water Resources	R 324.2003	Part 5. Spillage of Oil and Polluting Materials. Delete statement that the owner or operator of such a facility shall submit a copy of the facility's spill prevention, control, and countermeasure plan in accordance with R 324.2006(d)
Water Resources	R 324.2003(b)	SPCC regulations have been modified since the Part 5 rules were promulgated, so conditional exemption is no longer applicable.

IDENTIFIED RULE AMENDMENTS		
PROGRAM	**RULES**	**SUMMARY**
Air Quality	R 336.1119 and 336.1122	**General Provisions.** The rule revision modifies existing definitions for the addition of PM2.5 requirement pertaining to PSD and for the definition of VOC.
Air Quality	R 336.1401, 336.1401a, 336.1402 and 336.1404-1407	**Emission Limitations and Prohibitions—Sulfur-Bearing Compounds.** Rule revisions will correct the deficiencies that the USEPA has identified in the rules where the Wayne County ordinance sulfur limits are incorporated.
Air Quality	R 336.1420	**Emission Limitations and Prohibitions--Sulfur-Bearing Compounds.** Rule revisions to incorporate new federal Transport Rule provisions.

Air Quality	R 336.1610-1618	**Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions.** Rule revisions will remove primer surfacer and topcoat emission limits at auto assembly plants because now covered by federal limits, and will revise the asphalt paving rule for purposes of clarification.
Air Quality	R 336.1801-1834	**Emission Limitations and Prohibitions – Oxides of Nitrogen.** Rule revisions to incorporate new federal Transport Rule provisions.
Air Quality	R 336.1931, 336.1932, 336.1948, 336.1949 and 336.1950	**Emission Limitations and Prohibitions-- Miscellaneous.** Rule revisions for municipal solid waste landfills and municipal solid waste combustors will be needed to bring state rules in line with federal rules. Three proposed new rules will be needed to adopt federal rules by reference for state implementation of the federal area source regulations for iron and steel foundries, electric arc furnace steelmaking facilities, and aluminum, copper, and other nonferrous foundries.
Air Quality	R 336.2801-2823	**Prevention of Significant Deterioration (PSD) of Air Quality.** Rule revisions to complete implementation of PM**2.5**, NO**2**, and SO**2** permitting requirements.
Air Quality	R 336.2901-2908	**New Source Review for Major Sources Impacting Nonattainment Areas.** Rule revisions to complete implementation of PM**2.5**, NO**2**, and SO**2** permitting requirements.
OEA	R 324.14501-14508	**Small Business Pollution Prevention Assistance Loan.** These rules update and clarify the requirements for participation in the Small Business Pollution Prevention Loan Program, including applicability, eligibility, binding agreements, obligations, and procedures. Program changes as a result of Public Acts 333 and 334 of 2004, will be incorporated into these rule revisions.
Remediation	R 29.2101 *et seq.*	**Michigan Underground Storage Tank Rules (MUSTR).** The RD has developed updates to the administrative rules promulgated pursuant to Part 211, Underground Storage Tank Regulations, of Act 451. Requires certification of underground storage tank owners and operators. The rule amendments require that the owners/operators of underground storage tanks obtain certification through the International Code Council, by August 8, 2012. The rule changes enable Michigan to comport with the current federal USEPA energy act requirements.
Resource Management	R 299.901 *et seq.*	**Hazardous Waste Management.** Michigan is authorized by the USEPA to administer the state's Hazardous Waste Management Program in lieu of the federal Hazardous Waste Management Program. Pending resolution of legal action at the federal level regarding the redefinition of solid waste provisions and draft legislation at the state level, the RMD anticipates initiating work on a rules package to address rules promulgated at the federal level since January 2008, and to reflect recent legislative changes regarding the former Site Review Board and the consolidation of the construction permit and operating license processes.

Resource Management	R 325.1541 *et seq.*	**Medical Waste Producing Facilities.** The RMD intends to develop rules to administer proposed amendments to Part 138, Medical Waste, of Act 368. Pending legislative action, a stakeholder work group will be convened by December 2011 to review draft rules for promulgation by August 2012.
Resource Management	R 324.102, 324.103 and 324.301	**Supervisor of Wells.** These rules classify wells for storage of gas, including LPG, in salt caverns or other artificially-created underground caverns, as "oil and gas" wells. They need to be reclassified as storage wells under Part 625.
Resource Management	R 299.2304	**Mineral Wells, Part 625.** We want to reclassify wells for storage of gas, including LPG, in salt caverns or other artificially-created underground caverns, from "oil and gas" wells subject to Part 615 to "storage wells" subject to Part 625.
Water Resources	R 281.811-46	**Inland Lakes and Streams, Part 301.** A RFR has been submitted and approved for these rules. The rule amendments include clarifying definitions and exemptions, updating and deleting outdated construction practices, modifying stream mitigation requirements, and updating the permit application review process and other permit related rules. Some of the revisions are required to maintain Michigan's Section 404 of the Clean Water Act program assumption.
Water Resources	R 281.921-25	**Wetlands Protection Program, Part 303.** A RFR has been submitted and approved for these rules. These amendments include clarifying and updating the permit application and review process, wetland identification and assessment, and mitigation requirements. Many of the revisions are required to maintain Michigan's Section 404 of the Clean Water Act program assumption.
Water Resources	R 299.6013	**Aboriginal Records and Antiquities, Part 761.** A RFR has been submitted and approved for these rules. The proposed rule would establish the West Michigan Great Lakes Bottomland Preserve to protect, promote, and preserve historical shipwrecks in the Great Lakes. The proposed rule would be the actual legal description of the preserve boundaries.

APPENDIX A

ISSUE PAPERS FOR FINAL RECOMMENDATIONS

AIR QUALITY RECOMMENDATIONS

REMEDIATION RECOMMENDATIONS

RESOURCE MANAGEMENT RECOMMENDATIONS

WATER RECOMMENDATIONS

GENERAL ISSUES RECOMMENDATIONS

Air Quality Recommendations

No. A–1
Subject: Air Toxics Rules
Regulation: R 336.1224 – R 336.1232
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: In 1992, Michigan approved state-only air toxics regulations and, for the most part, they remain in effect today. The rule development and approval process required several years of prior discussions with industrial and environmental groups, well before passage of the federal 1990 Clean Air Act (CAA) amendments. Prior to passage of the CAA amendments, the federal regulations concerning potential air toxics were limited to approximately 5 compounds.

Title III of the 1990 Clean Air Act Amendments established a national regulatory program to minimize the emissions of the most significant air toxics. Since passage of the 1990 CAA, the federal government has developed numerous Maximum Achievable Control Technology (MACT) determinations for a wide variety of processes that typically emit hazardous air pollutants (HAPS). Any MACT-subject source is required to comply with (1) the federal emission limitations, (2) specified emissions control technologies, and (3) specific monitoring, testing, and reporting requirements. Therefore, Michigan's outdated air toxics regulations are in need of significant reform.

In developing each MACT standard, USEPA focused on the most significant HAPS emitted from a specific process type, then developed emission control strategies that are as stringent as the control systems required to meet the intent of Michigan Rule 224. Not *all potential air pollutants* were evaluated by USEPA during development of the MACT standards, nor should they have been. The USEPA regulations focus on specific organic and non-organic HAPS, while the Michigan program focuses on each individual pollutant. The emission control systems required by MACT are as stringent as those required by Rule 224, although MACT uses emission surrogates such as CO and PM to certify reductions in potential HAPS, whereas Michigan's air toxics regulations review *each potential pollutant* individually. The end results for determining the adequacy of a proposed emissions control system is essentially the same.

Recommendations: The Committee makes the following recommendations regarding Air Toxic rules:

- The parts of R 336.1224 dealing with compounds that are considered volatile organic compounds (VOCs) should be rescinded. Portions of R 336.1224 are redundant because R 336.1702 requires a control technology review for VOCs. VOC-based emission control is more effective under R 336.1702 and this entire regulation exceeds federal standards.

- Rule 336.1225 should be amended to specifically include the following:
  - Limit permit modification reviews to those increases in a Hazard Index exceeding 10% above the previously permitted baseline.
  - Exempt sources that are identified in a MACT source category.

- Exempt clean fuels such as natural gas, low sulfur #2 Fuel Oil, and non-chemically treated biofuels.
- Exempt pollution control projects for existing sources from the air toxic regulations.
- Limit the number of air toxics to the federal HAPS list.
- Make the acceptable exposure limits consistent with other nearby states.
- Stop requiring permit holders to conduct elaborate and costly stack tests to provide emissions research data, since the DEQ does not use this information for subsequent permit reviews.

- R 336.1228 should be rescinded. This rule allows the Air Quality Division to go beyond the requirements of the rule for any reason.

Rationale/Comments: These proposed revisions to Michigan's air toxics regulations would serve to level the playing field with other states vying for additional industrial growth, and would not result in a back-sliding of the environmental programs (see supplemental document Issue A-1, Attachment 1). The current system of reviewing the impacts of every feasible, potential air toxic results in nothing more than a "numbers game" that only serves to heighten public anxiety , delay permit issuance and waste several hundreds of thousands of dollars for stack testing that could be put to better use for industrial expansions, process improvements and other more beneficial programs. Please review supplemental document Issue A-1, Attachments 2 and 2a related to the Public Participation Document for Frontier Renewable Resources PTI 166-09. You can see that only 6 of the 37 identified air toxics (based on the firing of natural gas) have a predicted air quality impact at least 50% of their individual ambient limitations. Furthermore, the Permit to Install document for the Mancelona Renewable Resources project contained in Issue A-1, Attachment 3 requires the company to spend tens of thousands of additional dollars to perform stack testing for 28 potential air toxics (the majority of which are predicted to be emitted in trace levels) generated from the burning of non-chemically treated biomass (wood).

This has also been a consistent issue for Michigan's Asphalt Plant industry for the past 20+ years (see supplemental document Issue A-1, Attachment 4). The AQD has required stack testing for compounds that have proven to have ambient impacts well below any state or federal standard. Had the AQD invested the time to compile the results of these historical stack tests, which have been consistently submitted to AQD for the past 20+ years, it would be readily apparent that the vast majority of these air toxics of concern would no longer be an issue. This would result in a more expedited air permitting process, reduce stack testing requirements for new Asphalt Plants and save companies several thousands of dollars in unnecessary stack testing.

Supplemental document Issue A-1, Attachment 5, provides a summary of issues related to a 2+ year delay in issuance of an air permit for use of Biodiesel in a large utility boiler when the same fuel is widely used in this company's fleet vehicles.

Supporting document Issue A-1, Attachments 6 and 6a relate to air toxics issues for raw material and fuel substitutions that can be expanded to several other types of manufacturing and combustion processes. As noted in our final recommendations, we believe a Hazard Indexing

methodology be established by rule to allow for raw material / fuel substitutions that do not have a detrimental ambient impact. This is consistent with our recommendation in A-1, Rule 336.1225.

James Clift Comments: The environmental community believes that a company or person who wants to emit a toxic chemical into the environment should have the duty to demonstrate that emission of that toxic chemical will not adversely impact natural resources or public health. By requiring testing before chemical are released, we are providing companies with the incentive to develop safer alternatives through green chemistry.

If the federal government has developed a MACT, BACT or LEAR standard for a chemical, we support that standard being applied as the Michigan standard. However, if such a standard has not been developed, we believe the source should be subject to T-BACT. Exempting all chemicals not on the list federal list of hazardous air pollutants could provide an unwise incentive for companies to use chemicals for which there has been less testing and analysis versus the use of less toxic alternatives.

We support Rule 228 which is designed to protect Michigan citizens from persistent bioaccumative toxic chemicals.

No. A-2
Subject: Mercury Rules: Part 15 Rules, (R 336.2501 – 2514)
Regulation: Part 15 Rules, (R 336.2501 – R 336.2514)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The Michigan Mercury Rules became effective in 2009 and contain mercury emission limitations for coal-fired utility boilers. Eighteen other states have also adopted regulation reducing mercury from power plants, including Illinois, Wisconsin, Minnesota, and New York. Many of the provisions in the Michigan Mercury Rules will be redundant with federal electric generating units (EGU) Maximum Achievable Control Technology (MACT) expected to be issued in fourth quarter 2011.

The current Michigan rule also requires expensive and expansive planning efforts and reporting on those plans to the DEQ with penalty deadlines which may not be required by EGU MACT. The first of these requirements has a deadline in 2012. It is anticipated that the Michigan Mercury Rule will be in effect for one year before EGU MACT becomes effective.

Proposed Solution: Amend Part 15 rules to add a statement that stays compliance with Rules 336.2512, 336.2503(2)(a) & (6), 336.2509(1) and 336.2513(1)(a) & (3) until January 1, 2015. The Michigan Mercury Rules' requirements will be effective on this date unless an applicable federal rule to control mercury has been published in the Federal Register. Once the applicable federal rule to control mercury has been published, the Michigan Mercury Rules should be rescinded.

Rationale for Change/Additional Comments: USEPA proposed the EGU MACT that will cover mercury emissions on March 16, 2011. It is anticipated the proposed EGU MACT will be finalized fourth quarter in 2011 and it will require the same type of control equipment to control mercury emissions as the Michigan Mercury Rules. A recent analysis demonstrated that the EGU MACT, as currently proposed, would reduce state-wide mercury emissions from coal-fired plants to a greater extent than the Michigan Mercury Rules. For that reason we should not spend any resources (DEQ or the regulated community) on developing, submitting, reviewing and approving compliance plans and mercury permits (as required by the Michigan Mercury Rule as early as 2012) until the EGU MACT is final. It is also anticipated that all the substantive federal requirements to control mercury will be effective on January 1, 2015 so that is the rationale for using that date as a backstop for the Michigan Mercury Rule requirements.

James Clift Comments: The environmental community believes that when the federal rule has been finalized it should be compared with the Michigan rule. After that review, we can support modification of the rule to eliminate any redundant provisions which are included in the federal rule.

No. A-3
Subject: Additional Rule 201 (Permit to Install) Exemptions
Regulation: New Rule
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: By rule (R 336.1201), any process that "may emit" an air contaminant must first obtain a pre-construction permit ("permit to install") unless it is covered by a specific exemption contained in R 336.1278 – R 336.1290. There are too many categories of minor emission sources for DEQ to issue specific exemptions for all of them. The broadest exemption (R 336.1290) is limited to VOC and PM emissions and is too cumbersome and complex for many facilities to understand and use.

USEPA is also very slow and somewhat reluctant to approve revisions to DEQ's permit exemption rules. USEPA has not approved revisions to permit to install exemptions for many years. Some exemptions have been pending since 1992. Sources relying on permit exemptions adopted since 1980 are currently in a legal limbo – exempt under state law, but arguably required to get a permit under the State Implementation Plan (SIP).

Proposed Solution: Michigan should adopt a new exemption rule for minor sources with *de minimis* potential to emit. This exemption rule should be similar to the minor new source review thresholds adopted by the USEPA for its own permitting program in Indian Country (40 CFR, Subpart C), and should read as follows:

"New sources with a potential to emit less than the following amounts in an attainment area would be exempt from the requirement to obtain a permit to install:

CO	10 tpy
NOx	10 tpy
SO2	10 tpy
VOCs (non-carcinogenic)	5 tpy
PM	10 tpy
PM10	5 tpy
PM2.5	3 tpy
Lead	0.1 tpy
Fluorides	1 tpy
Sulfuric Acid Mist	2 tpy
Hydrogen Sulfide	2 tpy
Total Reduced Sulfur	2 tpy
Reduced Sulfur Compounds	2 tpy
MSW Combustors	2 tpy
MSW Landfills	10 tpy

In non-attainment areas, the NAA compound-specific thresholds would be:

CO	5 tpy
NOx	5 tpy
SO2	5 tpy
VOCs (non-carcinogenic)	2 tpy
PM	5 tpy

PM10	1 tpy
PM2.5	0.6 tpy
Lead	0.1 tpy

Rationale/Comments: The proposed exemption would supplement the existing permit to install exemptions, so sources relying on existing exemptions can continue to use the existing exemptions contained in R 336.1278 – R 336.1290. R 336.1278 is an effective tool to avoid a conflict with the federal Major Source applicability requirements.

The proposed exemption would apply to a broad spectrum of small emission sources, alleviating the need for industry and DEQ to spend limited resources on permits for sources and source changes that are really too small to warrant a permit review process. USEPA should not object to including this exemption in the State Implementation Plan because USEPA has included an exemption based on these emission thresholds in its own rules for minor new source review in Indian Country ((see 40 CFR 49.153 (76 Fed. Reg. 38748 – July 1, 2011)).

James Clift Comments: The environmental community does not support an exemption for facilities that annually emit 2 to 5 tons of volatile organic compounds.

No. A-4
Subject: Rule 206 Process Deadlines#
Regulation: R 336.1206
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: R 336.1206 is worded too generally and needs more specificity. Major and minor permit decisions must be made in a timely manner. Currently, the AQD's performance goal is to act on final permits within 180 days of receipt of an application. In addition, there are no Part 1 definitions for administratively and/or technically complete as these terms relate to the Permit to Install (PTI) program.

Proposed Solution: R 336.1206 must be more specific and must include a definition for "administratively complete". The rule should be amended to:

- Include a definition of "administratively complete" in Part 1.
- Require the Air Quality Division (AQD) to make an "administratively complete" determination within 10 days of the receipt of the application.
- Require AQD to act (issue or deny) on all minor source Permit to Install (PTI) applications within 180 days of receipt. This should include "opt-out" PTIs.
- Require AQD to act (issue or deny) all major source and major modification PTI applications within 240 days from the date of receipt.
- Allow for the extension of these deadlines with the mutual consent of both the applicant and the DEQ.

Rationale for Change/Additional Comments: The current wording within the rule is too vague and Rule 206 should be revised for permit action by specific deadlines, for both minor and major source PTI based upon date of receipt of the permit application. This would provide more regulatory certainty, and speed the issuance of permits. Historically, the term "technical completeness" has been somewhat arbitrarily determined as supported by lack of documentation within existing PTI application files. Basing permit decisions on an application receipt date is more definitive.

Note: The electronic permit application process recommended as part of this Issues package (Issue A-14) would help alleviate any confusion concerning whether a permit application is or is not administratively complete, as evidenced in the existing ROP application submittal process. In addition, an electronic permit application process, currently available in several other states, would help promote a more consistent agency technical review process because the required technical data as identified within the permitting forms would limit the technical inconsistencies amongst the agency's permitting staff.

James Clift Comments: The environmental community notes that applicants for permit to install in Michigan pay no permit fees. Many of our neighboring states collect significant permit fees and are thus able to issue permits in a timely manner. The environmental community believes that state should institute new permit fees in this area to provide prompt attention to new applications.

No. A-5
Subject: Dispersion Modeling Guidance Document
Regulation:
Remedy: ☒ Process ☐ Rules ☐ Statute

Background/Issue: For minor source air permits (i.e., those not classified as a major source or major modification), the AQD's old policy (as elaborated in the internal AQD memorandum revised on March 19. 1998, available on AQD's web site) was that air quality modeling was generally only required if the potential annual emissions increase was greater than the significant emission rate (SER) thresholds (i.e., 40 tons/year for NOx and SO2, 100 tons/year for CO, etc.).

With the recent promulgation of 1-hour National Ambient Air Quality Standards (NAAQS) for both NOx and SO2, the AQD is often requiring air quality modeling even though the emission increases are well below the SER thresholds. This is contrary to the current AQD Guidance Document, as well as federal guidance issued over the last year or so regarding these new 1-hour NAAQS. This has unfortunately resulted in leaving the modeling decision to the DEQ permit engineer assigned to review the permit. This obviously creates confusion on the part of the applicant, as they are not sure whether the application should include modeling.

The costs of conducting the modeling exercises are highly variable and largely depend upon the complexity of the associated site and whether existing sources must also be included. Rule of thumb estimates to complete these modeling efforts are typically between $7,500 and $50,000, including the preparation and submittal of a modeling protocol document and obtaining detailed hourly background concentration data for use in more sophisticated dispersion modeling techniques.

Proposed Solution: The DEQ should organize a stakeholders group by January 1, 2012 to develop a new Policy Guidance Document (PGD) that considers the new National Ambient Air Quality (short-term) Standards (NAAQS) for NOx and SO2. Finalization of the new PGD should become effective no later than March 1, 2012. This PGD should be modified, with stakeholder consensus, within 90 days of USEPA's promulgation of any subsequent new or revised NAAQS.

Rationale for Change/Additional Comments: Implementation of this recommendation would increase consistency for permit application development and submittals.

No. A-6
Subject: Averaging Times and Compliance Testing - AQD Operational Memo No. 18
Regulation:
Remedy: ☒ Process ☐ Rules ☐ Statute

Background/Issue: On February 26, 2004, the AQD issued Operational Memorandum No. 18 requiring companies to accept emission limits based on shorter averaging periods (1-hour versus 24-hour) or accept longer testing times to match the averaging time period. This was strictly an internal agency policy decision and not required by federal law. As a result, companies had to eliminate potential operational flexibility by agreeing to shorter (emission) averaging times, or face extended (costly) compliance testing that was unnecessary to demonstrate compliance.

Proposed Solution: The DEQ should review Air Quality Division's Operational Memorandum No. 18 to ensure it is consistent with federal test methods and make changes to the Memorandum if necessary. Stakeholder input should be included in any change to the Memorandum.

Rationale for Change/Additional Comments: The recommendation will provide companies with operational flexibility without having to repeat costly and excessive stack testing. The current (Option 3) proposal in Operational Memorandum No. 18 essentially requires a company to restrict operational flexibility for the sake of minimizing costs for compliance demonstrations. Other Great Lakes states do not have such a policy and typically follow the recommended USEPA Test Method protocols for compliance.

No. A-7
Subject: Rule 801, Rule 803 and State Implementation Plan
Regulation: Rule 801, Rule 803 and State Implementation Plan
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Michigan pulls large generating units (that do not produce electricity for sale) into the rule, making it more stringent than federal requirements. The federal rules only pull in units that also contribute electricity to the grid.

Proposed Solution: The Air Quality Division (AQD) should amend R 336.1801 and R 336.1803 and the State Implementation Plan (SIP), to only include electrical generating units (EGU's) that contribute electricity to the grid. A stakeholder group should commence rules development activities by January 1, 2012 and submit a proposed rules package for public comment by no later than April 1, 2012.

Rationale for Change/Additional Comments: Michigan pulls large generating units into the rule (that do not produce electricity for sale), making it more stringent than federal requirements.

James Clift Comments: The environmental community believes that all large generating units should be subject to regulations designed to reduce their public health impacts on Michigan residents. Whether the electricity is sold onto the grid should be irrelevant to the issue of determining reasonable control measures.

No. A-8
Subject: Michigan Continuous Emission Monitoring Rules (Part 11)
Regulation: R 336.2170
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: This rule provides that an Excess Emissions Report is required to be submitted quarterly. Federal rules only require semi-annual submission.

Proposed Solution: R 336.2170 should be amended to be consistent with the federal reporting requirements and limited to semi-annual reporting of excess emissions. The present Michigan rule requires quarterly reporting.

Rationale for Change/Additional Comments: Consistency with federal requirements.

No. A-9
Subject: Visible and Particulate Emission Limitations
Regulation: R 336.1301(c) and R 336.1331(b)
Remedy: ☒ Process ☐ Rules ☐ Statute

Background/Issue: Currently the AQD is allowed, by rule, to lower opacity and PM emission limitations below the levels established within other applicable air rules.

Proposed Solution: The Air Quality Division (AQD) shall develop a Policy Guidance Document addressing the use of visible emissions limits less than 20% opacity in permit conditions. The process for developing the document will include stakeholder input and will require opacity limits that are more stringent than what is allowed by R 336.1301(1)(a) to be negotiated between the applicant and the AQD. The guidance document should be developed by June 1, 2012.

Rationale for Change/Additional Comments: These rules allow AQD to lower opacity and PM emission limitations below the levels noted within each rule. This can lead to arbitrary decisions, and additional guidance will provide clarity to the regulated community.

No. A-10
Subject: R 336.1330
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: R 336.1330 provides performance criteria for electrostatic precipitators (ESPs). The rule is part of the State Implementation Plan (SIP), and thus rescission would require USEPA approval.

Proposed Solution: The Air Quality Division should engage with USEPA to determine what it would take to get USEPA approval to rescind R 336.1330. Based upon that feedback, the DEQ should engage with stakeholders to determine whether to repeal or modify the rule, or take no further action.

Rationale for Change/Additional Comments: This performance criterion is outdated and current Rule 910 is suitable for this purpose.

No. A-11
Subject: R 1336.1901 – General Nuisance Rule
Regulation: R 1336.1901
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: This regulation is a very broad and general rule that is intended to target emissions that constitute a common law nuisance. R 336.1901 ("Rule 901") prohibits emissions that, in fact, cause injurious effects or unreasonable interference; it does not prohibit emissions that merely "may" cause injurious effects or unreasonable interference. Although there is a long-standing remedy in court for such nuisances, AQD has historically claimed that Rule 901 is essential for dealing with citizen complaints of odors and air pollution nuisances. However, AQD has not limited the application of Rule 901 to responding to citizen complaints and actual nuisance conditions. Historically, AQD has used Rule 901 for the establishment of stack height and emission rate conditions for air toxics in permits to install and this practice continues at the present time. A review of recent proposed AQD permits shows that Rule 901 is being used as a citation for applicable requirements on sources that have never been found to have caused nuisance conditions.

Installation permits should be based on *clear and objective standards* that are applied in a uniform manner. Therefore, Rule 901 should be rescinded or, if it is retained, it should be limited in scope to responding to *known nuisance conditions* and not for prospectively regulating activities and emissions based on AQD's *suspicion* that they may result in nuisance conditions.

Proposed Solution: With stakeholder involvement, rulemaking should be undertaken to clarify how R 336.1901 is to be used in the Permit to Install process. R 336.1901 should be limited to responding to and resolving *known* odor issues and other nuisances. As part of this review, all templates and standard language will be reviewed to assure the appropriate use of R 336.1901.

Rationale for Change/Additional Comments: If nuisance conditions such as odors or fugitive emissions occur that require remedial measures, the remedial measures can be addressed in a Consent Order. In such cases, there is an objective basis for establishing the requirements in a Consent Order because a nuisance has, in fact, been verified.

James Clift Comments: The environmental community supports the consideration of Rule 901 in permitting for those industries that have a track record of odor problems with neighbors.

No. A-12
Subject: Electronic Application for New Source Review
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: The AQD Permit to Install (NSR) process could be substantially improved for more consistent (process-specific) data requirements, resulting in a more consistent permit development and submittal process, and a more consistent regulatory review process, by the use of an electronic permitting system. "Administrative Completeness" based upon completion of the general and process-specific informational needs, as identified on electronic forms, would be more or less a formality – as with Michigan's current Renewal Operating Permit (ROP) program within the AQD. Administrative Completeness would begin the agency clock for permit issuance. Like the ROP program, the AQD could provide all permit applicants with a notice of administrative completeness within 10 working days of receipt of the application, or identify a complete list of the remaining technical information required to complete AQD's permit review within 10 working days of achieving the administrative completeness designation.

The current regulatory process for reviewing air permit applications and issuing final permits can be further improved by requiring consistent information from each individual AQD permit engineer. Limiting the amount of individual permit engineer *variability* during the AQD permit review process would create a far more efficient, consistent and fair system. Several nearby states that directly compete for manufacturing jobs with Michigan have electronic permit application development and submittal systems in place, and have so for many years.

A checklist could be made part of the electronic permitting system. For example, all technical information templates could be developed for natural gas peaking power plant applications. Upon electronic submittal of all basic site, process and emissions-related information to AQD, the electronic application program should be capable of submitting an electronic confirmation of administrative completeness could be electronically sent to the permit applicant.

We believe a user-friendly electronic permit application development and submittal system would require no more than 12 months to develop (using some of the templates already developed by the DEQ's Office of Environmental Assistance) upon selection of an outside firm (or combination of firms). This can be accomplished by the private sector in *far less* time than what was required for the failed MiTAPS attempt in 2004, with the cooperation of DEQ. For example, a private sector team of Michigan consulting firms collectively developed the initial electronic ROP (PASS) software when the DEQ had determined that such a system would require too much agency staff effort and financial resources. Development of the PASS software required less than a year of *donated* private sector effort. An efficient PTI electronic development and submittal system can be accomplished within 12 months. This should become a very high priority on DEQ's list of goals for FY 2012.

Proposed Solution: Develop and implement an electronic Permit to Install application system by December 31, 2012. Development of this system should be done primarily by the private sector with quality assurance and regulatory guidance from the DEQ. The funding for this project should be found outside of the current DEQ budget.

Rationale for Change/Additional Comments: The benefit of the electronic permit development

and submittal process would be to (1) identify the general and process-specific data necessary for review of the application, (2) limit the amount of AQD permit engineer individualism experienced within the current system, and (3) provide a more responsive system to Michigan businesses.

Several nearby states that directly compete for manufacturing jobs with Michigan have electronic permit application development and submittal systems in place, and have so for many years.

No. A-13
Subject: Stakeholder Involvement in SIP Development
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: Historically, the SIP development process has used limited stakeholder involvement, well before the final documents are released for public review, comment and USEPA consideration. The limited use of stakeholder input and review in the SIP development process can result in DEQ commitments within a proposed SIP that may increase the regulatory burden to Michigan businesses, and yet are not essential for USEPA approval.

Proposed Solution: The Air Quality Division of the DEQ should conduct stakeholder reviews to solicit more non-agency input in drafting State Implementation Plans (SIPs).

Rationale for Change/Additional Comments: Stakeholder involvement and effective communication of important policy decisions is critical to the success of the AQD. Even though stakeholder involvement may take time and additional effort for development and submittal of SIPs, it will lead to a more transparent process and limit Michigan's regulatory burdens on businesses.

No. A-14
Subject: Addition of New Permit to Install Exemptions and Clarification of Existing Exemptions
Regulation: R 336.1278 – R 336.1290
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The existing Permit to Install (PTI) exemptions contained in R 336.1278 – R 336.1290 are somewhat confusing and have occasionally led to hindsight enforcement activities. The AQD has also held firm to the position that it will not make written determinations concerning possible PTI exemptions on a case-by-case basis.

Proposed Solution: Amend the R 336.1201 permitting requirements to add new exemptions, and further clarify the current exemptions included in R 336.1278 – R 336.1290.

Rationale for Change/Additional Comments: Revised rules will provide clarity to the regulated community.

No. A-15
Subject: VOC Emissions from Pharmaceuticals (R 336.1625)
Regulation: R 336.1625
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The rule imposes additional requirements for control devices in volatile organic compound (VOC) service. If a process unit is a major source and already subject to a MACT standard, the additional state recordkeeping is redundant and unnecessary.

Proposed Solution: Amend R 336.1625 to provide that if a MACT standard applies to the sources identified in R 336.1625 and also establishes VOC limitations, then the requirements in R 336.1625 are not applicable.

Rationale for Change/Additional Comments: Rules impose unnecessary recordkeeping requirements for air pollution control equipment if subject to MACT.

No. A-16
Subject: Volatile Organic Compounds (VOCs) – R 336.1611 and R 336.1707(3)-(4)
Regulation: R 336.1611 and R 336.1707(3)-(4)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: R 336.1611 and R 336.1707(3)-(4) apply to very small emission sources (such as parts cleaners and cold washers) at numerous manufacturing facilities in Michigan.

Proposed Solution: The DEQ should work with stakeholders to simplify the process for demonstrating compliance with these rules for Renewable Operating Permit (ROP) facilities.

Rationale for Change/Additional Comments: These rules pertain to VERY small air emission sources and contain nearly three pages of regulatory requirements within every ROP. For some companies, these rules literally double the number of "applicable" requirements within an ROP.

No. A-17
Subject: Rule 703, Gasoline Storage Tanks (>2000 gal)
Regulation: R 336.1703
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: R 336.1703 pertains to vapor balance controls to prevent the escape of gasoline vapors during the filling of gasoline storage tanks. The complexity of the rule makes it difficult to understand the compliance requirements. It is difficult to interpret which gas stations are subject since the USEPA recently promulgated a standard with different applicability requirements.

Proposed Solution: Amend R 336.1703 to be clear and consistent with new USEPA regulations, while ensuring continued attainment of air quality standards.

Rationale for Change/Additional Comments: Current regulations are very difficult to read and determine applicability, although the DEQ's Office of Environmental Assistance has generated some guidance documents. Clarifications within the rule would be beneficial to the regulated community.

No. A-18
Subject: Rule 336.1349
Regulation: R 336.1349
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Rule 349 specifies compliance with Rules 350 – 357 on or before December 1982 (nearly 30 years ago).

Proposed Solution: Rule 349 is obsolete and should be rescinded.

No. A-19
Subject: Limiting Compounds Required for Annual MAERS Report
Regulation: R 336.202(2)
Remedy: ☒ Process ☐ Rules ☐ Statute

Background/Issue: R 336.202(2) states, "The Department shall require an annual report from a commercial, industrial, or governmental source of emission of an air contaminant if, in the judgment of the department, information on the quantity and composition of an air contaminant emitted from the source is considered by the department as necessary for the proper management of the air resources…The information shall include factors deemed necessary by the department to reasonably estimate quantities of air contaminant discharges and their significance…"

Currently, the department requires MAERS subject companies to use either stack test data or state-supplied default emission factors.

The majority of these state-supplied emission factors were derived from USEPA databases of very questionable quality, and typically include a very lengthy list of potential trace air toxics. The only other alternative is to have a company invest a very substantial amount of money to develop process-specific emission factors based on stack testing for these "theoretical" trace compounds that have no adverse environmental impacts at their maximum predicted emission rates. This would be a very costly alternative for Michigan businesses with no environmental benefit.

Proposed Solution: Continue to use the existing default MAERS air toxics emission factors as an optional calculation tool for industry, but clearly identify which air toxics have been calculated using USEPA-supplied emission factors in the annual MAERS reports. Furthermore, the DEQ should be prohibited from developing new air toxics rules using D and E-rated emission factors.

Rationale/Comments: In the past 10+ years, the DEQ has significantly expanded the list of reportable compounds, with very little supporting justification other than a blanket statement concerning the potential use of this information for the development future air toxics rules. Using low-quality emission factors with an USEPA rating below a C rating results in a false read of Michigan's statewide and source-specific annual emission levels and should not be used for regulatory planning purposes or any other intended agency use.

James Clift Comments: The environmental community believes that a company or person should report all chemicals that it is, or may be, emitting into our environment. We believe the burden falls on them to characterize the nature of their emissions and not on the state and federal government. Therefore, the quality of emission factors should not be a basis of an exclusion from reporting.

No. A-20
Subject: Putting a Hold on the 18-Month Construction Window for a PTI
Regulation: R 336.1201
Remedy: ☐ Process ☒ Rules ☐ Statute
Lead(s):

Background/Issue: R 336.1201(4) requires construction under a PTI to commence within 18 months of issuance or the permit becomes void. The Air Quality Division (AQD) recently issued an 18-month extension on a Prevention of Significant Deterioration (PSD) permit for a source that is tied up in litigation. We have been sued over this decision.

Proposed Solution: Amend R 336.1201(4) to provide for a "hold" on the 18-month timeframe if a permit decision has been appealed. The following bold language should be added to R1201(4):

> *"If the installation, reconstruction, or relocation of the equipment, for which a permit has been issued, has not commenced within, or has been interrupted for, 18 months, then the permit to install shall become void, unless* ***(a)*** *otherwise authorized by the department as a condition of the permit to install, or* ***(b) the installation permit is the subject of an appeal by a party other than the owner or operator of the air contaminant source that is the subject of the installation permit, in which case the date of termination of the permit is not later than eighteen months after the effective date of the permit plus the number of days between the date in which the permit was appealed and the date on which all appeals concerning the permit have been resolved.***

Rationale for Change/Additional Comments: Ohio has a provision in their Revised Code that provides for a 'hold' on the 18-month timeframe if a permit decision has been appealed. This recommendation would prevent already granted permits from becoming void.

James Clift Comments: The environmental community believes that the purpose of the deadline is to protect public health and ensure the best available control technology is being utilized. We are concerned that an applicant could appeal the issuance of its own permit and extend the time period between issuance and construction. This new proposed rule should not apply to an electrical generating unit subject to the certificate of need process under MCLA 460.6s, but has failed to receive such certificate before applying for a permit to install.

Remediation Recommendations

No. R-1
Subject: Groundwater/Surface-Water Interface (GSI)
Regulation: Part 31, Part 201, and R 299.5716
Remedy: ☒Process ☒ Rules ☒ Statute

Background/Issue: In a report issued by Public Sector Consultants, Inc. on April 2, 2007 following a review of the Part 201 program, it was stated:

"The GSI pathway has been identified by the DEQ and the regulated community as a pathway that can significantly slow the review and approval process of a RAP or an interim response designed to meet criteria because under the current Part 201 procedures, facilities must go through a highly detailed process to demonstrate whether the GSI is or is not a relevant pathway." *See PSC Report at page 20.*

Unfortunately, little has changed in the more than four years since the report was issued.

In 2010, the legislature amended Part 201 to address some of the issues associated with regulating the GSI. Although those amendments contained some important improvements, the DEQ staff has since refused to make any changes in the manner in which they regulate the GSI. The current method of regulating the GSI is not working. Rather, it is unnecessarily driving up the cost of compliance. This is contrary to the intent behind the 2010 amendments, which were focused on streamlining processes, creating compliance flexibility, reducing unnecessary response costs, and increasing site closures. As explained in the 2007 PSC report, the GSI issue is driving many cleanups across the state—making this issue vitally important to getting more sites closed.

Fortunately, the statutes and rules can be improved so that more sites will be closed. Further, where complexity exists, DEQ staff actions should reflect a problem-solving culture, seeking the best available solution to move the project forward, thereby avoiding regulatory paralysis. Specifically, amendments to the relevant statutes and rules should address the following:

1. GSI Compliance Evaluation Based on Surface Water and Not Groundwater.
   Revise Rule 716 (and if necessary, Parts 31 and 201) to clearly allow the need for plume control or cleanup relative to GSI to be based on the impact of the plume on the surface water and to provide for a clear opportunity for the PRP to determine response activity. A "convenience" approach of only using on-land well data would be retained but only as an option for the PRP. This keys on the compliance point(s) for the GSI. Acceptable monitoring methods would be specified and additional monitoring methods could be proposed by the PRP and approved by DEQ.
2. Prohibit Excessive Data Demands. Effectively prohibit the DEQ from requiring unreasonable amounts of data to support a compliance point(s) at the true GSI, in the surface water, and elsewhere.
3. Focus on Designated Uses and Surface Water Quality Standards. No cleanup action would be required for a venting plume if the designated uses of the surface water are

not impaired and surface water criteria are not exceeded as a result of the venting plume. Mixing zones would be available for the venting plume. Sentinel well monitoring may be required if necessary in some circumstances to provide a warning as to changes in groundwater conditions that would imply adverse impacts on surface water quality standards are likely to occur.

4. Site-Specific Criteria. Expand the bases for site-specific GSI criteria to reflect (1) and (3) above, allow non-numerical criteria and criteria based on in situ bioassays and biological community assessments.
5. Plume Characteristics. Use plume-average concentrations and not point-by-point plume data, except to the extent there is a demonstrated acutely toxic effect occurring at the GSI. Whole effluent toxicity testing would not be a compliance criterion in on-land wells.
6. Natural Attenuation Acceptance. Include an express recognition that natural attenuation of the venting plume is acceptable in lieu of active treatment.
7. Sustainability Parameters. Inclusion of sustainability parameters in the response action choice factors – energy consumption, impacts on other environmental media and land use impacts.
8. No Permit Needed. Under Part 31, no permit would be needed for venting groundwater and a venting plume would not be a new or increased loading for Rule 98.
9. Clarity on surface waters subject to GSI. Surface water for purposes of GSI regulation should not include all wetlands that are currently regulated under Parts 301 and 303. Specifically, the GSI should not apply to wetlands of a magnitude that do not merit protection to surface-water standards. For example, the GSI should not apply to wetlands where standing water is not present for more than 6 months in a typical year and which does not support biological resources typical of surface waters. Further, the GSI regulations should be evaluated to determine that appropriateness of their applicability to storm-water retention ponds.
10. Storm Sewers and GSI. Means to resolve the storm-sewer/GSI issue should be considered. Unfortunately, the DEQ staff uses a hyper-conservative approach regarding the compliance point for a groundwater plume that is infiltrating a storm sewer. Indeed, storm-sewer flow is intermittent—making it difficult in some circumstances to monitor the water discharging into a surface water from the storm-sewer outfall. But such monitoring is possible. In addition, in some large and intricate storm sewers, it is possible to determine that the infiltration of a groundwater plume is insignificant in terms of the mass and rate and the plume's eventual impact on a surface water. Further, where end-of-pipe monitoring does not produce relevant surface-water quality criteria exceedances or it is shown that an infiltration is otherwise insignificant to a sewer's impact on a surface water, no response action should be required. The owners of impacted and potentially-impacted storm systems, rather than the DEQ, should decide if plume control, cleanup, or other measures such as monitoring, maintenance, and system improvements are necessary for plumes which infiltrate their storm sewers.

Proposed Solution: Seek amendments to Part 31, Part 201, and R 299.5716 to address the following goals regarding the GSI pathway:

1. GSI compliance evaluation should be based on surface water and not groundwater.
2. Prohibit excessive data demands.
3. Focus on designated uses and surface-water-quality standards in the surface water and not in groundwater or pore water.
4. Expand the bases for site-specific criteria, including non-numeric criteria.
5. Evaluate appropriate plume characteristics, such as using plume-average concentrations except where there is, or will likely be, an acutely toxic effect occurring in surface water.
6. Expressly recognize that natural attenuation may be acceptable in lieu of active treatment. Generally describe what is needed to show natural attenuation.
7. Use sustainability parameters in the response-activity choice factors.
8. Expressly state that no permit is needed under Part 31 for a GSI response activity.
9. Surface water subject to GSI regulation should not include all wetlands or storm-water retention ponds.
10. Develop new rule provisions or statutory changes for groundwater plumes infiltrating storm sewers based on the quality of the water exiting the storm sewer outfall and its impact on surface waters.

Rationale for Change/Additional Comments:

- Cost of compliance unnecessarily high for projects involving Ground water Surface water interface (GSI).
- Cleanup criteria conflict with values used in other disciplines/programs.
- Environmental monitoring techniques exist to protect surface water without unnecessary response activity and unreasonable data demands.
- A problem solving DEQ staff is desirable.
- Approaches to GSI compliance by other states and the USEPA should be analyzed.
- The goal is to protect surface waters without unnecessary GSI investigation and other response activities.

James Clift Comments: The environmental community supports efforts to transfer focus and resources to cleanup activities versus ongoing monitoring requirements. However, we are concerned that greater use of site-specific criteria and non-numerical criteria are also staff intensive activities for a department that is significantly underfunded. Lastly, we oppose an across the board exclusion of the consideration of the impacts that a discharge could have on a wetland ecosystem.

No. R-2
Subject: Part 201/213 Vapor Intrusion Criteria
Regulation: Part 201; Part 213
Remedy: ☒ Process ☒ Rules ☐ Statute

Background/Issue: The Remediation Division (RD) of the DEQ has indicated that it plans to change its approach to regulation of the vapor intrusion (VI) pathways (as to both soil criteria in R 299.5724 and groundwater criteria in R 299.5714). The regulated community concurs that change is required. It is important that the new approach to these pathways be developed very carefully because of the critical importance of the VI pathway both from a public health perspective and because of the increasing understanding of how the relevance and risk of this pathway can vary commensurate with the widely varying conditions of properties.

The continued inability of both liable and non-liable parties to identify a reliable path to completing the investigation of a site and implementation of appropriate remedial and/or due care measures strongly discourages parties from engaging in the Part 201/213 program and often delays and increases the cost to redevelop and reuse property.

The RD is proposing the development of soil gas criteria (SGC) to replace the current soil volatilization to indoor air inhalation criteria (SVIIC). The regulated community concurs that soil gas is a more representative medium to evaluate than soil data, as vapor is the (inhalation) exposure medium.

The SGC are derived by dividing an acceptable indoor air concentration (AIAC) by a vapor attenuation coefficient. The vapor attenuation coefficient is a reduction factor, representing the decrease in vapor concentrations from the subsurface to the indoor air of a building. That is, the vapor attenuation coefficient is the indoor air concentration divided by the subsurface soil gas concentration – the fraction of soil gas present in indoor air. The RD is expected to propose "default" vapor attenuation coefficients based on the U.S. Environmental Protection Agency's (USEPA) VI database to develop Part 201/213 SGC.

There are many issues with applying the USEPA default vapor attenuation coefficients. The indoor air and subsurface groundwater and soil gas data in the USEPA database are limited, hence not sufficiently representative of VI conditions (particularly in Michigan), and therefore are not appropriate data to support development of Part 201/213 generic VI criteria. USEPA uses the default attenuation coefficients from their VI database to derive screening levels – the screening levels trigger whether further evaluation of VI pathway risk is necessary. Reasons why the USEPA VI database of attenuation coefficients are not adequately representative to support development of Part 201 generic VI criteria include: (1) a majority of the data are from a limited number of sites, most of which are in the western U.S. and eastern U.S., with very little data from the Midwest, (2) approximately 85% of the data are from residential homes and therefore are not representative of non-residential land uses, (3) 97% of the data are for chlorinated hydrocarbons, and therefore are not representative of VI for petroleum hydrocarbons, (4) the subsurface and indoor air sample data represent the environmental and building conditions on only one day of the year and (inappropriately) used to represent daily long-term exposures when in reality concentrations can change significantly on a daily basis due to varying meteorological and building operation conditions, (5) further, these "snapshot-in-time" data are

extrapolated into the context of risk criteria equations that are based on long-term daily human exposure assumptions (e.g., 30 years), and (6) the indoor air measurements, which are necessary for deriving the attenuation coefficients, are affected by background indoor air contaminants such that indoor air concentration measurements of the same volatile organic compounds (VOCs) as those of concern in the subsurface may falsely indicate vapor intrusion.

There are generally three areas of variability associated with the VI pathway, subsurface, building and meteorological conditions, and the interaction among these variables can create significantly varying VI conditions for houses immediately adjacent to one another. As a result, the list of issues against developing generic criteria could go on; what has been learned about the VI pathway over the past decade is that every VI pathway evaluation must be customized, possibly within a flexible regulatory framework, to effectively manage the inherent variabilities of subsurface, building and long-term exposure conditions associated with the pathway at each site.

Proposed Solution: The 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: (i) allow the initial use of a conceptual site model 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.

Rationale for Change/Additional Comments: Too often confounding data are gathered for situations that do not warrant an evaluation of the VI pathway. A process should be applied to pre-empt sample data collection and comparison to criteria. As described above, the inherent variabilities of the pathway creates uncertainties in the decision-making. As a result, an efficient process to effectively screen out these situations is necessary to determine if VI assessment is needed.

Data collection and evaluation processes need to match the time frames of property transactions; there is not the luxury to sample each season or quarter to gather data to make a decision, as is typically required by the RD. If the VI pathway is of potential concern, develop information gathering options specific to the current/future use context to validate the concern, rather than unnecessarily gathering additional data from samples. Viable options are to allow the conduct of real-time testing with mobile lab, use of passive diffusive samplers, conduct pumping tests on the sub-slab plenum air, etc. to address the snapshot-in-time concern. Available background/historical information for the site or in the immediate area should be applied to ground truth the concern. [Development of a conceptual site model must be an integral part of this process, and if data collection is necessary, use of the USEPA Data Quality Objectives (DQO) process must also be considered.]

Sample data gathering options should only ensue after a thorough exercise of the above

conceptually described qualitative screening process is completed, and which supports that additional data are necessary to complete a quantitative evaluation of the risk. (The option to design, install, and operate a mitigation system remains) The quantitative evaluation results would then be compared to "initial screening levels". The initial VI screening levels should represent available Michigan VI site data in addition to some of the USEPA VI data that is properly screened. Additionally, the process should include conducting a simple radon attenuation evaluation at sites where concentrations exceed "initial screening levels" to assist with actual building-specific attenuation (if a building is present), and/or collection of indoor air samples if contribution of background indoor air sources can be reliably prevented.

The RD should prioritize the compilation of data from the many sites which are known to exist (both private party sites and sites investigated by the RD) to determine the efficacy of its hypotheses related to the VI issue. The continued development of such an important regulatory approach for the VI issue without a serious effort to compile and analyze data from Michigan properties will undermine confidence in the RD's efforts to regulate this issue.

Other key considerations should include:

Regulatory approaches for determining when the VI pathway is relevant and complete and when mitigation is necessary, whether developed by the USEPA or DEQ, must acknowledge and incorporate the following realities:

- The science around the issue is continually evolving.
- Knowledge and understanding of the VI pathway is advancing over short timeframes relative to typical rulemaking processes.
- Responsible parties need certainty that assessment and mitigation of the VI pathway have end points and a clear and understandable process for determining those end points.

The process for development of a new VI regulatory program in Michigan must include the following elements to be viable, reasonable, and facilitate cooperative participation by the regulated community:

- The resulting regulatory program must be less proscriptive and prescriptive and more flexible, allowing for incorporation of new science and technology without requiring additional rulemaking (Benchmark - USEPA).
- The regulatory development process must include a thorough consideration without bias of the approaches used by other states and the USEPA.
- The RD must significantly increase the transparency and openness of the regulatory development process. Use of new interactive tools, such as open blogs (e.g., see http://indoorairproject.wordpress.com for the Massachusetts approach), is needed to generate real-time interactions with and comments from stakeholders as ideas and approaches are developed. The RD also needs to be more forthcoming in explaining the thought processes and technical bases at each step of the regulatory development process so stakeholders have an opportunity to provide comment and input during the process, not just at the end. The current process of developing rules internally and accepting comments only after rules packages are developed is not a transparent

process.(Benchmark - other states, such as Massachusetts)

- The involvement and contribution of stakeholders to the rules development process must be improved to include more input from a larger universe of stakeholders. Input must be interactive and consistent throughout the process (see transparency discussion above). There must be room for all stakeholders that want to participate, not just a handful selected by the RD.
- It must be based on the best science currently available.
- The absence of scientific data and certainty cannot result in overly conservative approaches to avoid using reasonable risk assumptions and best judgment.

Interim Steps: It is expected that take at least one year for the RD to complete the process of replacing its current approach to the VI pathway. In the meantime, attention should be paid to facilitating the prompt resolution of sites where application of existing default VI criteria is not currently permitted by the RD due to failure of conditions to the application of the default criteria (such as the presence of shallow groundwater or sumps).

No. R-3
Subject: Revising Part 201 Cleanup Criteria
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: In 2010, the legislature amended Part 201. Those amendments included a requirement that the DEQ evaluate and revise the cleanup criteria not later than December 14, 2012. MCL 324.20120a(18) states:

> *(18) Not later than 2 years after the effective date of the 2010 amendatory act that amended this section, the department shall evaluate and revise the cleanup criteria derived under this section. The evaluation shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment. Following this revision, the department shall periodically evaluate whether new information is available regarding the cleanup criteria and shall make revisions as appropriate. The department shall prepare and submit to the legislature a report detailing any revisions made to cleanup criteria under this section.*

The DEQ should fulfill this requirement by undertaking a stakeholder process to determine the relevant knowledge and data that should inform any revisions to the cleanup criteria. The stakeholder process and the criteria revisions should take into account best practices from other states and appropriate risk assessment. Further, the stakeholder process should revisit the generic algorithms and exposure assumptions and determine whether those algorithms and exposure assumptions reflect reasonable and realistic conditions, good science, and normal rational human habits. Appropriate revisions should be made.

Proposed Solution: The DEQ should evaluate the algorithms, exposure assumptions, and toxicity values used to establish generic cleanup criteria and screening levels under Section 20120a of the Part 201 statute and the Part 7 rules and revise those algorithms, exposure assumptions, and toxicity values as necessary based on best practices from other states, reasonable and realistic conditions, and good science. Consistent with any such revisions, the DEQ should then revise the generic cleanup criteria and screening levels established in the Part 7 rules.

No. R-4
Subject: Part 201 Rules
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: At the end of 2010, the legislature substantially amended Part 201, but this effort actually began in early 2009. At that time, the regulated community united to pursue amendments that were sorely needed. To fully understand the intent behind the effort to amend Part 201, some background is appropriate.

In 1995, the Michigan legislature enacted Part 201 which, among other changes, fundamentally shifted Michigan's liability standard from strict liability to causation-based. This change and others contained in Part 201 have been successful. But over the years, the DEQ and businesses have identified problems with the Part 201 program. So in 2006, the DEQ asked Public Sector Consultants (PSC) to facilitate a stakeholder-driven process to discuss and identify potential improvements to the programs. A group of experienced individuals met periodically between 2006 and early 2007 to identify and discuss problems and improvements to the Part 201 and brownfield programs. PSC then issued a report in April, 2007 documenting that process.

Unfortunately, by 2009 nothing had been done yet to address improving Part 201. Many problems identified in the PSC report and other problems identified since that report continue to substantially bar increased investment in remediation and redevelopment in Michigan. The over-arching theme representing the greatest barrier was conservative decision-making by the DEQ. This tendency imposed an environmental and economic cost to the State. Creative and practical evaluations were squelched. The incentive for investment was significantly diminished. The economic and environmental consequences of ultra-conservatism were clear: the environment does not benefit from investment and the State does not benefit from increased economic activity and the commensurate tax revenue.

Furthermore, over the previous six months, the DEQ had "rolled out" a set of conceptual changes to Part 201. Unfortunately, many of the DEQ's conceptual changes would have discouraged people looking to do business in Michigan, directed the State's limited resources toward looking for problems where none were known to exist, and increased regulatory burdens and transaction costs without providing much improvement to Michigan's environment. In addition, the DEQ's conceptual changes did not address the major issues that the regulated community had been voicing.

Consequently, there was little support for the DEQ's conceptual changes. But the Part 201 program still needed be reformed for Michigan to move forward and maintain its "cutting edge" approach and appeal to those interested in investing in brownfields. To that end, the regulated community came together to pursue comprehensive changes to the Part 201 program that addressed many of the issues identified in the PSC report and also other issues that had arisen since. The themes of these changes were to simplify and streamline the Part 201 program; create transparency; promote regulatory flexibility; and provide incentives for the DEQ to make less-conservative decisions.

A two-year process of broad-based work-group meetings ensued culminating in the amendments that were passed in December, 2010. These amendments require certain

conforming amendments to the Part 201 rules. But they also raise the larger issue of the continued need for many of the Part 201 rules. Similar to the state of the Part 201 statute before the 2010 amendments, the Part 201 rules over time have become cumbersome and overly restrictive. Indeed an overhaul of the Part 201 rules is in order.

Proposed Solution: On or before April 1, 2013, the DEQ should rescind all rules (Parts 1, 4, 5, 7, 9, and 10) promulgated under Part 201 except the portion of the Part 7 rules related to establishing generic cleanup criteria and screening levels. Concurrent with this process, DEQ should promulgate a streamlined and efficient rule package that contains only rules that are:

- necessary for program implementation; and
- performance-based rather than prescriptive.

Rationale for Change/Additional Comments: The Part 201 rules have over time become unnecessarily restrictive or simply unnecessary. More response activities would take place and more brownfields will be redeveloped if the rules allowed more flexibility. In addition, the Part 201 rules must be consistent with the authorizing statute.

James Clift Comments: The environmental community does not support the rescission of any rules until a comprehensive package of revised rules has been prepared. We think the statute and the rules should specifically identify the duties of owner and operators of contaminated property and when possible specific timelines for undertaking cleanup activities or measures designed to minimize exposure risks to the public. We think that an owner or operator who has knowledge that their property is contaminated should have the duty to disclose the existence of that site to neighbors and appropriate state and local officials.

No. R-5
Subject: Risk-Based Closures and Site-Specific Criteria
Remedy: ☒Process ☒ Rules ☒ Statute

Background/Issue: In 2010, the legislature amended Part 201 in part to provide further flexibility in developing site-specific criteria for sites and to otherwise promote risk-based cleanups. Indeed, several risk-based models exist that could be utilized by the Part 201 program. For example, the Risk-Based Corrective Action (RBCA) approach can be an effective process to develop remedial objectives. Further, the site-specific-criteria option would be further enhanced if the criteria could be both numeric and nonnumeric depending on the site. Unfortunately, the DEQ has historically not allowed for a risk-based site-specific closure option. This is contrary to the intent behind the 2010 Part 201 amendments.

Proposed Solution: Consistent with the increased flexibility to create site-specific criteria under the 2010 Part 201 amendments, the DEQ should encourage the increased use and approval of risk-based site-specific closure limits in order to facilitate closure of more sites. In addition, Part 201 and the Part 201 rules should be amended to allow for non-numeric site-specific criteria.

Rationale for Change/Additional Comments: Allowing more use of site-specific criteria and training staff regarding site-specific criteria will lead to more closures while still protecting the environment.

James Clift Comments: The environmental community is concerned with the labor-intensive nature of these cleanups and diverts resources away from work at other sites. The statute should be amended to allow for the DEQ to recover costs through fees in these instances.

No. R-6
Subject: Effective Solubility and Free Phase Contamination
Remedy: ☒Process ☒ Rules ☐ Statute

Background and Description of Issue: Csat is an estimate of the concentration at which soil is saturated with a particular hazardous substance. The DEQ has promulgated generic cleanup criteria to address Csat. But Csat concentrations do not account for multiple contaminants (RD Op Memo 1, Technical Support Document – Attachment 8) such as may be present at petroleum contaminated sites. To address this issue, the DEQ has developed informal, unpromulgated "alternative criteria" for gasoline based on USEPA effective solubility formulas. The alternative consists of analyzing soils for gasoline range organics (GRO) for screening and if GRO exceeds 350 ppm, then a comparison to the alternative criteria based on soil type needs to be made to further evaluate for the presence of free phase contamination. If the alternative criteria are exceeded, the DEQ will consider free phase contamination to be present which "must" be addressed. There is no statutory basis under Part 201 or Part 213 for such an "alternative criteria" to be established or enforced in this manner.

Neither Part 213 nor its regulations contain any requirement applicable to "free phase" contamination. Part 213 does, however, regulate "free product" which means "a regulated substance in a liquid phase equal to or greater than 1/8 inch of measurable thickness, that is not dissolved in water, and that has been released into the environment." MCL 324.21302(f).

The Part 201 regulations confirm that "The generic cleanup criteria shown in R 299.5744, R 299.5746, and R 299.5748 and identified under subrule (14) of this rule may be used and known as risk-based screening levels for corrective actions required under the part 213 of the act." R299.5706a(4). The generic cleanup criteria shown in the referenced rules include the generic Csat concentrations. Consequently, the risk-based screening levels that apply to Part 213 cleanups would include the promulgated, generic Csat concentrations. DEQ, however, believes that the generic Csat concentrations may not be sufficiently protective under certain circumstances.

DEQ Draft Q&A document, dated May 12, 2011, addresses the issue with a regulatory analysis of the relationship between free phase contamination and statutory requirements. These alternative criteria are significantly different from the generic Csat criteria and are being applied by the DEQ as if they were promulgated, binding criteria. If the DEQ considers "free phase" to be present DEQ's position is that generic criteria would not be relevant. DEQ has repeatedly taken the position that Final Assessment Reports and other reports submitted under Part 213 are "inadequate" or "do not satisfy statutory requirements," if they do not address "free phase" concerns, even in the absence of any identified free product (as defined) or exceedances of promulgated criteria. The Draft Q&A document states that the Remediation Division will be willing to accept site specific evaluations, but no additional justification or guidance is provided.

DEQ's Draft Q&A document also provides "screening levels" for diesel range organics (DRO) and oil range organics (ORO) and are discussed further in the Draft Q&A document. Again, however, these screening levels are not authorized by either statute and have not been promulgated.
RO) and oil range organics (ORO) and are discussed further in the Draft Q&A document.

The recent amendments to Part 201 re-confirmed that "A guideline, bulletin, interpretive statement, or operational memorandum under this part shall not be given the force and effect of law." Since DEQ's Draft Q&A has not even been "finalized" by the Department, let alone actually promulgated as required by the Administrative Procedures Act, case law, and now Part 201, the use of this document by the DEQ and the assertion to the regulated community that it is a legal requirement is contrary to law. Moreover, the presence of "free phase" contamination as described by DEQ does not necessarily even pose a health or environmental risk. If DEQ believes that additional "free phase" criteria are necessary, then such criteria must be formally promulgated in accordance with the Administrative Procedures Act, and receive the full public scrutiny, review and comment required by the APA. In addition, if "free phase" contamination is going to be regulated under Part 213, then the statute would require amendment to revise the definition of "free product" or add a completely new definition of "free phase."

Further, the DEQ should allow flexibility when evaluating a "free phase" situation when there is no demonstrated impact to groundwater present. In that situation, it may be appropriate to approve a no further action letter that includes a reopener for future discovery of free product.

Proposed Solution:

1. The DEQ should immediately discontinue applying the unpromulgated alternative criteria for gasoline that are based on USEPA effective-solubility formulas and that are attached to the DEQ Draft Q&A document dated May 12, 2011, and should use the existing promulgated criteria.
2. To the extent the DEQ believes that new criteria are appropriate for "free phase" contamination, it must seek the appropriate changes to Part 213 or promulgate new criteria under Part 201 pursuant to the Administrative Procedures Act.
3. In developing any new criteria to address free-phase contamination, the DEQ should use science and look to national best practices.
4. The DEQ should allow regulatory flexibility when evaluating "free phase" situations where there is no demonstrated impact to groundwater present.

No. R-7a
Subject: Underground Storage Tank Inspection Delegation and Certification (R 29.2071 – R 29.2077)
Regulation: R 29.2071 – R 29.2077
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules established criteria for the delegation of authority to enforce the act (and rules promulgated under the act) and to establish qualifications for certification of individuals as underground storage tank inspectors. The department may delegate enforcement responsibilities. Delegation is to be based on minimum staffing requirements, regulated tank population within the area of jurisdiction, and the level of support provided by the local unit of government.

Proposed Solution: The rule set relating to Underground Storage Tank Inspection Delegation and Certification (R 29.2071 – R 29.2077) should be rescinded**.**

Rationale for Change/Additional Comments: These rules no longer provide value and have not been used since the 1990s.

No. R-7b
Subject: Part 211 – Underground Storage Tank (UST) Regulations
Regulation: R 29.2101 – R 29.2174
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules prescribe requirements for installation, removal, and operation and maintenance of underground storage tank systems storing regulated substances. Regulated substances are defined as petroleum (such as diesel and gasoline) and hazardous substances.

The provisions of 40 CFR Part 280, subparts A-H (2006), entitled "Technical Standards and corrective Action Requirements for Owners and Operators of Underground Storage Tanks," (*as amended by 54 F.R. November 9, 1989, p. 47081-47092, and as amended by 58 F.R. February 18, 1993, p. 9050-9059*), are adopted by reference in these rules. DEQ adopted the federal rules, but incorporated Michigan-specific amendments leading to a mixed rule set that is about seventy-nine pages long. The extent of the DEQ amendments is unclear.

USEPA 40 CFR Part 280 allows the use of national codes as an option for compliance (required in some cases) but does not alter the referenced code. Where compliance with the national code is required, multiple code options are typically included.

Proposed Solution: The DEQ should review the current rules relating to Part 201 – Underground Storage Tank Regulations (R 29.2101 – R 29.2174) to determine the use and relevance of the current rules.

If the department determines the rules are relevant and should be kept in place then they should review the rules with stakeholders to determine if particular rules should be updated or modified and if they exceed federal standards.

When these determinations are made, the DEQ should work with stakeholders to modify the rules and eliminate those rules that exceed the federal standards, unless the DEQ can demonstrate that state-specific rules are necessary to protect human health and the environment.

Rationale for Change/Additional Comments: Eliminating the Michigan-specific amendments to the rules that exceed federal standards will result in less complex and more efficient regulations.

No. R-7c
Subject: Transportation of Flammable and Combustible Liquids (R 29.2201 – R 29.2234)
Regulation: R 29.2201 – 29.2234
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: Public Act 265 of 1995 amended the Motor Carrier Safety Act of 1963 by adopting new federal regulations that govern the transport of hazardous materials and provide for general motor-carrier safety. This Act rescinded the associated rules but failed to rescind the rule set related to Transportation of Flammable and Combustible Liquids. Based on the content of this rule set, the legislature's failure to rescind the rules was an oversight. Therefore, the rule set pertaining to Transportation of Flammable Combustible Liquids (R 29.2201 – R 29.2234) should be rescinded.

Proposed Solution: The rule set relating to Transportation of Flammable and Combustible Liquids (R 29.2201 – R 29.2234) should be rescinded because it is redundant with existing transportation regulations.

Rationale for Change/Additional Comments: These rules are related to transportation issues. These rules make Michigan specific amendments to the NFPA code and incorporate by reference NFPA Code 385, 386, and Pamphlet 10. DEQ's analysis has determined these rules are redundant with existing regulations and should be rescinded.

No. R-7d
Subject: Compressed Natural Gas (CNG) Vehicular Fuel Systems (R 29.4601 – R 29.4652)
Regulation: R 29.4601 – R 29.4652
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules apply to the design and installation of CNG engine fuel systems on vehicles and associated fuel-dispensing systems. The Fire Protection Code authorizes the promulgation of these rules but requires that: "Rules promulgated under this act shall be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the field of fire protection. Experiences identified in the fire incident reports received by this state may be considered by the board and the bureau when reviewing rules promulgated or considering promulgation of new rules under this act." (MCL 29.3c(4))

In 1998, the authority to promulgate these rules was transferred from the Department of State Police (specifically the State Fire Marshal) to the Department of Environmental Quality by executive order. At the time, the thought was that transferring the duties to the DEQ would lead to "efficient administration and effectiveness of government to regulate the storage and handling of these hazardous materials within one department." (MCL 29.641). Unfortunately, the transfer has not led to efficient administration and effectiveness of government for this program. Rather, the program has become even more complex and cumbersome for the regulated community.

Proposed Solution: The Compressed Natural Gas (CNG) Vehicular Fuel Systems program (R 29.4601 – R 29.4652) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Rationale for Change/Additional Comments: These rules regulate vehicle engine fuel systems and fuel dispensing systems and are related to fire safety issues, and would be best administered by the Bureau of Fire Services.

These rules make Michigan specific amendments to numerous national codes and incorporate by reference ANSI/ASME, ASTM, CGA, CSA, NFPA Code 37, 52, 54, 59A, 68, 70, 220, 259, 496. The NFPA 52 version cited is the 1992 edition, which has since been superseded by five subsequent NFPA Code editions. Eliminating the Michigan-specific amendments to the rules that exceed federal standards will result in less complex and more efficient regulations.

No. R-7e
Subject: Production, Storage, and Handling of Liquefied Natural Gas (R 29.4671 – R 29.4672)
Regulation: R 29.4671 – R 29.4672
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: These rules were promulgated in response to the pre-siting of Liquefied Natural Gas (LNG) production facilities within the state by certain private entities. For reasons unknown, the LNG production facilities were never built, nor have any ever been built in Michigan. Therefore, there is no continued need for these rules as written. If an LNG facility was to locate and build within this state, a newer version of the standard should be adopted that would be more in line with current technologies and practices.

Proposed Solution: The rule set relating to Production, Storage, and Handling of Liquefied Natural Gas (R 29.4671 – R 29.4672) should be rescinded because there are no applicable facilities (existing or planned) in the state.

Rationale for Change/Additional Comments: These rules were intended to regulate fire safety issues at Liquefied Natural Gas facilities. DEQ has determined these rules should be rescinded since there are no plants in the state.

No. R-7f
Subject: Storage and Handling of Flammable and Combustible Liquids (R 29.5101 – R 29.5516)
Regulation: R 29.5101 – R 29.5516
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: These rules apply to the storage and handling of flammable and combustible liquids (FL/CL) in above ground storage tanks (AST) and underground storage tanks (UST) and are intended to protect against fire and explosion hazards. Compliance with these rules does not excuse compliance with other applicable state and federal statutes and rules and regulations promulgated thereto.

In 1998, the authority to promulgate these rules was transferred from the Department of State Police (specifically the State Fire Marshal) to the Department of Environmental Quality by executive order. At the time, the thought was that transferring the duties to the DEQ would lead to "efficient administration and effectiveness of government to regulate the storage and handling of these hazardous materials within one department." (MCL 29.641). Unfortunately, the transfer has not led to efficient administration and effectiveness of government for this program. Rather, the program has become even more complex and cumbersome for the regulated community.

Michigan is the only state in the region that makes state-specific amendments to national codes (e.g., National Fire Protection Association codes). For example, the 2003 rule package added 80 pages of DEQ-specific amendments to the actual NFPA Code and also incorporated by reference NFPA Code 30, 30A, 31, 37, 70, 59A, 57, 10, 90A, 54, 211, 82, 9501, 8502, 55 and NFPA Pamphlets 15 and 704. The national codes referenced by the 2003 DEQ rules have been updated by newer editions. The DEQ format currently used to amend the national code is extremely detailed and evaluates/modifies the national code on a paragraph-by-paragraph basis.

Where appropriate, other states also tend to allow the owner to choose from multiple national codes in order to satisfy requirements of their rules. Since these states adopt national codes by reference (without making state-specific amendments), they can use a streamlined approach to incorporate a newer version of codes by simply proposing to change the date of the referenced code in a proposed rulemaking. Of course, if the newer revised code only contains minor or insignificant changes then no changes would be necessary.

Proposed Solution:

1. Transfer the Storage and Handling of Flammable and Combustible Liquids program (R 29.510 – R 29.5516) from the DEQ to the Bureau of Fire Services (within LARA) through an executive order.
2. The Bureau of Fire Services should revise these rules (R 29.5101 – R 29.5516) to rescind the current Michigan-specific amendments to the national codes and then adopt by reference the current national codes (without state-specific amendments).
3. Concurrent with the Bureau of Fire Services rulemaking in Proposed Solution #2 above, the DEQ should determine if there are remaining environmental concerns specifically related to the PIPP Part 5 rules (R 324.2001 – R 324.2099) pertaining to aboveground storage tanks. If environmental concerns are identified, they should be evaluated against the best practices in neighboring states to determine whether

additional regulations by the DEQ are truly necessary.

Rationale for Change/Additional Comments: The primary focus of this program is fire and explosion protection, and therefore belongs in the Bureau of Fire Services.

Michigan is the only state in the Greats Lakes region that makes amendments to national code. Compliance requires reviewing the stand-alone DEQ rule beside all of the individual applicable NFPA Codes reference above. Other states reference the code, without making state-specific amendments, which makes it much easier to change the reference for new code editions where warranted. Eliminating the Michigan-specific amendments to the rules that exceed federal standards will result in less complex and more efficient regulations.

Most other states in the Great Lakes region regulate AST in the State Fire Marshal's office (or a non-environmental agency) since the regulations are focused on fire and explosion safety. The regulation of UST are mixed, with some states authorizing the environmental agency and other states authorizing the Fire Marshal's office or similar agency.

DEQ goes beyond accepted fire protection industry standards by requiring aboveground storage tanks (AST) containing flammable and combustible liquids to comply with the spill and overfill protection requirements found in the federal (and Michigan) underground storage tank (UST) regulations. These requirements are redundant in purpose to federal and DEQ rules which also regulate AST (federal SPCC and Michigan PIPP).

No. R-7g
Subject: Liquefied Petroleum Gas (LPG) (R 29.6001 – R 6097)
Regulation: R 29.6001 – R 29.6097
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules apply to the operation of all liquefied petroleum gas (LP gas) systems. A person shall comply with these rules, other applicable state and federal statutes, and rules and regulations promulgated under the statutes. The purpose of these rules is to provide for the prevention of fires and the protection of persons and property from the exposure to the dangers of fire or explosions.

In 1998, the authority to promulgate these rules was transferred from the Department of State Police (specifically the State Fire Marshal) to the Department of Environmental Quality by executive order. At the time, the thought was that transferring the duties to the DEQ would lead to "efficient administration and effectiveness of government to regulate the storage and handling of these hazardous materials within one department." (MCL 29.641). Unfortunately, the transfer has not led to efficient administration and effectiveness of government for this program. Rather, the program has become even more complex and cumbersome for the regulated community.

Proposed Solution: The Liquefied Petroleum Gas (LPG) program (R 29.6001 – R 29.6097) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Rationale for Change/Additional Comments: The purpose of this rule is to provide for the prevention of fires and the protection of persons and property from the exposure to the dangers of fire or explosions, and should be transferred to the Bureau of Fire Services. In addition, they make Michigan specific amendments to the NFPA and NACE Codes and incorporate by reference NFPA Code 58, NACE RP0285 and RP0169. Eliminating the Michigan-specific amendments to the rules that exceed federal standards will result in less complex and more efficient regulations.

No. R-7h
Subject: Storage and Handling of Gaseous and Liquefied Hydrogen Systems (R 29.7001 – R 29.7199)
Regulation: R 29.7001 – R 29.7199
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules apply to the operation of all gaseous and liquefied hydrogen systems. A person is required to comply with these rules, other applicable state and federal statutes, and rules and regulations promulgated under the statutes. These rules address fire safety issues regarding the storage and handling of hydrogen.

In 1998, the authority to promulgate these rules was transferred from the Department of State Police (specifically the State Fire Marshal) to the Department of Environmental Quality by executive order. At the time, the thought was that transferring the duties to the DEQ would lead to "efficient administration and effectiveness of government to regulate the storage and handling of these hazardous materials within one department." (MCL 29.641). Unfortunately, the transfer has not led to efficient administration and effectiveness of government for this program. Rather, the program has become even more complex and cumbersome for the regulated community.

Proposed Solution: The Storage and Handling of Gaseous and Liquefied Hydrogen program (R 29.7001 – R 29.7199) is related to fire safety and should be transferred from the DEQ to the Bureau of Fire Services (within LARA) through an executive order. Further, the Michigan-specific amendments to the national codes should be rescinded and the current national codes should be adopted by reference.

Rationale for Change/Additional Comments: These rules are related to fire safety issues of a flammable material, and should therefore be transferred to the Bureau of Fire Services.

In addition, these rules make Michigan-specific amendments to NFPA Code 50A and are the only rules in this issue subsection that incorporate the actual copyrighted NFPA Code 50A language into the DEQ amendments. These rules make reference to NFPA 10, 13, 69, 70, 220, 704, and ANSI/ASME, ASTM, and CGA. Eliminating the Michigan-specific amendments to the rules that exceed federal standards will result in less complex and more efficient regulations.

In 2005, NFPA incorporated the provisions of NFPA 50A and 50B into NFPA 55 (Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks). NFPA 50A and 50B codes have been discontinued.

No. R-8
Subject: Definition of "Background" Concentrations for Hazardous Substance in Soil and Groundwater
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: Under Part 201, liable parties are required to remediate soil to background levels. This would be reasonable if "background" was defined (loosely) as what was in the soil before a release occurred. However, the Part 201 rules define background as "not attributable to any release at or near the site." In essence, this requires soil to be cleaned up to "pristine" conditions. For obvious reasons, this is simply impossible for most property in industrial areas.

It is widely recognized that soils in urban areas typically have elevated concentrations of certain substances – both naturally-occurring (e.g., lead, nickel, zinc) and not (dioxins, polycyclic aromatic hydrocarbons) – due to a century or more of industrial operations that released these substances to the air, land, and water. At the same time, it was common practice to use foundry sand, slag, cinders, ash, demolition debris, and other "inert" solid wastes as fill material, especially on industrial property. As a result, soil in virtually all urban-industrial centers have concentrations of metals, PAHs, and other chemicals that are well above what would be typical for unimpacted soil. Even the USEPA has said these compounds are "ubiquitous in environmental media throughout the world" (USEPA 2000) and encourages practitioners to carefully consider "industrial background" concentrations when establishing cleanup goals for all hazardous substances. They write, "Anthropogenic chemicals may be detected in soil samples far removed from point sources. It is important to be able to differentiate the natural or regional concentrations of hazardous substances from those that are associated with a source and pathway at a specific site."

The DEQ's current approach to anthropogenic contamination should be changed. It is patently unfair to expect property owners to undertake "never-ending" environmental studies and costly cleanups to address contamination that they did not cause.

Proposed Solution: The DEQ should consider "industrial background" concentrations (otherwise known as anthropogenic contamination) when establishing cleanup goals for all hazardous substances. Specifically, the Part 201 statute, Rule 299.5701, and the Part 5 and Part 10 rules should be amended, as necessary, to create a process whereby the DEQ will work with the regulated community in areas containing anthropogenic contamination. This process should include:

1. The DEQ should make existing data regarding anthropogenic contamination across the state available to the regulated community.
2. The DEQ should allow flexibility for the regulated community to develop data regarding anthropogenic contamination for particular sites.
3. At sites where anthropogenic contamination exists, there should be no obligation for an owner/operator to clean-up the contamination. Rather the DEQ should work with the owner/operator to develop a due-care plan for the site.

No. R-9
Subject: Due Care for Indoor Air Inhalation at a Property Subject to MIOSHA Standards
Regulation: R 299.51013(5)(b) and R 299.51013(5)(c)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Vapor intrusion into structures has been identified as an issue of increasing concern. Rule 1013 clearly acknowledges a distinction between residential properties and commercial/industrial properties regulated by MIOSHA worker protection laws and regulations. However, sections (5)(b) and (5)(c) place restrictions upon the property owner's ability to rely on the MIOSHA laws to regulate employee exposures in facilities where soil or groundwater contamination may pose a vapor intrusion (indoor air inhalation) risk.

Rule 1013(5)(b) states that the MIOSHA (OSHA) workplace exposure standards may be used as part of site-specific evaluation in connection with a Part 201 due-care evaluation if the chemical of concern is also being used in a process in the structure. This limitation on use of the MIOSHA standards ignores the fact that the MIOSHA workplace standards apply to ALL work places where chemical exposure is an issue, regardless of source. It also ignores the fact that the USEPA concurs with that interpretation and accepts OSHA criteria for indoor air exposures in all work places regulated by OSHA.

Rule 1013(5)(c) requires that exposure for non-worker populations (e.g. customers of a commercial/retail facility) still be evaluated on a site-specific basis or using a criterion developed by the department. Currently, the department often is not accepting use of the generic indoor air criteria promulgated in Part 201 rules and is requiring use of Operational Memorandum criteria, which can be as much as 9,000,000 times more restrictive than OSHA criteria. This can lead to the following scenarios:

- If only workers are in a facility, the MIOSHA standards can apply, but if a customer enters, an exposure criteria over 1,000,000 times more restrictive may apply, even though the exposure duration is much shorter than for the workers. This can add hundreds of thousands of dollars in due care compliance costs.
- The exposure criteria for a customer of a dry cleaner, where chlorinated solvents are used, can be 9,000,000 times as high as for the same customer in an office building or other retail store on a contaminated site subject to Part 201 due care.

Proposed Solution: The Part 201 inhalation criteria and due care related rules (R 299.5714(6), R 299.5724(6) and R 299.51013(5)), and if necessary, Part 201, should be modified and amended so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of property by applying MIOSHA and USEPA workplace exposure criteria for both workers and non-workers in workplaces in lieu of generic Part 201 criteria and without regard to whether or the extent to which the chemical in question is being used in the workplace. This would include the deletion of the limitations contained in R 299.5714(6)(a)-(c), R 299.5724(6)(a)-(c) and R 299.51013(5)(a)-(c). In addition, if generic soil gas criteria are promulgated, the criteria should be based on indoor air or inhalation exposure limits established under MIOSHA if established for the chemical in question.

James Clift Comments: The environmental community opposes the use of MIOSHA rules to dictate cleanup standards. Part 201 standards are health-based and designed to be consistent

across the board.

No. R-10
Subject: Soil Relocation Statute (MCL 324.20120c) and Associated Rules
Regulation: MCL 324.20120c; Rule 299.5542(2)
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: MCL 324.20120c limits the relocation of soil both within a facility and from a facility to other locations. The law and corresponding R 299.5542 are complicated and difficult to understand and implement and result in (i) non-compliance by those who do not understand their legal obligations, and (ii) decisions by owners and operators to not engage in the Part 201 response activity process, including compliance with section 7a due care obligations, due to the unpredictable requirements of the law and rules.

Both MCL 324.20120c and R 299.5542 should be revised to establish requirements which provide environmental protection in an easily understood manner which does act as an unreasonable constraint on the use and redevelopment of property and encourages compliance with the law and rules.

MCL 324.20120c should be interpreted more liberally, consistent with the goal of encouraging remedial activities which reduce or eliminate human exposure to hazardous substances and protect the environment. The DEQ's current interpretation of MCL 324.20120c prohibits the relocation of soil from one portion of a property to another portion of the property that is not similarly contaminated, even if the property owner or operator handles the soil in a manner that reduces or eliminates human exposures, such as by relocating the soils to berms that are properly capped with clay or top soil and ground cover. This interpretation unnecessarily increases the cost of remedial activities, for example, by requiring expensive landfill disposal of soils that present minimal environmental risk, all of which can be economically managed on-site if MCL 324.20120c was interpreted more liberally or amended to eliminate any ambiguities that the DEQ believes exist in the law.

The rules also contain requirements beyond that required by MCL 324.20120c. For example, R 299.5542(2) improperly applies the MCL 324.20120c soil relocation limitations to soils that exceed criteria intended to protect an aquifer, but even if an aquifer is not present at the facility, instead of considering the criteria under "section 20120a(1) or (2) that apply to the location to which the soil will be moved or relocated…" By ignoring whether the groundwater protection pathway is complete and relevant, this rule could lead to increased remedial and operating costs. Additional ambiguities and inconsistencies exist in both the law and rules.

In addition, the interface between MCL 324.20120c and Part 115 needs to be improved as past attempts to reconcile and coordinate the regulation of soil relocation under the Part 201 and Part 115 programs has not been fully successful after many years of attempts. In particular, proposed revisions to Part 115's Rule 110 (R 299.4110(l)) by revision of the definition of "other wastes regulated by statute" under Part 115 would facilitate a more flexible and cost effective application of these concepts.

Proposed Solution: The DEQ should implement MCL 324.20120c to permit the relocation of contaminated soils within facility or property so long as due care or other measures are implemented which prevent human exposure or harm to the environment. In addition, the state

should amend MCL 324.20120c and amend R 299.5542 and adopt proposed revised R 299.4110(l) in order to reduce regulatory burdens in connection with the proper relocation of soil under Part 201.

Rationale for Change/Additional Comments: Revising this statute and R 299.5542 will provide clarity and certainty to the regulated community, and will result in increased compliance and participation in the Part 201 response activity process.

No. R-11
Subject: Source Control Requirements Under MCL 324.20114(1) and R 299.5526(4)
Regulation: MCL 324.20114(1) and R 299.5526(4)
Remedy: ☐ Process ☒ Rules ☒ Statute

Background and Description of Issue: MCL 324.20114(1) requires a liable party to take actions including: (i) "immediately stop or prevent the release at the source" (MCL 324.20114(1)(c)), (ii) "immediately implement source control or removal measures to remove or contain hazardous substances that are released after [June 5, 1995] if those measures are technically practical, cost effective, and provide protection to the environment" (MCL 324.20114(1)(d)), and (iii) immediately initial removal of a hazardous substance that is in a liquid phase, that is not dissolved in water, and that has been released." (MCL 324.20114(1)(f)).

There is significant confusion about the meaning of these requirements, including whether the term "source" is intended to mean an active source such as a leaking drum, free product, spill or other location of hazardous substances that have not yet been released into soil or water. This lack of clear understanding results in insufficient actions being taken in some cases, while in others the Remediation Division requires response activities that are not required by MCL 324.20114(1) due to its belief that sources are present and must be removed by a liable party.

Only Rule 299.5526(4)(c) appears to address any of these situations by establishing an obligation of a liable party to implement source removal for free phase liquids.

Proposed Solution: R 299.5526(4) should be amended to facilitate a clear understanding of the requirements of MCL 324.20114(1), including what constitutes a "source" subject to the Section.

No. R-12
Subject: Relationship Between Part 201 & Part 213
Regulation: Part 201; Part 213
Remedy: ☒Process ☒ Rules ☒ Statute

Background/Issue: Part 201 is the program specifically designed to govern the cleanup of contaminated property across the state. The program was formed by Public Act 307 of 1982, and significantly expanded in 1990. In 1988, in response to federal legislation, Michigan created a separate program governing the cleanup of leaking underground storage tanks. The governing statute was amended in 1993 and 1995. The registration and UST regulatory program became Part 211 of the NREPA when Michigan's environmental laws were codified (451 PA 1994). The program for cleaning up leaking USTs became Part 213, when Michigan's environmental laws were codified (451 PA 1994).

Between 1988 and 1995 the state operated a program to assist leaking underground storage tank owners in remediating contaminated sites (Michigan Underground Storage Tank Financial Assurance Fund). Due to funding shortfalls the program terminated in 1995, although the state continues to collect 7/8 cents per gallon. That program required the use of "qualified consultants" to do work that funded by the state. Those consultants are still utilized today for the Part 213 program, but not the Part 201 program.

There is a significant overlap between department administration of Parts 201 and 213. Both cover the cleanup of contaminated sites, utilize the same liability standard and must meet the same standards regarding the cleanup of the contaminated sites. However, each program maintains its own staff and supervisors, and has separate administrative rules, and they have both separate and common funding sources.

The end result is the state is operating two different programs even though the contaminates of concern, risks to public health, and the strategies and techniques for investigation and remediation at any particular site may be identical. Merging the programs would more efficiently utilize scarce public resources.

Proposed Solution: Combine Parts 201 and 213 into one statute and one program, merge staffs and focus on one set of administrative rules to govern the cleanup of contaminated sites in Michigan.

Rationale for Change/Additional Comments: Combining Parts 201 and 213 would increase efficiency and result in cost savings for the department and the regulated community.

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.

No. R-14
Subject: Boron Standard for Groundwater (R 299.5744)
Regulation: R 299.5744
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The use of 500 ug/l boron, a phytotoxicological standard based on celery leaf damage, as the Part 201 drinking water standard instead of the actual drinking water standard of 1900 ug/l should be discontinued. This lower standard puts dischargers statewide in remedial action when there is no threat to drinking water and there is almost always no celery farm to protect.

Proposed Solution: Amend R 299.5744 to use the drinking water standard as the criteria for boron. Prior to determining to the applicability of the drinking water standard at a site, the pathway must be reviewed to determine if the impacted portion of the receiving waters is being used for purposes of irrigation. If the impacted portion of the receiving waters is being directly used for irrigation, then a lower standard may be set at the discretion of the DEQ to protect potentially sensitive crops.

Rationale for Change/Additional Comments: The current standard of 500 ug/l was set based on a study that showed damage to certain crops (celery, beans, onions, grapes, and fruit trees) when irrigation water was used with boron concentrations above 500 ug/l. Other crops, such as corn, thrive with irrigation water with higher concentrations of boron as boron is a nutrient for these plants. It is a rare circumstance that industrial groundwater discharges are used for irrigation purposes. It is rarer still for these discharges to be used for irrigation water for sensitive crops. Consequently, it makes sense to use the drinking water standard for boron for the vast majority of groundwater discharges. It does not make sense to set the standard at the lowest recommended level, but to reserve that determination only when irrigation is being applied. If irrigation is being applied, the DEQ has the discretion to set a lower standard based on the expected use of that irrigation water, including the potential for crop rotation.

No. R-15
Subject: Quality Review Team
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: The Quality Review Team is non-transparent and inefficient. District office representatives present interim and final remediation and due-care plans to senior Remediation Division staff in a closed-door meeting. Decisions are not delegated to the districts; they are issued by Lansing management and often take weeks.

Although there is benefit to consistent regulation across the state, this can be accomplished through more appropriate means, such as educating the district staff. To the extent needed, the senior Remediation Division staff may engage on major decisions. But senior Remediation Division staff should not be required to approve most decisions.

Proposed Solution: Discontinue the Quality Review Team process, focusing instead on educating district staff and monitoring appropriately. The DEQ's process to educate District staff and monitor decision-making should focus on achieving consistency, quality control, and collaboration with the regulated community.

Rationale for Change: Elimination of the Quality Review Team will streamline the process and should create transparency.

No. R-16
Subject: Flexibility When Site Exceeds Only Secondary Non-Health-Based Standards
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: Michigan's rules do not allow for appropriate flexibility to close a site where there is off-site migration of groundwater exceeding secondary non-health based standards. Specifically, the requirement to obtain landowner signatures on restrictive covenants should not be automatically required when a landowner is hooked up to municipal water.

Proposed Solution: The Part 201 statute and the Part 5 rules should be amended to provide the DEQ with the flexibility to approve a limited closure at a site where hazardous substances are migrating onto adjoining properties at levels that exceed only secondary non-health-based standards and where the affected property is hooked up to municipal water. Specifically, the amendments should authorize the DEQ to approve a closure at these sites according to the following process:

1. The owner/operator develops data regarding the plume-migration characteristics and information regarding property owners within the plume that are hooked up to municipal water.
2. The owner/operator sends notice to all identified property owners informing them that contamination exceeding secondary non-health-based standards is migrating onto their property and that the owner/operator has requested a no-further-action letter from the DEQ, and the property is a "Facility" subject to disclosure obligations under Part 201 or Part 213.
3. The notice should provide each landowner a period of time (such as 21 days) to respond if they feel that the DEQ should not issue the no-further-action letter.
4. If the DEQ does not receive any responses within that time period, the DEQ may move forward with issuing the no-further-action letter. On the other hand, if one or more landowners respond, the DEQ must review each response to determine whether the migrating contamination is reasonably anticipated to impair the use of the property. If no such impairment is found at any of the properties, the DEQ may issue the no-further-action letter.
5. The Part 201 statute and rules should explicitly state that this process in no way affects or limits any rights of a property owner.

Rationale for Change/Additional Comments: These changes will lead to more closures while still protecting the rights of adjoining landowners.

No. R-17
Subject: Review Part 201 Cross-References
Regulation: Part 201; R 299.5532
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Certain sections of R 299.5532 cross reference parts of the statute that has been amended, and the cross reference no longer makes sense, e.g., 299.5532(2)(a) and 299.5532(11)(i)(i). Part 201 was amended in December of 2010 and there may be other incorrect cross references.

Proposed Solution: The DEQ and Attorney General's office should review all cross references contained in the Part 201 rules and correct any errors.

Resource Management Recommendations

No. RM-1
Subject: Liquid Industrial Waste Regulations

Recommendation: The DEQ should develop rules and/or changes to the statute(s) governing liquid industrial waste to make the process of handling these materials more streamlined and cost effective for the regulated community while protecting human health and the environment. In the development of these rules and recommendations, the department should look at what rules can be eliminated and how the various rules can be consolidated.

This rules package and/or statutory change recommendations must be evaluated in comparison to the federal standards and should be consistent with the programs in surrounding Great Lakes States. Any rules package and statutory changes should be presented to the Office of Regulatory Reinvention (ORR) by September 1, 2012.

The development of the liquid industrial waste recommendations must consider:

- The role of manifests in the hauling and disposal process.
- The development of an electronic manifesting system.
- *De minimis* and threshold quantities in determining applicability of the law or rule.
- Duplicative rules and standards between the various parts of the Act(s) governing liquid industrial waste.
- Whether certain insignificant materials such as used oil, wash water and other small or insignificant materials should be included in the Act.
- How liquid industrial waste is handled under the present laws and rules.
- Registration/licensing of liquid industrial waste haulers.
- The reasons for using a licensed hauler.
- Reasonable insurance and financial assurance requirements that reflect real risk and actual costs.
- Whether the current list of materials in the Act should continue to be listed.
- The option of regulating used oil as a universal waste.
- Consider regulating other LIW wastes streams as universal waste.

No. RM-2
Subject: Beneficial Reuse
Remedy: ☐ Process ☐ Rules ☒ Statute

Background/Issue: Current definitions of solid waste and inertness do not facilitate the beneficial reuse of high volume/low impact materials such as paper mill sludge, foundry sand, etc. Application of Part 201 cleanup criteria are inappropriate and discourage beneficial reuse.

Recommendation: The DEQ should develop, based on recommendations from stakeholders, a new comprehensive Beneficial Reuse Act. The recommendations of the stakeholder workgroup should be completed by April 1, 2012 and legislation prepared by May 1, 2012.

Rationale for Change: Many suitable by-products are regarded as waste by the DEQ and are buried or burned. Michigan should be a leader in innovation and beneficial reuse of by-products from the manufacturing industries in our state.

No. RM-3
Subject: Michigan Hazardous Waste Regulations
Regulation: Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Michigan's lists of hazardous wastes included in Table 205c of R 299.9226 are more restrictive than federal Resource Conservation Recovery Act (RCRA) standards. No additional treatment standards are required for these wastes. Michigan's rules exceed federal standards but do not provide additional environmental protections. There is confusion created by different state and federal listing codes for hazardous substances.

DEQ collects manifests from RCRA permitted facilities and generators of hazardous waste. At one point DEQ had three FTEs performing data entry. The data is still being entered. The only use for the data of which we are aware is to generate a draft biennial report for generators. This burden (creation of biennial reports) should be borne by the generator, not the state/taxpayer. Eliminating the data entry seems reasonable.

Michigan has lists of hundreds of chemicals that go well beyond the USEPA listed hazardous waste. These lists are located in Rule 219 (Table 202), Rule 223 (Table 204b) and Rule 226 (Table 205c).

Proposed Solution: The DEQ should conduct a systematic review - including stakeholder and public comment - of the chemicals and wastes listed in R 299.9226, Table 205c ("U" listed); R 299.9219, Table 202 ("S" characteristic); and R 299.9223, Table 204b ("K" listed). The review should consider new information about the chemicals and wastes to determine if they should remain on the lists or be removed.

Rationale for Change/Additional Comments: By going above and beyond the federal RCRA requirements, Michigan industries have to comply with and fund the implementation of requirements that are not required of industries in other states. Also, by not incorporating the federal RCRA regulations by reference, DEQ delays implementation of federal requirements by having to implement its own rulemaking process. Favorable federal regulatory changes may never be adopted since states are not required to adopt less stringent requirements. For example, Michigan has not, and may not adopt, the revised definition of solid waste that would allow increased opportunities for reuse and recycling of certain materials by reclassifying their status to non-hazardous (for example, spent purge solvent from automotive paint shops).

James Clift Comments: The environmental community supports public transparency when it comes to hazardous wastes that are generated, stored and transported through Michigan communities. Unfortunately, many chemicals in wide use today have also not been fully tested regarding their potential impact on public health. We therefore oppose restricting the number of chemicals covered by the current reporting systems.

No. RM-4
Subject: Rescind/Repeal Michigan PCB Regulations
Regulation: Part 147, Chemical Compounds, Subpart 1, PCB Compounds (MCL 324.14701 – 324.14705) of Act 451 and administrative rules (R 299.3301 – R 299.3319)
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: Michigan's PCB regulations are no longer necessary given the existence of detailed USEPA PCB regulations. PCB regulations are regulated under Part 147 and administrative rules (R 299.3301 – R 299.3319). These rules are outdated and have been superseded by USEPA PCB regulations (40 C.F.R. Part 761) enacted under the U.S. Toxic Substances Control Act. Michigan PCB rules are no longer enforced, but remain in the administrative code.

Proposed Solution: Michigan's PCB rules (R 299.3301 – R 299.3319) should be rescinded. Make statutory amendments necessary to remove PCB regulations from Michigan statute (MCL 324.14701 – 324.14705).

Rationale for Change/Additional Comments: Most interpret the TSCA pre-emption clause as not allowing states to regulation PCBs above and beyond USEPA regulations. Michigan is no longer supporting or enforcing these regulations, but leaving them on the books opens regulated community up to potential risk and causes confusion.

No. RM-5

Subject: Hazardous Waste Biennial Reporting Required Under the Federal Resource Conservation Recovery Act (RCRA) Of 1976

Regulation: Section 3002(a)(6) of the Resource Conservation Recovery Act (RCRA) of 1976 requires USEPA to develop a program for hazardous waste generators to report the nature, quantities and disposition of hazardous waste generated at least once every two years. In addition, Section 3002(a)(2) requires treatment, storage, and disposal facilities (TSDFs) to submit a report on the wastes they receive from off-site.

Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: Biennial reporting and the RCRA Permitting process are bulky and redundant. The DEQ collects the biennial reporting information on behalf of the USEPA. The USEPA defines the data points that must be collected and transmitted to the federal database. The ability for generators and treatment storage and disposal facilities to file electronic biennial reports would be ideal. Currently, the state does not have the resources to implement an electronic data collection system. The state has been using the Waste Data System (WDS) to help prepare biennial reports and with the latest update to WDS, all the data is available on-line. The state has also been advocating on behalf of the regulated community to reduce the reporting burden of the biennial report to only those data points that are required by rule. The DEQ is amenable to further discussions on how to streamline the collection of biennial reporting information, but this is a federal requirement.

DEQ has tried to assist large quantity generators (LQGs) and treatment, storage and disposal facilities (TSDFs) with biennial reporting via information packets as outlined on the following Web site: http://www.michigan.gov/deq/0,1607,7-135-3312_4118_4240-181382--,00.html. An electronic biennial system would be a great benefit to generators.

Proposed Solution: The DEQ should convene a stakeholder workgroup to develop electronic biennial reporting for hazardous waste generators to streamline the process and eliminate duplicative reporting.

No. RM-6
Subject: Financial Assurance for Landfills
Regulation: Part 115 (MCL 324.11501, et seq.)
Remedy: ☐ Process ☐ Rules ☒ Statute

Background/Issue: The current regulation has distinct financial assurance requirements for Type III and Type II landfills; however, proposed changes to Part 115 would require some non-hazardous Type III landfills to meet the same financial assurance requirements of Type II landfills.

Proposed Solution: Part 115 should be amended to allow for additional financial assurance mechanisms, and to streamline and create a more cost effective method of assuring proper funds are available for landfill emergencies and closure.

Rationale for Change/Additional Comments: Increases in the amount of financial assurance required drives up cost – especially for companies struggling with credit restrictions in this difficult economy.

No. RM-7
Subject: Hazardous Waste User Charge and Manifest Systems
Regulation: User charges are established under Part 111, Hazardous Waste Management, of the NREPA and underwent revision pursuant to PA 403 of 2008. Manifest requirements are found in both Part 111 and Part 121, Liquid Industrial Waste, of the NREPA.
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The required manifesting system is paper intensive and burdensome. Hazardous waste user fees are awkward and arbitrary. Both should encourage appropriate behavior: reduced volume of hazardous waste generated.

Proposed Solution: The DEQ should convene a stakeholder group to redesign the hazardous waste user charge system to make it fair, simple and timely, and to develop electronic methods for minimizing the paperwork associated with the verification of hazardous waste manifests.

Rationale for Change/Additional Comments: A more efficient system would result in the elimination of paperwork. There is no reason for generators to review DEQ data entry for accuracy as part of this report. In addition, generators should not have to add unprocessed manifests from the current year to the report. The invoice sent to the generators should have all manifests for that year that DEQ processed.

No. RM-8
Subject: Medical Waste Storage Accumulation Limitation (Sharps Containers) Part 138, Medical Waste Regulatory Act, 1978 PA 368, as Amended
Regulation: MCL 333.13809(1)(h); R 325.1541 – R 325.1549
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: The state mandates "use" limitation of 90 days for sharps containers. This limitation results in many containers being disposed of that are not full. In addition the tracking and labeling requirements are burdensome. Current medical waste rules treat all sharps as medical waste.

Proposed Solution: Amend the act and/or rules governing the disposal of medical waste to require disposal of sharps that are used strictly for non-medical procedures (a) when the storage container is full, or (b) annually, whichever occurs first. The sector(s) receiving this exemption should be defined in the rules to avoid having sharps containers with different storage requirements within the same facility.

Rationale for Change/Additional Comments: Would eliminate disposing of partial containers, which would result in a cost savings, increased sustainability, and reduction in burdensome tracking/labeling/removal workflow.

No. RM-9
Subject: Conformance Bond or Statement of Financial Responsibility Requirements for Mineral Well (Disposal Well) Operators; Part 625, R 299.2330
Regulation: Part 625, R 299.2330
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: USEPA Underground Injection Control (UIC) regulations also require financial responsibility requirements which are the same as the states but are not on the same form. The USEPA annual financial test requirements for the same wells should be sufficient to meet the state's requirements.

Proposed Solution: DEQ, with input from stakeholders, should attempt to enter into a memorandum of understanding with the USEPA to utilize the same conformance bond, and if successful, should rescind any duplicative rules.

Rationale for Change/Additional Comments: The DEQ requirements for conformance bonds are redundant with the federal regulatory program.

Water Recommendations

No. W-1
Subject: Part 5, Spillage of Oil and Polluting Materials, of the NREPA (PIPP, TRQs, 911 Notification, Release Reporting Related to Secondary Containment)
Regulation: R 324.2001 – R 324.2009; MCL 324.3111b
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: As a whole, this rule set is more stringent than federal requirements. To a certain degree, these rules can be viewed as an example of the state accepting the stewardship responsibility of protecting the Great Lakes. However, much of the increased burden and stringency created at the state level is excessive and provides little in way of additional protection.

Portions of the rule are related to the federal Spill Prevention Control, and Countermeasure (SPCC) program which requires a spill prevention control plan. But where the SPCC plan is focused primarily on oil, the state has created an extensive 20-page list of state-specific chemicals (about 900 chemicals), including salt, that would require a pollution incident prevention plan if the threshold management quantity (TMQ) is exceeded. For outdoor locations, a TMQ of only 440 pounds is all that is necessary to trigger the requirement to generate a state plan.

Another area of excessive state stringency is related to the threshold reporting quantity (TRQ) of polluting materials in Table 1 of Part 5, Rule 9. The Table 1 list appears to closely resemble the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reportable quantity (RQ) list in terms of the listed chemicals. However, the major difference when comparing the two lists is that the state TRQ level is uniformly only 10% of the CERCLA RQ (for any chemicals where the CERCLA RQ is 100 pounds or greater). For example:

- The CERCLA RQ for sodium hypochlorite is 100 pounds and the state TRQ is only 10 pounds.
- The CERCLA RQ for propylene oxide is 100 pounds and the state TRQ is 10 pounds.
- The CERCLA RQ for potassium hydroxide is 1,000 pounds and the state TRQ is 100 pounds.
- The CERCLA RQ for quinoline is 5,000 pounds and the state TRQ is 500 pounds.

When a facility subject to Part 5 has a release that exceeds the state TRQ, the spill notification process must be initiated, but as demonstrated above, at a level only $1/10^{th}$ of the federal spill notification requirements for many compounds. The federal Emergency Planning and Community Right-To-Know Act (EPCRA reporting) thresholds for spill reporting have been in existence for years and are effective. Having a different state reporting threshold that is arbitrarily set at only $1/10^{th}$ of the federal RQ is not reasonable and only complicates the notification process.

In addition to the state TRQ levels being more stringent that federal RQ, the state also requires that releases must be reported to local 911. The 911 reporting requirement was passed into law in 2004, primarily as a reaction to releases that originated in Canada. Why releases, originating in Canada, resulted in imposing additional requirements on Michigan businesses is still not

clearly understood. Releases already trigger the potential need to promptly call the National Response Center (if the RQ is exceeded) and the DEQ Pollution Emergency Alerting System (PEAS) Hotline (if the TRQ is exceeded). The additional call to 911 detracts from the true emergency intent for the local 911 for the vast majority of situations.

The Pollution Incident Prevention Plan (PIPP) also has other unusual and unreasonable requirements. For example, the release of more than 1,000 gallons of a "polluting material" into a secondary containment area must be reported even when fully contained and there is no impact on the environment. Further, even a release of less than 1,000 gallons of a polluting material into a secondary containment area must be reported if the cleanup is not initiated with 24 hours (and completed within 72 hours) even when fully contained and there is no impact on the environment. This requirement is unnecessary, it only impacts Michigan and should be eliminated.

The TRQs related to salt, either as a solid or in liquid solution, also need to be revised to be more realistic. In a northern climate where literally tons and tons of salt are dumped on the roads on winter days, it's quite extreme to require that salt releases be reported (by stationary businesses) if they exceed 50 pounds as a solid or 50 gallons as a liquid.

Another concern is the definition of "polluting material", which includes any compound or product that contains 1% or more of oil, salt or any of the ~900 compounds specified in Table 1 of R 324.2009. The concept of using a percentage threshold seems valid due to mixtures, but 1% is a very small percentage to pull the entire mixture into the Part 5 rules. Increase this threshold to a more reasonable level of 25 – 50%.

Finally, there are certain aspects and guidance references in the rules that may force regulated community to accept certain risks that are not otherwise considered acceptable, *e.g.,* referencing the management and storage guidance for rail cars.

Proposed Solutions:

1. Increase the threshold management quantity (TMQ) which triggers the need for a PIPP from 440 pounds (about 1 barrel) to a more reasonable level of 500 gallons. (R 324.2002(f)(iv)).
2. Revise the threshold reporting quantities (TRQs) in Table 1 to make all TRQs similar to the federal CERCLA RQs (many are currently only $1/10^{th}$ of the federal level), or eliminate Table 1 and reference the existing CERCLA RQs for the reporting thresholds. (R 324.2009 Table 1).
3. Revise MCL 324.3111b to eliminate the requirement to call local 911. When reporting is necessary, calls are already required to the National Response Center and the DEQ PEAS hotline.
4. Eliminate the reporting requirements related to releases that go to secondary containment. (R 324.2002(b)(i)).
5. Significantly increase the reporting threshold for salt to 1,000 pounds for solids and 1,000 gallons for liquids. (R 324.2002(g)(iii)).
6. Increase the mixture threshold from its current 1% level to more of a 25 – 50% range. (R 324.2002(a)(iv)).
7. In general, revise Part 5 rules to make them easier to understand and follow. Work

with regulated community to establish rules that are understandable, technically feasible, and will achieve intended results.

8. Revise the conditional exemption in R 324.2003(1)(b) to reference the current version of the SPCC regulations at 40 CFR Part 112, currently dated October 14, 2010. The current rule reference is the 1997 SPCC regulation, making the current conditional exemption useless. (R 324. 2003(1)(b)).

Rationale for Change/Additional Comments: This program is not required by Federal law, and is redundant to federal SPCC, CERCLA, and EPCRA regulations. (See summary of federal requirements in Addendum on the following page which summarize the health and environmental criteria that is evaluated in order to establish federal RQ levels). The 911 requirement puts undue stress on already busy and understaffed police and fire operators. CERCLA / EPCRA reporting already require notification to Local Emergency Planning Committees (LEPC) to trigger local response, if needed. The cost of compliance is unnecessarily high due to state specific standards, such as those relating to Pollution Incident Prevention Plans (PIPP). These rules exceed federal requirements and those of other states in the region. In addition, they are complex and do not address concerns in a common sense manner or approach.

James Clift Comments: The environmental community supports attempting to streamline the reporting process and building off federal requirements. We also support eliminating the use of 911 in non-emergency situations and substituting other appropriate local officials. The environmental community does not support reducing the threshold quantities for release reporting to the state.

Addendum to Recommendation W-1

USEPA Reportable Quantity Adjustments

The following information is from USEPA's website at:

http://www.epa.gov/superfund/policy/release/rq/index.htm#method

What Is the Purpose of RQ Adjustments?

Why adjust the CERCLA statutory RQs?

Statutory RQs are often those set provisionally by Congress (usually at one pound), pending detailed scientific analysis by USEPA and adjustment through notice and comment rulemaking. They often do not reflect the relative hazard posed to public health and the environment. By adjusting the RQs, the Agency is able to focus its resources on those releases that are more likely to pose potential threats to public health or welfare or the environment, while relieving the regulated community and government emergency response personnel from the burden of making and responding to reports of releases that are less likely to pose such threats.

How Does the RQ Adjustment Methodology Work?

What properties of CERCLA hazardous substances are evaluated for purposes of adjusting the RQs for these substances?

The Agency evaluates the properties of hazardous substances (other than radionuclides) in a two-step process:

Step 1: Primary Criteria

RQ adjustment begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each substance. These intrinsic properties called "primary criteria" are aquatic toxicity, acute mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. USEPA ranks hazardous substances for each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value, from one to 5,000 pounds. For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low," corresponding to RQ levels of 1, 10, and 100 pounds, respectively. Each substance receives several tentative RQ values based on its particular intrinsic properties the lowest of all the tentative RQs becomes the "primary criteria RQ" for that substance. (See "How were the RQs for radionuclides determined?" for radionuclides.)

Step 2: Secondary Criteria

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). In general, if a hazardous substance degrades relatively rapidly in the environment to a less hazardous form by one or more of the BHP processes, its primary criteria RQ is raised one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for

the more hazardous substance.

No. W-2
Subject: Mercury Rule for National Pollutant Discharge Elimination System (NPDES) Permits
Regulation: R 323.1211(7)(a)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: This unique Michigan policy is ineffective in addressing environmental concerns as it does not address atmospheric deposition from global sources. The cost of compliance is very high with no commensurate benefit to Michigan.

The rule does not allow the DEQ to include net intake concentration in the development/calculation of a water quality-based effluent limit (WQBEL) applied at a plant's external effluent.

As a result, industry or an NPDES permittee with a WQBEL for mercury or a toxic substance in the permit will be responsible to remove, treat or control that substance that is otherwise coming in from the intake (as background) whether it is present in the water by natural means or by other sources upstream of the plant, and is not related to plant operations.

Alternatively, DEQ will require a plant to improve the plant's Pollution Minimization Plan (PMP) to include an employee education component to assist in possibly lowering the presence of mercury in noncontact (condenser cooling water) discharge even more. Intake mercury concentrations account for 92% of loading discharged at some sites. This has tremendous cost implications with negligible environmental gains.

If intake loading is not allowed to be accounted for in the Part 8 WQBEL calculation, it will force permittees (including municipalities) to install treatment technologies to remove a loading that they are not otherwise responsible in contributing. This is one more rule that ratchets down on point source discharges at an expense to account for nonrelated source contributors upstream.

Proposed Solution: Allow an NPDES permittee with a water quality-based effluent limit (WQBEL) for mercury in the permit to account for inlet loading concentration when their contribution to the effluent is negligible. Language should be added to R 323.1211(7)(a) that states:

"If the mean effluent concentration is less than 10% greater than the mean inlet concentration (using 24 consecutive months of monitoring data) and does not exceed the mean inlet concentration by more than 0.5 PPT, then the permittee should be exempt from the PMP requirements and subject to annual monitoring."

Rationale for Change/Additional Comments: This unique Michigan policy is ineffective in addressing environmental concerns as it does not address atmospheric deposition from global sources. The cost of compliance is very high with no commensurate benefit to Michigan. The environmental community believes focus should remain on atmospheric deposition of mercury, and any requirements placed on the NPDES permittee should be specifically designed to reduce mercury discharges.

No. W-3
Subject: R 299.2933(4) Promulgated Under Part 41, Sewerage Systems, of the NREPA (MCL 324.4101 et seq.)
Regulation: R 299.2933(4)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: R 299.2933(4) promulgated under Part 41, Sewerage Systems, of the NREPA, MCL 324.4101 et seq., requires an applicant for a private wastewater system to demonstrate that the local unit of government has committed to assume responsibility for the system if the applicant fails to operate and maintain it. The rule was found invalid by the Court of Appeals in *Lake Isabella Development Inc*. v. *Village of Isabella*, 259 Mich App 393 (2003).

Proposed Solution: R 299.2933(4) should be rescinded.

Rationale for Change/Additional Comments: The rule is obsolete.

No. W-4
Subject: Part 22 Rules for Groundwater Discharges
Regulation: R 323.2210
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The rules are vague, causing the regulated community to make inquiries regarding whether various "discharges" to the ground or groundwater would require permitting. When approaching the agency, the regulated community has experienced inconsistent interpretation.

Proposed Solution: R 323.2210 should list types of discharges which do not require groundwater permits – similar to what is done in the storm water regulations. That listing should address issues such as: potable water, fire protection water, irrigation drainage, lawn watering, air conditioning condensate, and foundation or footing drains.

Rationale for Change/Additional Comments: Property owners and businesses need regulatory certainty about what discharges to the ground or groundwater require permits.

No. W-5
Subject: Part 301 (Section 30105) Inland Lakes and Streams; Part 303 (Section 30312) Wetlands Protection; and Part 325 (Section 32512) Great Lakes Submerged Lands of the NREPA
Remedy: ☒ Process ☒ Rules ☐ Statute

Background/Issue: Michigan has three programs – Inland Lakes and Streams, Wetlands Protection, and Great Lakes Submerged Lands – that roughly equate to the U.S. Army Corps of Engineers' (USACE) 404 program. Michigan programs pre-date the USACE programs and regulate different activities in a different manner than the USACE. The USACE and USEPA have identified deficiencies in the DEQ program because it did not permit certain activities that are covered in the Corps Nationwide Program. The USACE Nationwide Program regulates a lot of inconsequential activities, but does so in an unobtrusive manner by allowing coverage through a permit by rule. The DEQ has just passed a new set of requirements that referred to General Permits and Minor Projects that regulate all of these new activities; however, rather than allowing a permit-by-rule, the DEQ requires time consuming individual permits. There is no benefit in requiring individual permits. Major construction projects are delayed while inconsequential permits must first be obtained. Moreover, the Nationwide Permits specify the desired behavior and a permit-by-rule is just as effective in requiring construction according to a set of proscribed practices.

Proposed Solution: Amend Michigan's Inland Lakes & Streams, Great Lakes Submerged Lands, and Wetlands programs to adopt the USACE Nationwide Permitting approach of allowing non-reporting general permits for minor projects below certain thresholds and individual permits for project above those thresholds. Amend the Minor/General Permit Category revisions accordingly. To ensure consistent program implementation, these activities should be coordinated with any proposals from the Wetland Advisory Council.

Rationale for Change/Additional Comments: Recently, a new proposed set of Rules/Permit Categories were developed which are more stringent than what the DEQ has been using. This would result in significant increases in the number of permit applications, longer waiting periods for issued permits and additional requirements for Public Notification / Comments. USEPA will not accept a "permit by rule" approach, but could support something like a USACE "non-reporting general permit" approach.

James Clift Comments: The environmental community supports the current process of review of this program by the legislatively created Wetland Advisory Council. We think changes in the program, including the scope of exemptions, should be designed to ensure continued delegation of the Clean Water Act 404 program. Adoption of nationwide permits categories should be crafted in a manner that is consistent with other program requirements.

No. W-6
Subject: Implementation of General Federal Nationwide Permits: State 401 and Coastal Zone Management Certification Of U.S. Army Corps of Engineers (USACE) Nationwide Permits
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: Nationwide Permits used by the USACE to authorize activities which singly or cumulatively have minimal adverse effects on the aquatic environment require State certification under Section 401 (water quality certification) and Coastal Zone Management portions of the federal Clean Water Act. Of the 44 Nationwide Permits that could be issued by the USACE, the State has denied or partially denied certification for 11 nationwide permits and imposed additional conditions on 19 permits. These denials result in applicants having to submit individual permit applications rather than enjoying the permit-by-rule procedure that other states allow under the Nationwide permits. These denials/conditions should be withdrawn. They provide no environmental benefit. All of the 44 Nationwide Permits specify proscribed construction techniques that are protective of the environment and there is nothing other than delay associated with a requirement for the Corps to issue an individual permit.

Proposed Solution: The DEQ should review, with stakeholder involvement, all 44 USACE Nationwide Permits to determine if the current MDEQ Nationwide permit denials or additional conditions make sense or if they are more stringent than the federal requirements. To ensure consistent program implementation, these activities should be coordinated with any proposals from the Wetland Advisory Council.

Rationale for Change/Additional Comments: DEQ's denials provide no environmental benefit. All of the 44 Nationwide Permits specify proscribed construction techniques that are protective of the environment and there is nothing other than delay associated with a requirement for the Corps to issue an individual permit.

This vetting of the 44 Nationwide Permits has not been done with stakeholder input to ensure that the public interest is being served. Some of the denials and conditions may be in the best interest of the State while some may merely add burden for Michigan business with no environmental benefit.

Rationale for Change/Additional Comments:

James Clift Comments: The environmental community supports the current process of review of this program by the legislatively created Wetland Advisory Council. We think changes in the program, including the scope of exemptions, should be designed to ensure continued delegation of the Clean Water Act 404 program. Adoption of nationwide permits categories should be crafted in a manner that is consistent with other program requirements.

No. W-7
Subject: Sanitary Sewer Overflows Control
Remedy: ☒ Process ☒ Rules ☐ Statute

Background/Issue: Sanitary sewers are designed to carry sewage (and only sewage) to a wastewater treatment plant (WWTP). In practice, however, storm water enters the collection system during rain events causing the system to exceed its design capacity. To prevent basement flooding, this excess water is discharged to the nearby waterways. These overflows (known as sanitary sewer overflows or SSOs) violate the federal Clean Water Act (CWA). Unfortunately, compliance is very costly and care must be taken to assure that the funding committed to SSO control is sufficient to fulfill the requirements of the law while minimizing the costs to the rate payers.

Combined sewers are designed to carry both sewage and storm water. When it is not raining, a combined system sends the sewage to a WWTP for treatment. When it does rain, the collection system collects both sewage and storm water (i.e., combined flow) and the flow is sent to a WWTP, and/or to a combined sewage overflow retention treatment basin (i.e., CSO RTB) for treatment. Sometimes, a rain event is so large that the excess combined flow is discharged to nearby waterways. Such discharges are permitted and (generally) do not result in violations of the CWA. Combined sewage systems are typically found in older well-developed communities, such as the city of Detroit.

Whether it is a sanitary sewer or combined sewer, both types of systems are limited by its particular design capacity. There will always be a larger storm that exceeds the ability to control an overflow. In the case of a large rain event, the system must be relieved by discharging to the river, or basements will flood. No system can be designed to manage all sizes of storms. To eliminate SSOs, one viable and less costly solution would be to permit system operators, where available, to commingle "wet" sanitary flow with combined sewage flow. Basically, this involves a process of diverting "wet" sanitary flow to an existing CSO RTB, where it will be stored for subsequent treatment at a WWTP, or discharged with partial treatment (i.e. settling, screening and disinfection) from the CSO RTB. Using existing CSO RTB capacity would allow communities to quickly eliminate SSOs (because the capacity is already in the ground) and would serve as “emergency capacity” when events that exceed the design standards occur. The problem is that current DEQ policy prohibits the commingling of the flows from different systems.

Proposed Solution: Revise the Part 21 rules (R 323.2101 et seq.) to explicitly direct the DEQ to permit the diversion of separate sanitary flow to a combined sewer retention treatment facility for settling, screening, disinfection and discharge in order to prevent sanitary sewer overflows (SSOs), provided such discharge to a combined sewer retention treatment facility does not violate water quality standards. In addition, the DEQ should permit a sewage system operator that is under an administrative order to abate storm water infiltration and inflow to its sanitary collection system, to divert flow from the separate sanitary system to a combined sewer retention treatment facility to provide the operator time to rehabilitate the sanitary collection system.

Rationale for Change/Additional Comments: Using existing CSO RTB capacity would allow communities to quickly eliminate SSOs (because the capacity is already in the ground) and

would serve as “emergency capacity” when events that exceed the design standards occur.

There is no federal or state law or EPA policy that prohibits the co-mingling (diversion) of separate sanitary sewage flow and combined sewage flow. Indeed, EPA Region 5 acknowledges that in almost every region of the country where there are combined sewer facilities, that co-mingling with separate sanitary flow occurs. The EPA Region 5 was not able to identify a single major combined sewer area that did not currently accept separate sanitary sewage flow. Cities such Cleveland, Chicago, Milwaukee and Pittsburgh, are all cities that have combined sewers accepting flow from separate sanitary systems. EPA has also acknowledged that eliminating separate sewage from combines systems is costly, impracticable and in many cases impossible. The only state that expressly prohibits the co-mingling of the two types of flows via policy (not by statute or rule) is the State of Michigan through its DEQ. DEQ admits that they will use enforcement discretion when it comes to controlling SSOs in this manner. This leads to uncertainty in the regulated community.

Controlling and eliminating SSOs without causing basement flooding, is very expensive. Sanitary retention tanks (SRTs) can cost municipalities hundreds of millions of dollars. And for what? To control overflows that occur less than four times a year. Many communities have already invested in large combined sewer retention facilities to control and treat overflows before such flows are discharged to our rivers and streams. Where available, allowing the co-mingling of flows as part of a comprehensive plan to control and eliminate SSOs will save taxpayers millions, which should be used for needed operation and maintenance.

No. W-8
Subject: Agricultural Activities Under Parts 301 and 303 of the NREPA
Regulation: Part 301 and Part 303
Remedy: ☒Process ☒ Rules ☒ Statute

Background/Issue: The agricultural community has raised several issues related to the manner in which certain agricultural activities are regulated under Parts 301 and 303. For example, there is confusion over the extent to which a permit is required for activities that are directly related to exempt agricultural activities, such as fencing associated with grazing. Also, there appears to be inconsistent interpretations related to whether a permit is required for the cutting of trees or bushes in wetlands associated with agricultural activities. Finally, the USEPA recently pronounced that the Michigan Supreme Court's ruling in *Huggett* v *Department of Natural Resources*, 464 Mich 711 (2001) is inconsistent with federal law. In *Huggett*, the court held that "the farming activities exemption is not limited to 'land in established use for agriculture'....[E]ven if the activity was not previously established, it will fall within the exemption for farming activities and the wetland permit requirements will not apply." *Id*. at 721, 722. The USEPA takes the position that agricultural activities must be established in use to be exempt. Since the Michigan wetlands program regulates wetlands that are not regulated under the federal program, the USEPA's position regarding *Huggett* could be limited to state-only wetlands.

Proposed Solution: The DEQ should work with the agricultural community to resolve issues related to the manner in which certain agricultural activities are regulated under Parts 301 and 303. These include:

- the extent to which permits are required for activities directly relating to exempt activities, such as fencing for grazing;
- the cutting of trees and bushes within wetlands; and
- whether it is appropriate to limit the USEPA's position regarding the Huggett ruling to only federal wetlands.

The primary consideration in resolving these issues should be to streamline the permit process, especially for activities that have a minimal impact on the environment.

Rationale for Change/Additional Comments: By requiring individual permit reviews for these types of minimal impacts, the DEQ places an unnecessary burden on the industry and requires additional DEQ staff involvement for administration of the program.

James Clift Comments: The environmental community supports the current process of review of this program by the legislatively created Wetland Advisory Council. We think changes in the program, including the scope of exemptions, should be designed to ensure continued delegation of the Clean Water Act 404 program. Adoption of nationwide permits categories should be crafted in a manner that is consistent with other program requirements.

No. W-9
Subject: Groundwater Discharge – Part 22, Groundwater Quality Rules
Remedy: ☐ Process ☐ Rules ☐ Statute

Background/Issue: The groundwater-discharge program is a state-directed program that is not required by federal law. Unfortunately, the program has had a history of permit backlogs. And the program's permit requirements can be overly burdensome, particularly for the agricultural industry. Michigan's groundwater-discharge program would operate more effectively by adapting to focus on specific, significant threats to groundwater. This could be accomplished by expanding the permit-by-rule categories and eliminating categories requiring groundwater-discharge permits for projects with minimal or no environmental impact.

Proposed Solution: The DEQ should pursue changes to the groundwater-discharge program in the Part 31 statute and the Part 5 and Part 22 rules to focus on specific, significant threats to groundwater. These changes should include expanding the permit-by-rule categories and eliminating categories requiring groundwater-discharge permits for projects with minimal or no impact on groundwater.

Rationale for Change/Additional Comments: The DEQ must focus limited resources on protecting Michigan's most important resources while servicing customers and participating as a full partner in economic development. To focus resources, DEQ must limit the application of the best professional judgment of staff to those issues that have significant environmental impact.

No. W-10
Subject: Part 5, Spillage of Oil and Polluting Materials Rules
Regulation: R 324.2003(1)(b)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Rule 324.2003(1)(b) creates a conditional exemption from the Part 5 rules for certain on-land or oil storage facilities subject to the federal oil-pollution-prevention requirements of 40 CFR Part 110 or 112. One of the conditions to this exemption is that the "[t]he owner or operator of such a facility shall submit a copy of the facility's spill prevention, control, and countermeasure plan in accordance with R 324.2006(2)." This condition is not required by the federal rules and is an unnecessary burden.

Proposed Solution: Delete the condition in R 324.2003(1)(b) requiring facilities to submit SPCC plans in order to remain exempt from the Part 5 rules.

Rationale for Change/Additional Comments: DEQ staff has made various, sometimes inconsistent, statements about whether SPCC plans need to be submitted. Federal rules do not require that such plans be submitted – they just need to be made available. That is already covered in DEQ rules so this statement can be deleted.

James Clift Comments: The environmental community believes the public and local emergency responders should be fully apprised of a facility's spill prevention, control and countermeasure plan, and thus support broad sharing of the plan.

No. W-11
Subject: Unduly Restrictive Requirements for NPDES Permitting Of Storm Water Runoff at Airports
Remedy: ☒ Process ☒ Rules ☐ Statute

Background/Issue: DEQ and federal Clean Water Act regulations require that airports discharging storm water obtain a National Pollutant Discharge Elimination System (NPDES) permit. Unlike USEPA, DEQ does not currently have a sector-specific industrial storm water permit that allows airports to discharge storm water that contains aircraft deicing fluids (ADFs). The DEQ is therefore limited in its ability to allow airports to otherwise comply with USEPA and Michigan rules through a general permit. Airports could operate more cost-effectively if Michigan adopted regulations that required DEQ to develop a sector-specific general permit for airports consistent with USEPA regulations.

Deicing aircraft and airfield pavement is essential for safe wintertime operations. Winter operations safety is strictly regulated by the Federal Aviation Administration (FAA), which provides airports and aircraft operators with specific policies and procedures for deicing and anti-icing aircraft and airfield pavements. FAA also regulates the performance and characteristics of all aircraft and airfield pavement deicing products. Only SAE International Aerospace Materials Specifications (AMS) certified products may be used. Currently, the only aircraft fluids that meet these technical specifications are formulated from a base fluid consisting mostly of ethylene glycol, propylene glycol, or glycerin. Because the airlines (or aircraft operators, not the airports) are responsible for the safe operation of their aircraft, airports must allow them to use this select group of approved products which are categorized as Type I, II, III, and IV fluids. Airports have some ability to establish the base-fluid type and locations for the airlines to apply aircraft deicing fluids. Safety requirements also limit the types of best management practices (BMPs) that airports can use to manage their storm water runoff. Finding cost-effective measures to eliminate the presence of ADFs in airport storm water runoff can be extremely challenging. The discharges can, however, often be controlled through a mix of appropriate storm water management measures, BMPs, and other efforts (such as treatment).

The Flint Bishop International Airport and most other airports in Michigan have historically operated under an industrial storm water permit under Michigan's general permit. The permit requires that the facility prepare a Storm Water Pollution Prevention Plan (SWPPP), implement BMPs, and meet other requirements to comply with Michigan regulations.

DEQ staff has indicated that Michigan's industrial storm water permit prohibits the discharge of <u>any</u> deicer-contaminated storm water. Staff indicated that the airport would eventually need an individual permit, which usually results in strict numeric limits for the discharges and can lead to more costly compliance monitoring and reporting. DEQ staff is willing to continue to work with the airport, but our concern is that without a change in regulations, DEQ's ability to provide the needed flexibility for the airport will be unduly limited.

In contrast, USEPA's Multi-Sector General Permit for Air Transportation facilities requires permittees to develop a SWPPP, practice good house-keeping measures, and implement control measures during the deicing season. Samples of contaminated storm water are to be collected and compared to benchmark concentrations for specific contaminants so that permittees can

assess how well BMPs are working. If a similar process was used in Michigan, smaller airports could be authorized to discharge storm water that contains minor levels of ADFs that cannot be captured, including to an impaired waterway, without numeric effluent limits.

Proposed Solution: Provide DEQ with additional flexibility in helping airports manage ADFs in storm water. Adopt rules that require DEQ to develop a sector-specific general permit for airports consistent with federal regulations and USEPA's Multi-Sector General Permit for Air Transportation facilities (Sector S-air transportation facilities) and that don't impose requirements stricter than required under federal law.

Rationale: The current regulations exceed the federal standards. The proposal would provide the DEQ with additional flexibility in helping airports manage ADFs in storm water.

James Clift Comments: The environmental community will oppose adoption of USEPA's Multi-Sector General Permit for Air Transportation facilities (Sector S-air transportation facilities) if they cannot be demonstrated to ensure compliance with water quality standards and anti-degradation requirements.

No. W-12
Subject: Wetland Mitigation Banks
Regulation: R 281.954 (Rule 4)
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Michigan's wetland mitigation bank program has attracted the creation of very few mitigation banks, many of which are not privately owned. Michigan's program appears to be very immature compared to other states, such as Minnesota. The DEQ should take steps to increase the viability of wetland mitigation banks so as to facilitate more economically efficient wetlands mitigation projects. For example, R 281.954 (Rule 4(7)) establishes a minimum of 10 acres for a wetlands mitigation bank, while providing that the new wetland may consist of multiple sites that are a minimum size of 1 acre each that are administered under a single banking agreement. However, these size minimums are inconsistent with the need to establish mitigation banks in urban and suburban settings where available lands are not sufficient to satisfy these minimum size requirements, even though it has been demonstrated at many on-site mitigation sites that smaller wetland mitigation areas can be created and maintained on an economically feasible basis. By lowering or eliminating the minimum size requirements, the pool of potential sites and "bankers," including small businesses, private and public landowners, would be expanded. This would also help to avoid concentration of banks in certain areas of the watershed, and allow more even area distribution.

Proposed Solution:

4. The DEQ should expand the service area of mitigation banks to encourage more bank development (including in urban areas) and increase access to mitigation banks while maintaining watershed protection.
5. The DEQ should seek US Army Corps of Engineers approval of smaller mitigation banks if deemed economically feasible.
6. The DEQ should increase the on-line reporting of information on the program, including trading information, to foster greater utilization of the banking program.

Rationale for Change/Additional Comments: By lowering or eliminating the minimum size requirements, the pool of potential sites and "bankers," including small businesses, private and public landowners, would be expanded. This would also help to avoid concentration of banks in certain areas of the watershed, and allow more even area distribution.

No. W-13
Subject: DEQ Annual Wastewater Report
Regulation: R 299.9001 – R 299.9007
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: These rules require annual wastewater reporting to the DEQ. The DEQ and industry agree that this report is duplicative and unnecessary. DEQ suspended the reporting requirements in 2009 and said they would not enforce against the requirement until further notice, but it's still on the books.

Proposed Solution: Rescind R 299.9001 – R 299.9007, which require annual wastewater reporting to the DEQ.

Rationale for Change/Additional Comments: This report is duplicative and unnecessary.

No. W-14
Subject: Local Regulation of Wetlands: MCL 324.03308, MCL 324.30309, and MCL 323.30310
Regulation: Sections 324.03308, 324.30309, and 323.30310 of Act 451 of 1994 (NREPA)
Remedy: ☐ Process ☐ Rules ☒ Statute

Background/Issue: These sections of the NREPA provide for the regulation of wetlands by local units of government in a manner that can be more restrictive than state or federal regulation. These sections of the act should either be repealed or modified to assure that wetland regulation on the local level is no more restrictive than federal standards. Another layer of local permitting adds no environmental value and simply adds timing and cost burden to companies that want to do business in Michigan.

Proposed Solution: Amend sections 324.03308, 324.30309, and 323.30310 of Act 451 of 1994 (NREPA), so that there is no authority for local wetland regulations.

Rationale for Change/Additional Comments: Another layer of local permitting adds no environmental value and simply adds timing and cost burden to companies that want to do business in Michigan.

James Clift Comments: The environmental community supports the current authority for local wetland regulations.

No. W-15
Subject: Coordinating Storm Water Operators for Construction Sites with Local Enforcement of Soil Erosion and Sedimentation Control
Regulation: R 323.2190(2)(d) and (e)
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issues: The federal Clean Water Act requires industries with storm water discharges to surface waters to obtain a storm water permit under the National Pollutant Discharge Elimination System (NPDES). The DEQ has been given the authority to administer this program. In Michigan, permitting for construction sites one acre or larger is regulated under permit-by-rule. Construction site owners must comply with the permit-by-rule requirement, which includes employing a certified storm water operator for construction sites. Certified storm water operators are required, among other things, to conduct weekly construction site inspections, as well as inspections within 24-hours of a rain or snowmelt event.

In addition to employing a storm water operator, construction site owners must obtain and comply with a Soil Erosion and Sedimentation Control (SESC) permit from county or local enforcing agent pursuant to Part 91 of the Natural Resources and Environmental Protection Act (NREPA). Throughout Michigan, this function (i.e. enforcement of Part 91 SESC) is carried out either by a county or local municipality. In Oakland County this function is performed by the Office of the Oakland County Water Resources Commissioner. SESC inspectors receive the same training as certified storm water operators, and further, conduct regular inspections of constructions site to ensure compliance with Part 91. These two distinct requirements (employing a certified storm water operator and compliance with an SESC permit) are so similar that counties or local municipalities could process and issue the present permit-by-rule on behalf of the DEQ as part of the normal SESC permit process.

Proposed Solution: Amend R 323.2190 to provide construction site owners the option of utilizing the services of the local Part 91 SESC Inspectors to fulfill the inspection and compliance reporting requirements.

Rationale for Change/Additional Comments: This recommendation would create a more harmonious relationship between the regulator and regulated community, decreasing intimidation and negative impactful behaviors as well as creating motivation for compliance.

In addition, it would result in reduced costs to the regulated community by allowing a developer to utilize the services (through the SESC permitting process) the local SESC inspector to fulfill the certified storm water operator duties. This would provide cost savings to developers, particularly smaller developers.

No. W-16
Subject: NPDES Permitting for Construction Sites
Regulation: Part 21, Wastewater Discharge Permits Rules (R 323.2101 – R 323.2197)
Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: The Part 21 rules, promulgated under Part 31 of the NREPA, require storm water discharge permits for construction sites over 1 acre. These sites are addressed through a "permit by rule," which means that smaller sites do not need to wait for approval from DEQ to begin activities. Under the rules, a site between 1 and 5 acres will automatically be covered - not requiring any submittal to DEQ - if it has received approval from an approved local agency under Part 91, Soil Erosion and Sedimentation Control, of the NREPA. Sites between 1 and 5 acres are also not required to submit any paperwork to DEQ, but must still comply with the requirements of the "permit by rule," including hiring a certified storm water operator to make regular inspections and reports. Sites over 5 acres must submit what amounts to an application and have their activities approved by the DEQ before conducting construction activities.

The rules assume that any construction activities on sites over 1 acre will result in discharges to surface waters. But there may be instances where construction activities are so far removed from a surface water body that they will not discharge to surface waters. The current regulatory scheme does not provide for a certification process that would exempt certain construction activities from the Part 31 storm water regulations if it can be demonstrated that construction activities will not impact surface waters.

Proposed Solution: The Part 21 rules governing storm water discharges from construction sites should be amended to allow for a process that will exempt sites where it can be demonstrated that there will be no discharge of sediment to a surface water body. This will eliminate the requirement that a certified storm water operator be hired for sites that are between 1 and 5 acres where it has been demonstrated that there will be no discharge of sediment to a surface water body, and will eliminate the requirement of a submittal and approval of an "application" for sites over 5 acres, in instances where there is no anticipated impact to surface waters.

Rationale for Change/Additional Comments: This proposal would eliminate the costs for construction site owners to employ certified storm water operators for sites between 1 and 5 acres, or submit an "application" to the DEQ for sites over 5 acres, in instances where there is no anticipated impact to surface waters.

No. W-17
Subject: Safe Drinking Water – Cross Connection Inspections of Residential, Commercial and Industrial Properties
Regulation: R 325.10113
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: The DEQ is authorized by the Michigan Safe Drinking Water Act, 1976 PA 399, as amended, to promulgate rules necessary to continuously provide safe and adequate supply of water to the users of public water supply systems. Pursuant to Act 399 and the administrative rules, a water utility or water system owner is responsible for development of a local program to eliminate all cross connections to public water supply systems. A cross connection is an arrangement of piping which could allow undesirable water, sewage or chemical solution to enter the draining (potable) water supply system as a result of backflow, that can result in illness or death. Cross connections pose one of the most serious public health threats to a drinking water supply systems.

In Michigan, cross connections with potable piping systems are prohibited by the state plumbing codes. In addition, as noted above, Act 399 requires water utilities to have a cross connection control inspection program of their water customers to identify, eliminate and prevent cross connections of residential, commercial and industrial water customers.

Currently, DEQ guidelines recommend that a water utility owner or operator inspect residential properties (connected to public water supply system) for cross connections, at least every 3 years. For commercial and industrial it is recommended each time a plumber is contacted to perform work or annually whichever is sooner.

The problem is that there seems to be inconsistency in the requirements from community to community throughout the state. Many commercial and industrial customers believe that the program is unduly burdensome and/or frustrating because of the inconsistency in the requirements for compliance (e.g. testing frequency from community to community and/or plumber to plumber). Moreover, the basis for state recommended frequency of cross-connection inspection of residential properties does not appear to be supported by sufficient data. That is, it appears to be arbitrary rather than supported by analysis of failure rates. Indeed, under the current program, there does not seem to be sufficient information to perform a statistical analysis of failure rates because water utilities are not made aware of the failures by the homeowner or their hired plumber. Typically, the only information provided to the water utility is the completed testing forms that show passing results.

Proposed Solution: Amend R 325.10113 to set a standard for the frequency of testing residential cross-connections. The standard should be based on data that is compiled and analyzed to determine the number and frequency of failures and identification of cross connection problems in residential, commercial and industrial properties. A cost/benefit analysis should be undertaken as well.

Rationale for Change/Additional Comments: There is no scientific basis for the reduction in the frequency of inspections. Water customers – residential, commercial and industrial – are responsible for the costs of inspections and repairs. The current program has led to additional

unwarranted costs to consumers.

No. W-18
Subject: NPDES Water Treatment Additives
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: Water treatment additives (WTA) require prior approval by the DEQ before they can be used and discharged through a NPDES permitted outfall. Significant lead time is needed, which can hold up projects or process improvements.

The DEQ has been responsive to the concerns that have been expressed related to long approval times. Current response times are very prompt, not exceeding a month if the toxicity information is available. The major reason for current delays is the absence of product toxicity information. The DEQ's goal is to respond to requests in 6-8 weeks. That time frame is affected when the DEQ does not receive complete requests or needs to obtain additional toxicity data (i.e. pH adjusted data, etc.).

Proposed Solution: The DEQ should create a "notification only" process for well-defined water treatment additives (WTA) conditions that pose minimal toxicity concerns (e.g., the WTA would not be present at the discharge point to navigable waters in toxic amounts, including a conservative safety factor).

No. W-19
Subject: Mercury Standard for Groundwater
Regulation: Part 201, Environmental Response, of the NREPA, - Environmental Contamination Response Activity Rules, R 299.5744; and Part 31, Water Resources Protection, of the NREPA – Part 4. Water Quality Standards, R 323.1057
Remedy: ☒Process ☒ Rules ☐ Statute

Background/Issue: The groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l was adopted from the Great Lakes Initiative. The criterion should be recalculated using current toxicological methods. The criterion is lower than ambient concentrations in most inland waters.

Proposed Solution: DEQ should work with the USEPA to revise the Great Lakes Initiative with respect to the groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l, by applying current science.

No. W-20
Subject: Part 301 - Inland Lakes and Streams – Permits Required for Drawdown Activities That Are Already Subject to Federal Energy Regulatory Commission (FERC) Authority
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: Under the Federal Energy Regulatory Commission (FERC) process, when a hydroelectric generation facility proposes to drawdown the elevation of the flowage beyond what is allowed in the FERC license, the licensee is required to consult and obtain comments from governmental natural resource protection agencies prior to conducting maintenance activities or deviations in operations. The specific agencies differ for every FERC license, but the State of Michigan is always represented either through the Department of Environmental Quality (DEQ) or the Department of Natural Resources (DNR).

For large construction projects, the licensee prepares an Environmental Report that identities all of the potential environmental impacts and describes proposed mitigation measures that avoid or minimize potential impacts. For these same larger projects, FERC also develops an Environmental Assessment to assess the potential environmental impacts. The DEQ and/or the DNR participate in the environmental review process and specify environmental protection conditions to be incorporated into the FERC project approval.

It should be noted that even for smaller projects that require a drawdown, entities are required to prepare a drawdown plan and obtain agency comments. Even with all of its previously prescribed measures in place to avoid and minimize negative impacts to natural resources, the DEQ also requires that FERC licensees apply for a Part 301 (Inland Lakes and Streams) permit when conducting a drawdown for hydroelectric activities.

Proposed Solution: Eliminate the Part 301 permitting requirements related to temporary drawdown activities for entities that are already subject to a FERC license.

Rationale for Change/Additional Comments: When a FERC licensee proposes to drawdown the elevation of the flowage beyond what is allowed in the FERC license, the licensee first consults with the appropriate government agencies and then obtains FERC approval with comments from the agencies considered. All of the details of the drawdown are determined through this FERC process. When all of these details are finalized through the FERC process -- which the state is part of -- a Part 301 permit is then pursued. Since all of the details of the drawdown are worked out through the FERC process, the Part 301 permit becomes basically a document. If the DEQ objects to the drawdown and denies the permit for the drawdown, FERC has federal preemption and could simply over rule the DEQ decision and mandate that the drawdown take place.

Requiring this additional state permitting layer for federal projects not only adds additional time to the project schedule but additional costs to critical dam safety projects. It is not out of the ordinary for the complete project approval to be held up while waiting for a Part 301 permit. Complications are increased when there is a change in the drawdown specifics. Instead of obtaining FERC approval and proceeding, the licensee must first obtain FERC approval and then amend the DEQ drawdown permit prior to proceeding. Once again, FERC approval must occur first because *this federal agency has ultimate control*. Subsequently, it makes little sense to

pursue an amendment with the state until a licensee knows that FERC approves of the change.

Other states have already recognized this duplication in efforts and do not require permits for drawdowns governed by the FERC process. This duplication of effort consumes valuable time of state staff and the FERC regulated entity, and results in additional financial burdens that need to be expended through the Part 301 process (to regulate activities already covered by the FERC process). Agencies like the DEQ and DNR are already involved and participate in the FERC process. Eliminating the need for entities to apply for a Part 301 permit would streamline the process (and save time and money for the state, as well as FERC licensees), while still maintaining the state's ability to engage in the process.

General Issues Recommendations

No. G-1
Subject: Rules More Stringent Than Federal
Remedy: ☐ Process ☒ Rules ☐ Statute

Background/Issue: A considerable amount of time, effort and expense is expended at the federal level to create a very broad base of national standards. There is a fully documented and public record of the minimum "floor determinations", background information documents and response to public comment" to help justify and explain the intent of the rulemaking. Michigan, like all states retains its right to set its own standards when it is in the best interest of its residents. However, Michigan should defer to the federal standard as a default and only exceed them when there is a clear and convincing reason.

Proposed Solutions: Identify existing DEQ state rules and specific requirements that are more stringent than federal. Evaluate these rules and specific requirements to determine the benefits received versus the additional cost of compliance. Then systematically review (based on priority) to revise or eliminate unjustified rules or specific requirements.

No. G-2
Subject: Treatment of DEQ Non-Rule Regulatory Actions
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue:

Guidance Documents

- The DEQ has two procedures for the development of three types of formal policy documents: department polices, division policies, and policy guidance documents. Department and division policies provide direction on the management of the programs either at a department or division level. If these policies describe how the department or division interprets or applies a rule or statute, it must be in the form of a policy guidance document which requires stakeholder input.

- Currently the DEQ has hundreds of division policies, sixty-seven DEQ policies and two policy guidance documents. The policy guidance document procedure is relatively new which is the main reason for the small number.

- Each division uses a variety of templates for their division policies.

- The DEQ does not have a central location on the Internet for Department policies, division policies and policy guidance documents.

- Some division policies have an interim or draft status.

Educational Publications

- The DEQ has a number of educational publications such as fact sheets and frequently asked questions (FAQs) that help the regulated community improve their understanding of the regulations. Educational publications are only a restatement of the information contained in a regulation, policy guidance document, division policy, and/or department policy, and they do not require stakeholder input in the development process. The searchable online database that houses the DEQ's educational publications needs updating and no procedure exists for ensuring consistent development of educational publications among the divisions.

Forms

- To streamline the collection of data for permitting, reporting, planning, and recordkeeping purposes, the DEQ has over the years created numerous forms and instructions. The searchable online database that contains the forms is also in need of updating and no procedure exists for ensuring consistent development of forms.

Proposed Solution: Take the following actions with regard to DEQ guidance documents, educational documents and forms by the stated deadlines.

Guidance Documents

- Rescind DEQ Policy and Procedures No. 01-019 (Policy Development, Revision and

Rescission [1/12/07]) and No. 09-012 (Policy Guidance Document Development, Revision, and Use [12/30/09]). **Complete by December 31, 2011.**

Develop a new comprehensive DEQ policy that addresses department policy, division policy, guidance documents and guidelines. For the most part, department and division policies will address internal administrative or personnel procedures. "Guidance documents" will contain all rule and statute interpretations, and/or will contain any policy/procedure that provides guidance to those regulated by the DEQ. Guidance documents will provide a particular path to compliance with a rule or statute. The regulated community may choose this path or follow a different one. If the issue involves an interpretation of a rule and/or statute, stakeholder input will be obtained. For consistency, a template for guidance documents will be created and utilized by the divisions. Finally, the new DEQ policy will provide an alternative approach to a guidance document which is a "Guideline" as defined by Administrative Procedures Act, 1969 PA 306, as amended. **Complete by December 31, 2011.**

- Create a DEQ Web page for guidance documents which will be categorized by division or office. **Complete by December 31, 2011.**

- For those division policies that are draft or interim, the division should either rescind or finalize through the guidance document process. C**omplete by June 1, 2012.**

- Each division shall review their existing non-rule regulatory actions. Those meeting the definition of a guidance document (i.e., of interest to the regulated community and/or interpret regulations) shall be converted into the new template and posted on the Web page. If a division policy interprets rules or statute and had stakeholder input and no other substantive changes are being made, it can be directly converted into a guidance document without going through stakeholder input for a second time. Note: The DEQ Executive Division will provide each Division a spreadsheet containing all of the division's non-rule regulatory actions that was compiled for the ORR in July 2011. Those division polices not converted by the deadline shall not be relied on. **Complete by December 31, 2012.**

- Divisions shall review internal memos, letters and other documents and where appropriate, convert them into a guidance document following the procedures identified above. **Ongoing.**

<u>Educational Documents and Forms</u>

- Develop two new DEQ policies providing guidance to DEQ staff on the production of educational publications and forms. **Complete by December 31, 2011.**
- Update the DEQ Forms and DEQ Educational Publication online databases. **Complete by June 1, 2012.**

No. G-3
Subject: Administrative Rule Approval Process
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: An ORR review of the approval time of administrative rule packages indicated that the time to prepare and complete promulgation of a DEQ rules package from over the past 12 years averaged 644 days, or almost 20 months. This exceeds the time required by many other departments also with more than 10 rule packages processed during this same time period, such as Education (322 days), Community Health (382 days), Natural Resources (391 days), State Police (399 days), Treasury (426 days) and Licensing & Regulatory Affairs (467 days), and is similar to Agriculture and Rural Development (606 days) and Human Services (669 days). This timeline appears to be driven by two excessively long steps during the process: an average of 245 days for the DEQ to provide adequate draft rules following approval of the Request for Rulemaking ("RFR") and 433 days between approval of the RFR and the last public hearing date. This length of time to process a rule change is out of step with the rapid pace of extensive new federal rule making, new environmental technology and the rapid changes occurring in Michigan and the world business environment.

Without a more compressed rule change process the implementation of recommendations of Committee could be significantly delayed. Important reforms necessary for the protection of the environmental and business development would be, in effect, set aside due to the lack of timely implementation. The administrative rule process can be streamlined without limiting the quality of the development of recommended rule change or the ability of the public to be involved in the rule change process.

Proposed Solution: The Committee recommends setting an expectation or requirement for the DEQ to take no more than 12 months for a proposed environmental administrative rule change. The process should incorporate steps to ensure adequate public comments and other discussions with stakeholders over accelerated schedules, as well as the use of innovative public input tools to increase public input and awareness of the proposed rulemaking.

No. G-4
Subject: DEQ Citation of Legal Authority
Remedy: ☒Process ☐ Rules ☐ Statute

Background/Issue: The DEQ has, in the past, made written determinations, such as permit denials, without citing the legal standard on which they were relying in making their decision. Regardless of the legitimacy of the basis for the DEQ's decision, a failure to cite legal authority leaves the regulated community with the impression that the decision was made arbitrarily and without any legal basis or, as in one case shared with the ORR, because the DEQ simply "didn't like" the way the applicant was doing things.

Proposed Solution: When making a written determination which affects the rights of a Michigan citizen or business, the DEQ should always cite the applicable legal basis (statute, administrative rule, or common law) for its determination.

Rationale for Change/Additional Comments: Requiring the DEQ to provide a legal basis for all decisions will give confidence to the regulated community that decisions are made based on the law, and not on the interpretations or feelings of state employees.