



DEPARTMENT OF ENVIRONMENTAL QUALITY

RESCISSION OF DEPARTMENT POLICY AND PROCEDURE

Subject: Policy Guidance Document Development, Revision,
Rescission and Use

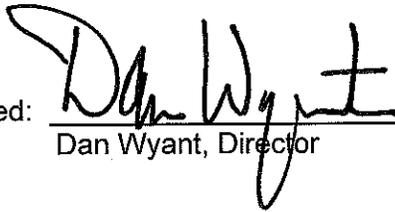
Number: 09-012

Rescinded Date: February 23, 2012

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Department of Environmental (DEQ) Policy and Procedure No. 09-012, Policy Guidance Document Development, Revision, Rescission, and Use, dated December 30, 2009, is rescinded. The substance of Policy and Procedure No. 09-012 was incorporated in DEQ Policy and Procedure No. 09-013, Department Policy and Procedure, Division Policy and Procedure, and Administrative Procedures Act Guideline Development, Revision, Rescission, and Use, dated February 23, 2012, which makes Policy and Procedure No. 09-012 unnecessary.

Approved:



Dan Wyant, Director



DEPARTMENT OF ENVIRONMENTAL QUALITY
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ISSUE:

The Department of Environmental Quality (DEQ) uses policy guidance documents to provide guidance to DEQ staff in the interpretation of the statutes and rules that the DEQ administers. The DEQ defines policy guidance document and establishes requirements for the development, maintenance, and use of policy guidance documents by DEQ employees.

DEFINITION:

Policy guidance document: A written statement that describes how the DEQ interprets or applies a statute or rule it administers.

POLICY:

A. Applicability. This policy applies to the development, revision, rescission, maintenance, and use of a policy guidance document.

1. Descriptions of Policy Guidance Documents. Since it is not always apparent that a document interprets or applies a statute or rule and, therefore, meets the definition of policy guidance document, DEQ staff shall use the following list of questions to determine whether or not a document is a policy guidance document. A policy guidance document is any document for which the answer to any of the following questions is yes:

- Does this document interpret a statute or rule, or address an ambiguity or lack of clarity in a statute or rule, by providing factors not otherwise explicitly included in a statute or rule, that the DEQ will use to consider:
 - Whether statutory or administrative rule requirements apply?
 - Whether statutory or administrative rule requirements are met with respect to demonstrating compliance?
 - Whether statutory or administrative rule requirements are met with respect to:
 - A control technology or device?
 - A design?
 - A method?
 - A detection limit?
 - Materials?
 - A product?
 - Eligibility for or to award a benefit, such as a grant or loan?
 - What information is necessary to grant a permit or other approval?

The preceding list of questions is not necessarily inclusive of all content that could result in a document meeting the definition of a policy guidance document. It is intended to serve as a

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tool to enable DEQ staff to identify commonly-used documents as policy guidance documents.

In unusual circumstances, a division chief or his/her designee may except a document from designation as a policy guidance document, if the exception is consistent with the overall purpose of this policy. If the division chief or designee excepts a document from designation as a policy guidance document, he or she shall concurrently notify a DEQ Deputy Director of the exception.

2. Descriptions of Documents that are Not Policy Guidance Documents. The following types of documents are not considered policy guidance documents:

- a. Any document that is only a restatement of information contained in a regulation or policy guidance document. Examples of such documents include Question and Answer (Q and A) or Frequently Asked Question (FAQ) documents that are only restatements of regulations or information contained in a policy guidance document, and training materials that are only restatements of regulations or information contained in a policy guidance document.
- b. Instructions on how to conduct an inspection.
- c. Enforcement policies or procedures that contain information about enforcement strategy or priorities, discussions of enforcement discretion, or information on penalty calculations.
- d. Documents that provide guidance to staff on internal administrative procedures only, such as: how to format reports, permits, and U.S. Environmental Protection Agency grants; how to develop and use databases; how to complete time and attendance records; how to code one's time; how to complete a travel voucher; and how to order supplies.

3. Combination Documents. Any document that meets the description of policy guidance document using the definition or questions provided in A.1., above, shall be considered a policy guidance document, even though the document may:

- a. Serve a dual purpose by also meeting the description of non-policy guidance documents in A.2., above; or
- b. Have a title, subject, or description of training document, internal administrative procedure, inspection procedure, or enforcement strategy. The title, subject, or description of a document shall not be used to determine whether a document is a policy guidance document.

B. Identification of Need for Policy Guidance Document Development, Revision, or Rescission. An issue for which policy guidance document development is appropriate may be identified by any DEQ employee. An employee may likewise identify a need for policy guidance document revision or rescission. An employee shall raise the issue (policy guidance document development, revision, or rescission) for discussion and preliminary verbal approval through the employee's chain of command, starting with the employee's supervisor. Upon receipt of preliminary verbal approval of the issue, the employee shall make the request for policy guidance document development, revision, or rescission in

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writing. The written request shall include a concise statement of purpose of the new document, the revision, or the rescission.

A division may make a nonsubstantive revision to an existing policy guidance document to reflect updated factual information, such as a change in the division's organizational structure, without review and approval as required in Sections C, E, and F (below).

- C. Approval of Issue and Development of New or Revised Policy Guidance Document.** A manager in the employee's chain of command or other employee designated by the division chief shall approve an issue for policy guidance document development or revision prior to commencement of development or revision of the document, and shall assign responsibility for development of the draft new or revised policy guidance document as appropriate.

In considering an issue proposed for policy guidance document development, the approving manager or designated approving employee shall explicitly consider whether the issue would be better addressed through rulemaking, document his/her decision and rationale, and include that documentation with the employee's written request from Section B.

The approving manager or designated approving employee shall promptly notify his/her division chief, through the chain of command, that he/she has approved development of a draft new or revised policy guidance document.

- D. Format for New or Revised Policy Guidance Document.** A policy guidance document shall be developed or revised using the format, elements, and template for a DEQ policy guidance document from Appendix A of this policy. A new or revised policy guidance document shall be assigned a reference number using the primary statute(s) to which it pertains as the prefix and the chronological number as the suffix (e.g., Water Bureau Policy Guidance Document Nos. 31-01, 31-02, 31-03, etc.). A policy guidance document that pertains to multiple statutes shall be given a reference number using all pertinent statutes (e.g., Water Bureau Policy Guidance Document Nos. 31 and 41-01).

- E. Stakeholder Involvement in Policy Guidance Document Development or Revision.** Concurrent with development of a new or revised policy guidance document, the approving manager or designated approving employee shall also prepare or assign a staff member to prepare a plan for stakeholder involvement in the development or revision of the policy guidance document.

The amount of stakeholder involvement will vary for each new policy guidance document or revision. The stakeholder involvement shall reflect the potential impacts of the policy guidance document on the regulated community and other parties and the level of stakeholder interest expected in the development or revision of the policy guidance document.

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The plan for stakeholder involvement should address the following elements:

1. Likely stakeholders, their level of interest in the document or revision, and their likely position on the issue;
2. The stakeholder involvement method(s) proposed for use based on the assessment done in No. 1; for a list and description of several potential stakeholder involvement methods please see the Stakeholder Participation Matrix in Appendix B;
3. The timetable for implementing the stakeholder involvement methods;
4. The DEQ employee(s) responsible for implementing the methods identified; and
5. How stakeholder input will be evaluated for incorporation into the draft document and how the stakeholders who provided the input will be informed of how their input influenced the final product.

Upon completion of an initial draft of the policy guidance document or revision and stakeholder involvement plan, the approving manager or designated approving employee shall submit the draft policy guidance document or revision and the stakeholder involvement plan to his/her division chief for approval through the chain of command.

F. Approval of New or Revised Policy Guidance Document and Stakeholder Involvement Plan. A draft new or revised policy guidance document shall be approved by the division chief and deputy director before being placed into use by DEQ staff.

1. **Division Chief Approval.** An approving manager or other designated employee shall obtain division chief approval of the stakeholder involvement plan developed in Paragraph E prior to implementation of the plan. The division chief shall notify the deputy director of implementation of a stakeholder involvement plan concurrent with implementation of the plan.

The division chief shall approve a draft new policy guidance document and any draft substantive revision to an existing policy guidance document, in consultation with appropriate division management and the management of other affected divisions, prior to requesting final approval by a deputy director.

The division chief shall determine, in consultation with division management, whether Department of Attorney General review and approval of the draft policy guidance document is necessary, and will obtain such review and approval in the event it is deemed necessary before sending the draft policy guidance document to the deputy director for final approval.

The division chief shall review the determination regarding the need for rulemaking made by the approving manager or authorized employee in Paragraph C, and either affirm or edit the determination before sending the draft policy guidance document to the deputy director for final approval.

2. **Deputy Director Approval.** A draft new or revised policy guidance document sent to the deputy director for approval shall be accompanied by a briefing memorandum signed

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by the division chief, using the format contained in the DEQ Correspondence Guidelines. The briefing memorandum shall:

- a. Succinctly state the issue that the policy guidance document addresses and summarize the new or revised policy guidance document;
- b. Summarize any Department of Attorney General reviews, reviews by other DEQ divisions, the external/stakeholder notifications and input sought and received;
- c. Summarize how or if input was incorporated into the final version of the policy guidance document;
- d. Identify any unresolved stakeholder issues;
- e. Include documentation of results of the division chief's review of the need for rulemaking conducted in Paragraph F.1., above, including the rationale for the division chief's determination; and
- f. Use a strike/cap or other format that clearly shows the proposed revisions.

G. Use of Policy Guidance Documents. A policy guidance document may be appropriately used in the development of enforceable documents or determinations issued by the DEQ (e.g., permits, orders, final remedial action plans), with the understanding that the presumptions and directions set forth in a policy guidance document are rebuttable and do not have the force of law. These presumptions may be rebutted informally through the DEQ chain of command (see Paragraph I, below).

A DEQ employee shall not cite a policy guidance document as the basis for a compliance or enforcement action.

A DEQ employee shall not apply changes to a policy guidance document retroactively by reconsidering regulatory decisions made under a policy guidance document when that document is modified.

When a policy guidance document upon which a party relied is modified prior to the party's completion of its transaction with the DEQ, the division chief shall discuss with the party whether to continue under the previous or modified guidance, balancing the reliance and stage in the decision making process with the reason for the new guidance in relation to statutory and rule requirements, unless the issue is otherwise explicitly addressed in the revised policy guidance document.

A policy guidance document cannot establish regulatory requirements for parties outside the DEQ. All policy guidance documents shall contain a disclaimer to this effect (see policy guidance document template in Appendix A).

To the extent that a policy guidance document interprets a rule, and that interpretation has been consistently applied for a period of time, the DEQ should consider updating the rule to directly incorporate the interpretation at the next opportunity.

H. Use of Draft Policy Guidance Documents. A DEQ employee shall not use a draft policy guidance document to interpret a statute or rule as described in Paragraph A unless such use has been approved by a deputy director. A division chief may request such approval by means of a briefing memorandum to the deputy director that states the reason for the

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request and the estimated time needed to finalize the draft policy guidance document or revision.

- I. Informal Appeal of DEQ Interpretation of Statute or Rule in a Policy Guidance Document.** A DEQ employee applying a policy guidance document shall invite a person who expresses concern about that employee's application of a policy guidance document to express his/her concern to the employee's division chief or other employee designated by the division chief as a means of informal appeal of the DEQ's interpretation of the statute or rule. The division chief or designated employee shall review the person's concern.

If the division chief or designated employee finds that the person's concern has merit, he/she shall contact the person who expressed concern to discuss alternative(s) for demonstrating that statutory or rule requirements have been met, and identify a mutually agreeable alternative.

If the division chief or designated employee does not agree that the person's concern has merit, the division chief or designated employee shall elevate the concern through the chain of command for review until the person is satisfied, or until the concern has been raised to the deputy director, whichever comes first.

- J. Staff Training in Use of Policy Guidance Documents.** Division management shall train staff members in the purpose and appropriate use of a new or revised policy guidance document as it becomes effective.
- K. Publication and Maintenance of Policy Guidance Documents.** Each DEQ division should inform affected parties of the content and intended use of a new or revised policy guidance document, and, to the extent practicable, provide outreach and training to affected parties. All policy guidance documents shall be posted on the DEQ's Internet Web site in a place or places designated for policy guidance documents.

Approved: _____

Date: _____



[Insert Name of Division]

Michigan Department of Environmental Quality

[Insert Date]

**POLICY GUIDANCE DOCUMENT NO. [Insert Part No.]-[insert
chronological number of document]**

[Insert Title/Description]

DIVISION/OFFICE CHIEF APPROVAL: _____

DATE: _____

DEPUTY DIRECTOR APPROVAL: _____

DATE: _____

1. INTRODUCTION (Purpose or Issue Statement and Regulatory Authority)

2. DEFINITIONS (if applicable)

3. POLICY

4. PROCEDURE

5. DISCLAIMER STATEMENT

A policy guidance document cannot establish regulatory requirements for parties outside of the DEQ. This document provides guidance to DEQ staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law.

APPENDICES (if applicable and as needed)

Can include (but not limited to):

- Forms
- Questions and Answers
- Checklists
- Contact Lists
- Stakeholder Lists

Increasing Level of Stakeholder Participation

		Inform			Involve		Collaborate		
Stakeholder Participation Goal		To provide stakeholders with balanced and objective information to assist them in understanding the problem, alternatives, opportunities, and/or solutions.			To work directly with the stakeholder throughout the process to ensure that stakeholder concerns and aspirations are consistently understood and considered.		To partner with the stakeholder in each aspect of the decision including the development of alternatives and the identification of the preferred solution.		
Promise to the Stakeholders		We will keep you informed.			We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how stakeholder input influenced the decision.		We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.		
Stakeholder Involvement Method	Key Performance Measures	Will it enhance the stakeholder's understanding of the process and/or topic of discussion?	Will it help identify problems?	Will it help identify solutions and/or solve a problem?	Will it help depolarize an issue?	Is it intended to achieve consensus?	Will it provide feedback loop to inform stakeholders of agency decision and basis for decision (e.g. transparency)?	Will it provide for feedback on the effectiveness of the process?	Will it enhance the stakeholder's trust of the agency?
Mass Mailing		Yes	Maybe*	Maybe*	No	No	Maybe*	Maybe*	No
E-mail Distribution		Yes	Maybe*	Maybe*	No	No	Maybe*	Maybe*	No
Posting on DEQ Web Page		Yes	No	No	No	No	No	No	No
Posting on Social Networking Sites		Yes	Yes	Maybe*	Probably Not	No	Maybe*	Maybe*	No
Present Draft Document to Standing Advisory Group		Yes	Yes	Yes	Maybe	Maybe	Yes	No	Maybe
Present Draft Document to Ad Hoc Advisory Group		Yes	Yes	Yes	Maybe	Maybe	Yes	No	Maybe
Stakeholder Participation in Drafting Document		Yes	Yes	Yes	Yes	Yes	Yes	Maybe**	Yes

* If a feedback loop mechanism (e.g., asking for comments and providing contact person information) is designed into the process.

**A survey of the stakeholders has to be included at the conclusion of the stakeholder process.

This matrix is adapted from the International Association of Public Participation (IAP2) matrix. For more information, please visit: http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf