



## Implementation of the Environmental Advisory Rules Committee's (ARC) Recommendations

Semiannual Report

Winter 2016

### **AIR QUALITY DIVISION**

#### **Recommendation A-1: Air Toxic Rules (IN PROCESS)**

The Air Quality Division's (AQD) Air Toxics Workgroup held nine meetings between December 3, 2012, and September 25, 2013. In September and October of 2013, Workgroup members submitted comments to the AQD on two iterations of the Workgroup's final draft report. A few remaining issues were then resolved between the AQD and Workgroup members in December 2013, and the report was finalized on January 31, 2014. Almost all of the Environmental ARC's recommendations are being addressed via proposed rule changes or changes in AQD procedures, as appropriate. The Request for Rulemaking (RFR) for amendments to the Part 1 and Part 2 rules were approved by the Office of Regulatory Reinvention (ORR) on December 9, 2014, and are identified as ORR rule set numbers 2014-153 EQ and 2014-154 EQ, respectively. Revisions to the RFRs were approved by the ORR on March 23, 2015. The draft rules and Regulatory Impact Statement and Cost-Benefit Analysis were submitted to ORR on July 17, 2015. A public hearing on the rules was held on December 7, 2015.

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#### **Recommendation A-3: Additional Rule 201 (Permit to Install) Exemptions (IN PROCESS)**

The ten members of the Exemption Workgroup held their first meeting on December 20, 2012. The Exemption Workgroup held additional meetings on January 24, 2013; March 6, 2013; April 10, 2013; May 1, 2013; June 5, 2013; July 10, 2013; August 7, 2013; and August 26, 2013. The Exemption Workgroup report has been completed. The Air Advisory Council (AAC) recommends addressing U.S. Environmental Protection Agency (U.S. EPA) concerns with previously-submitted exemptions in this same rulemaking package, as well as developing a different mechanism for Rule 291 exemptions. The RFR for amendments to the Part 1 and Part 2 rules were approved by ORR on December 9, 2014, and are identified as ORR rule set numbers 2014-153 EQ and 2014-154 EQ, respectively. Revisions to RFRs were approved by the ORR on March 23, 2015. The draft rules and Regulatory Impact Statement and Cost-Benefit Analysis were submitted to ORR on July 17, 2015. A public hearing on the rules was held on December 7, 2015.

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### **Recommendation A-7: Rule 801, Rule 803, and State Implementation Plan (SIP) (ON HOLD)**

This recommendation remains on hold for the time being. As of July 28, 2015, all legal challenges to the federal Cross State Air Pollution Rule (CSAPR) have concluded. The AQD met with representatives of non-Energy Generating Units (EGU) to explore options for moving forward with rule modifications. Additionally, discussions with EGUs have taken place and more will be needed before rule changes are initiated. The U.S. EPA proposed an updated CSAPR rule to address transport for the 2008 ozone NAAQS, and plans to propose another transport rule to address the 2015 ozone NAAQS in a year. Decisions on how to move forward with Part 8 rule revisions must consider these recent U.S. EPA actions and plans.

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### **Recommendation A-14: Permit to Install Exemptions (IN PROCESS)**

See comments under Recommendation A-3.

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### **Recommendation A-17: Rule 703, Gasoline Storage Tanks (>2,000 gallons) (SUSPENDED)**

Awaiting action by the federal government on ozone reductions.

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## **OFFICE OF DRINKING WATER AND MUNICIPAL ASSISTANCE**

### **Recommendation W-17: Safe Drinking Water - Cross Connection Inspections of Residential, Commercial, and Industrial Properties (COMPLETED)**

On February 13, 2013, the U.S. EPA published the revised total coliform rule that required the DEQ to make additions and changes to Parts 1-28, Supplying Water to the Public, of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended. Recommendation W-17 has been addressed in these rule changes which were filed on October 16, 2015. R 325.11404 includes a provision allowing backflow preventers installed on a residential lawn irrigation system to be tested once every five years as long as no chemical treatment is involved and the testing frequency is specified within the approved local cross connection control programs. R 325.11404 is on page 205 of the [rule set](#).

In 2014, [House Bill \(HB\) 5317](#) was introduced by Representative Michael McCready. If enrolled by the Legislature, the bill would have limited a water supplier's ability to require testing of backflow preventers on untreated, residential irrigation systems to not more often than once every five years. Governor Snyder vetoed the bill due to an increased potential risk to public health.

In December of 2015, Representative Ken Yonker introduced [HB 5112](#) that specifies backflow preventers on residential lawn sprinkler systems must be inspected after installation and repair, and eliminates a water supply's ability to put a testing frequency within their cross-connection control plan to require any additional testing after installation and repair. HB 5112 has been referred to the House Committee on Regulatory Reform.

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## OFFICE OF OIL, GAS AND MINERALS

### **Recommendation RM-9: Conformance Bond or Statement of Financial Responsibility Requirements for Mineral Well Operators (IN PROCESS)**

The Office of Oil, Gas, and Minerals (OOGM) developed a draft Memorandum of Understanding (MOU) that was sent to the U.S. EPA for review on May 23, 2013. The draft MOU was returned from the U.S. EPA to the OOGM on January 13, 2014. The OOGM worked on revisions and language changes with the U.S. EPA and their legal counsel. The DEQ is waiting to hear back from U.S. EPA on the latest version of the draft. On August 20, 2015, the U.S. EPA indicated that the MOU is with their Division Director and no time estimate on when we will receive approval to forward the official MOU.

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## OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION

### **Recommendation RM-1: Liquid Industrial Waste Regulations (COMPLETED)**

The DEQ discussed legislative changes to Part 121, Liquid Industrial Waste, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), with a stakeholder workgroup. On January 9, 2015, Director Dan Wyant approved the 19 recommendations of the workgroup with some minor changes. Changes to Part 121 were one of the Office of Waste Management and Radiological Protection's (OWMRP) legislative priorities for 2015. Senate Bills (SB) 400, 401 and 402 amend Part 121 and corresponding statutes by incorporating in the agreed upon recommendations. These bills were passed by the legislature and signed by Governor Snyder on December 17, 2015, respectively becoming Public Acts 224, 225, and 226 of 2015.

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### **Recommendation RM-8: Medical Waste Storage Accumulation Limitation (NOT STARTED)**

The proposal to allow Sharps used for "non-medical procedures" to be stored for more than 90 days requires amendments to Part 138, Medical Waste Regulatory Act, of the Public Health Code, 1978 PA 368, as amended. Stakeholders proposed legislation, HB 4459 of 2010, which would have allowed a longer storage period for small quantities of Sharps. A slightly different approach was taken in September 2012 with SB 1334. None of the legislation introduced to date on this issue has been enacted. The DEQ will develop rules to implement any eventual legislation as appropriate.

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## REMEDATION AND REDEVELOPMENT DIVISION

### **Recommendation R-2: Part 201/213 Vapor Intrusion Policy and Procedure (IN PROCESS)**

Three of the four proposed solutions have been implemented and the fourth is currently underway and being implemented in conjunction with the work associated with Recommendation R-3: Revising Part 201, Cleanup Criteria. The Part 201, Environmental Remediation, and Part 213, Leaking Underground Storage Tanks, of the NREPA, Guidance

Document for the Vapor Intrusion Pathway was finalized in May 2013 and posted to the [Remediation and Redevelopment Division \(RRD\)](#) Web site. This document details the use of a conceptual site model in evaluating the volatilization to indoor air pathway (also known as the vapor intrusion pathway) and provides guidance for data collection and evaluation processes consistent with the needs of business transactions, as described in recent presentations at various environmental professional workshops. The RRD has also completed a review of the available Michigan-based soil, soil gas, and groundwater data and comparison to screening levels. Following the recommendations of the Criteria Stakeholders Advisory (CSA) Workgroup, the vapor intrusion pathway will include a tiered approach for the development of facility and site specific criterion which allows the use of certain site specific conditions (e.g. soil type, temperature) consistent with the ORR Recommendation. The update to the criteria for all hazardous substances is well underway, and a project Gantt chart depicting the current status of the criteria development is provided on the RRD [CSA Web page](#). The proposed rules will include a process to implement this recommendation.

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### **Recommendation R-3: Revising Part 201, Cleanup Criteria (IN PROCESS)**

#### CSA Workgroup

A CSA Workgroup was convened by the DEQ on March 26, 2014. The responsibilities of the CSA Workgroup included: developing guiding principles to serve as the basis for updating the existing criteria, reviewing background white papers, reviewing reports of the technical groups, and making recommendations to the DEQ Director. The DEQ hired Public Sector Consultants to facilitate the stakeholder process. Four technical subcommittees were appointed to assist the CSA Workgroup. The Workgroup completed their report and provided a total of 29 recommendations to the Director. All of the recommendations were supported by the DEQ, and four recommendations warranted further discussion with the CSA. The update to the criteria for all hazardous substances for all pathways (including vapor intrusion) is currently underway, pursuant to the Director's response to the stakeholders' recommendations.

#### Current Progress

The Remediation and Redevelopment Division (RRD) is updating the Cleanup Criteria pursuant to the recommendations of the Criteria Stakeholders Advisory workgroup. The Cleanup Criteria (a.k.a. the Environmental Contamination Response Activity Administrative Rules, R 299.1 – 299.50) are undergoing a significant update to evaluate and select the most appropriate toxicological data, physical-chemical properties, and exposure assumptions for each of the 300 plus hazardous substances and associated criteria.

The update process involves a number of tasks and is expected to continue through 2015, at which point the DRAFT rule package will be submitted to the ORR for public comment and promulgation.

To keep everyone informed as to the status of the update, the RRD has posted a Gantt project chart on the [RRD CSA Workgroup Web page](#). The Web page also provides information about the CSA Workgroup and a link to the CSA Workgroup Final Report and Recommendations to the DEQ.

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### **Recommendation R-7b: Part 211, UST Regulations (REFERRED TO LARA)**

The Bureau of Fire Services has submitted a request for rulemaking to the ORR and it was approved on October 2, 2015. Please see ORR rule set number [2015-060 LR](#).

### **Recommendation R-7h: Storage and Handling of Gaseous and Liquefied Hydrogen Systems (REFERRED TO LARA)**

Once the revision to the UST regulations is completed, the Bureau of Fire Services will start the revisions of these rules.

### **Recommendation R-8: Definition of Background Concentrations for Hazardous Substance in Soil and Groundwater (IN PROCESS)**

Act 446 of 2012 amended Part 201 by amending the definition of “background concentration.” Additional amendments to Part 201 in SB 891 were passed by the Legislature, and 2015 PA 542 was signed by the Governor on January 15, 2015, which further clarifies the definition of “background concentration.” A policy on the appropriate use of the Michigan Background Soil Survey has been drafted by the Soil Background Technical and Program Support team to include information on the revised definition of “background concentration.” The draft is currently under internal review. Additionally, the DEQ completed a two-year project of collecting background soil data from existing RRD files to add to the database of background data that was used for the 2005 Michigan Background Soil Survey. The 2015 version of the Michigan Background Soil Survey is being revised to incorporate the public comments that were received. The next step will be to review and publish the document within the upcoming months.

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### **Recommendation R-14: Boron Standard for Groundwater (IN PROCESS)**

The RRD attempted to update the exposure assumptions and toxicity data through stakeholder engagement in 2012 and 2013; however, consensus was not achieved. The RRD has reengaged with stakeholders to review the physical-chemical properties, toxicity endpoints, and exposure assumptions as related to the Cleanup Criteria Rules. The CSA Workgroup has developed recommendations and provided them to the Director. The update to the criteria for all hazardous substances for all pathways is in progress, pursuant to the Director’s response to the Stakeholders’ recommendations. Boron is one of the hazardous substances included in the criteria and will be addressed as a part of the review.

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## **WATER RESOURCES DIVISION**

### **Recommendation W-1: Part 5, Spillage of Oil and Polluting Material Rules (IN PROCESS)**

Stakeholders met on May 3, 2013; May 16, 2013; May 30, 2013; June 13, 2013; June 27, 2013; July 11, 2013; July 25, 2013; August 8, 2013; August 22, 2013; September 12, 2013; and November 3, 2014, to discuss changes to the rules. The Water Resources Division (WRD) provided additional information to the stakeholders on December 5, 2014. On January 15, 2015, a subgroup of the stakeholders submitted a version of the Part 5 Rules for review by the WRD. Meetings were held on January 30, 2015, March 3, 2015 and October 1, 2015. The stakeholder process is concluded now, and final pieces are being put into place to proceed with legislation and/or rule process.

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### **Recommendation W-4: Part 22, Groundwater Quality Rules (NOT STARTED)**

Nothing to date.

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### **Recommendation W-9: Part 22- Groundwater Quality Rules (NOT STARTED)**

Nothing to date.

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### **Recommendation W-10: Part 5, Spillage of Oil and Polluting Material Rules (IN PROCESS)**

See Recommendation W-1.

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### **Recommendation W-12: Wetland Mitigation Banks (NOT STARTED)**

Act 98 of 2013 requires the DEQ to update the Wetland Mitigation Banking rules to facilitate more economically efficient wetland mitigation banks.

Development of rules under Act 98 of 2013 is on hold while U.S. EPA reviews the statutory amendments to determine if the changes in the program are consistent with federal law.

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## GENERAL

### **Recommendation G-2: Treatment of DEQ Non-Rule Regulatory Actions (IN PROCESS)**

The DEQ has reviewed and posted all of their public [forms](#) on the DEQ Public Forms Database. Go to [www.michigan.gov/deq](http://www.michigan.gov/deq) | Key Topics | Forms.

Existing DEQ Policy and Procedure No. 01-019 and No.09-012 have been superseded by a new department policy. The new policy, "Department Policy and Procedure, Division Policy and Procedure, and Administrative Procedures Act Guideline Development, Revision, Rescission, and Use, No. 09-013" will improve the consistency and accessibility of all of the department and division policy and procedures. External and some internal [policies](#) that would be beneficial to the public are being posted on the Internet. Go to [www.michigan.gov/deq](http://www.michigan.gov/deq) | Key Topics | Policy and Procedures. Not all of the Department's policies have been converted to the new template and posted. This is a work in progress.

DEQ divisions and offices are reviewing all of their publications. Outdated publications will either be removed or updated. This is a work in progress.

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