DEQ

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

All Divisions January 2018

Below are the recommendations that were either closed out in 2017 or their open status has been updated.

AIR QUALITY DIVISION

Recommendation A-7: Rule 801, Rule 803, and State Implementation Plan (SIP) (IN PROGRESS)

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.

Response:

All legal challenges to the federal Cross State Air Pollution Rule (CSAPR) concluded on July 28, 2015. The AQD met with representatives of non-Electric Generating Units (EGU) to explore options for moving forward with rule modifications. Additionally, discussions with EGUs have taken place. Representatives of EGUs and non-EGUs will continue to be engaged as revisions are developed. On December 27, 2016, the U.S. EPA's updated CSAPR to address transport for the 2008 ozone NAAQS became effective. In December 2016, U.S. EPA also released a Notice of Data Availability for the modeling to support states' Good Neighbor SIPs for the 2015 ozone NAAQS. Decisions on how to move forward with Part 8 rule revisions must consider these U.S. EPA actions and plans.

The Part 8 rulemaking is identified as 2017-069 EQ. The Part 8 rules are mainly being re-crafted to address obligations of the NOx SIP Call with respect to non-EGU's. EGU's will only be addressed by the new Part 8 rules if the AQD incorporates any CSAPR references. As of December 2017, draft rules are almost finished, but will then need to be reviewed by AQD supervisors/management and then stakeholders sometime in January – February of 2018.

Contact: Tracey McDonald, (517) 284-6756, McDonaldt@michigan.gov

OFFICE OF OIL, GAS AND MINERALS

Recommendation RM-9: Conformance Bond or Statement of Financial Responsibility Requirements for Mineral Well Operators (COMPLETED)

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.

Response:

The Oil, Gas, and Minerals Division (OGMD) successfully negotiated a Memorandum of Understanding (MOU) that was signed by U.S. EPA on October 31, 2017.
Contact: Adam Wygant at 517-897-4828 or wyganta@michigan.gov

MEMORANDUM OF UNDERSTANDING BETWEEN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION S FOR
CERTAIN ACTIVITIES UNDER THE FEDERAL UNDERGROUND INJECTION
CONTROL PROGRAM

This Memorandum of Understanding (MOU) is made between the Michigan Department of Environmental Quality, Oil, Gas, and Minerals Division (hereinafter MDEQ), and the United States Environmental Protection Agency; Region 5 (hereinafter EPA). This MOU replaces the previous MOU (Owner or Operator Use of the Michigan Well Bond to Satisfy the Federal Financial Responsibility Requirement for Class II Wells. effective May 2,1986) between the Michigan Department of Natural Resources and EPA, Region 5.

Start Date: OCT 31 2017 (Month/Day/Year) End Date: See Section VI - "Effective Date. Duration. and Maintaining this MOU".

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I. Purpose

The purpose of this MOU is to address specific areas of overlap between state and federal regulations and joint interests in the oversight of Class I, Ill, IV [V [1], and VI injection well activities under the federal Safe Drinking Water Act (SD WA), and ensures the best use of resources for environmental and public health protection, minimizes duplication of effort. and avoids confusion within the regulated community.

This MOU outlines the procedures and criteria for EPA to accept the financial assurance mechanisms required by Michigan law for owners or operators of a facility or activity subject to regulation under the federal Underground Injection Control (UIC) program, in order to comply with federal UIC financial responsibility requirements. These federal financial responsibility requirements provide for proper plugging and abandonment of Class l. ll. Ill. IV/V, and VI injection wells. The financial assurance mechanisms subject to this MOU may be for a single well or for multiple wells. This MOU also outlines

[1] This MOU does not apply to Class IV wells or to shallow Class V wells unless they have permits issued bv EPA with financial responsibility requirements.

sharing of information between MDEQ and EPA on topics such as plugging wells with state and federal funds, geologic sequestration, and hydraulic fracturings. For the purposes of this MOU, Class I, II, III, IV/V, and VI wells are classified as provided at 40 C.F.R § 144.6

This MOU does not apply to federal SDWA or UIC programs on "Indian lands" as defined in 40 C.F.R. §144.3, which means "Indian country" as defined in 18 U.S.C. §1151, within Michigan.

II. Financial Responsibility

a. Federal and State Requirements

i. State Financial Responsibility Requirements.

Under Part 615, Supervisor of Wells, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 45 as amended (NREPA), Michigan Compiled Laws (MCL) 324.61501 et seq., MDEQ promulgated administrative rules governing oil and gas operations (including Class II wells). These rules are found at Michigan Administrative Code (MAC) Rules 324.101 through 324.1406. MAC Rule 324.212 requires a person who drills or operates a well associated with oil and/or gas activities to file a conformance bond. The amount of the conformance bond varies based on the number and depth of well(s). MAC Rule 324.212 provides the specific amounts required.

Under Part 625, Mineral wells, of the NREPA, MCL 324.62501 et seq., MDEQ promulgated administrative rules governing mineral wells. These rules are found at MAC Rules 299.2301 through 2992531 (including Class I, III, IV, V, and VI wells). MAC Rule 299.2332 requires a person who drills or operates a mineral well to file a conformance bond with the supervisor of mineral wells. The amount of the conformance bond in each case varies based on several factors including, but not limited to, the number. depth, and type of well(s), MAC Rule 299.2332 provides the specific amounts required for different types of wells.

MAC Rules 324.102(j) and 299.2302(k) both define a "conformance bond" in relevant part as "a surety bond that has been executed by a surety company authorized to do business in this state, cash, certificates of deposit, letters of credit. or other securities that are filed by a person' and accepted by MDEQ. The cash, instruments, and other mechanisms included in the definition of conformance bond under Part 615 and Part 62.5 are the state-required financial assurance mechanisms referenced in this MOU.

ii. Federal Financial Responsibility Requirements

Pursuant to the regulations promulgated. under SDWA, 42 U.S.C. §§ 300h *et seq*., Class I, II, III, IV/V, and VI injection well owner/operators are required to maintain financial responsibility and resources to plug and abandon their underground injection operations in a manner prescribed by EPA. Under rules promulgated by EPA at 40 C.F.R. § 144.28(d) and 2(a)(7), an owner/operator may use various financial responsibility mechanisms to satisfy the federal financial responsibility requirements, Owners or operators of Class I wells that are injecting hazardous waste must comply with the additional financial responsibility requirements of 40 C.F.R. Part 144, Subpart F. Owners or operators of Class VI wells must comply with the additional financial responsibility requirements set forth in 40 C.F.R. § 146.85.

b. Use of State-Required Financial Assurance Mechanism for Federal Requirements

Class l, II. III, IV/V and VI injection well owners/operators may use state required financial assurance mechanisms to meet the federal requirements, in part or in full, when approved by EPA on a case-by-case basis for each well To obtain approval, an owner/operator must maintain evidence of the establishment of the required financial assurance mechanism and must submit a copy of such evidence, together with a letter requesting that the state-required mechanism be considered acceptable for meeting the federal requirements.

For Class l, II, III, IV/V and VI injection well owners /operators in Michigan who use the state-required mechanism to satisfy federal financial responsibility requirements, MDEQ will accept a financial assurance mechanism in an amount that would satisfy the federal requirements in full or, if in part, in an amount that is not less than the amounts required in MAC Rules 324.212 and 299.2332.

Pursuant to 40 C.F.R. §§ 144.28(d)(3), § 144.52(a)(7)(ii), or a permit condition, EPA may periodically reevaluate plugging and abandonment costs. If the demonstration of financial responsibility for a Class I, II, III, IV/V, or VI well is insufficient to cover revised estimated costs for plugging and abandonment for that well, EPA intends to require the owner/operator(s) to obtain additional financial assurance.

c. Reporting for Financial Responsibility

i. EPA's Responsibility List of UIC Wells Assured Using State Financial Assurance Mechanisms

Within thirty (30) days after the effective date of this MOU and continuing on a semi-annual basis thereafter, EPA intends to submit to MDEQ a list identifying all UIC wells located in Michigan assured using state-required financial assurance mechanisms to comply with the federal financial responsibility requirements. EPA intends to include the name of the owner/operator, the name of the well, the state and permit numbers, and the amount of coverage for plugging and abandonment for each well on the list. MDEQ plans to use this list to determine whether the amount of funds listed by EPA matches what it has on file for each financial assurance mechanism.

ii. MDEQ's Responsibility - Changes to State-Required Mechanisms Used to Meet the Federal Financial Responsibility Requirements

When a state-required financial assurance mechanism is used to satisfy federal financial responsibility requirements, MDEQ intends to notify EPA in writing within one week of MDEQ either: (l) initiating the release, cancellation, or modification of the state-required financial assurance mechanism; or (2) becoming aware of changes in the amount of coverage of the financial assurance mechanism or circumstances involving the well or owner/operator that are likely to require an increase in coverage of the financial assurance mechanism.

iii. Joint Responsibility

If either party identifies a shortfall or other discrepancy in the financial assurance mechanism for a well subject. to this MOU, the party making the discovery intends to inform the other party of the shortfall or other discrepancy.

III. Enforcement Communication and Plugging and Abandonment of a Well Subject to this MOU

Upon determining that a UIC well or its owner/operator is in violation of the SDWÅ or EPA UIC regulations, EPA may initiate an enforcement action(s) to compel compliance with the federal ULC requirements, As each. action occurs. EPA intends to provide MDEQ with a written notification and a copy of all relevant correspondence involving that well and its owner/operator.

If EPA determines that a UIC well in Michigan needs to be plugged and abandoned and the owner/operator is unable to adequately plug the well, the Regional Administrator of EPA, Region 5, or his/her designee may submit a written request to MDEQ requesting that MDEO properly plug and abandon the well. If MDEQ confirms that the well qualifies to be plugged through use of the conformance bond or funding from the Orphan Well Fund established pursuant to Part 616 of the NREPA, MCL 324.61601 *et seq*., in accordance with the provisions of Michigan's statutes, rules, and regulations, MDEQ will proceed expeditiously to plug and abandon the well using the available funds, in accordance with applicable state contracting or procurement. requirements.

MDEQ reserves the right to submit a written request to EPA requesting that a UIC well be properly plugged and abandoned in accordance with this MOU and EPA intends to not unreasonably withhold its consent,

When a subject well has both state and federal financial assurance mechanisms, EPA intends, upon MDEQ's request, to cause the release of funds from the federal financial assurance mechanism to MDEQ or a contractor which MDEQ has hired to plug the well, MDEQ agrees to provide EPA with at least seven (7) days' advance notice as to when it intends to plug and abandon such well, and EPA reserves the right to witness the plugging and abandonment of the subject well The subject well shall not be considered properly plugged and abandoned until an authorized representative of either MDEQ or EPA has signed a plugging affidavit. Upon said signing, any remaining state conformance bond funds shall no longer constitute part of the federal financial responsibility requirement for the subject plugged and abandoned well.

If ever EPA and MDEQ disagree on specific actions, timing, or the necessity to plug and abandon an injection well, the parties to this MOU or their designees may meet to discuss and attempt to resolve this disagreement,

IV. Other Financial Assurances

Nothing in this MOU shall be interpreted to preclude the owners/operators of UIC wells in Michigan from separately meeting state and federal financial responsibility requirements by any methods allowed under the applicable state and federal laws and regulations respectively.

V. Other Areas of Joint Interest

a, Communication Regarding Hydraulic Fracturing

If MDEQ becomes aware of any proposed or existing hydraulic fracturing operations using diesel fuel, MDEQ intends to notify EPA of these operations and agrees to notify the owner/operat01^{R} of the need to apply for a federal permit,

b. Communication Regarding Geologic Sequestration.

The regulations at 40 C,F.R. 144.19(b) establish, and complementary guidance discuss, risk-based factors that should be considered when determining if a Class Il operation that uses carbon dioxide for enhanced oil or gas recovery has changed such that the regulated operation may need to transition to a Class VI permit to address risks to Underground Sources of Drinking Water (USDW). If MDEQ or EPA becomes aware of any such operation that cannot be appropriately managed under the Class Il requirements to adequately address risks to USDW .and may need a Class VI permit} the first agency to become aware of the problem intends to contact the other agency to discuss the need for the owner/operator to obtain a Class VI permit-

VI. Effective Date, Duration, and Maintaining this MOU

This MOU becomes effective on the date of execution by the last signatory and shall remain in effect until EPA delegates to MDEQ primary enforcement responsibility for the UIC program pursuant to Sections 1422 or 1425 of SDWA, 42 U.S.C. §§ 300h-l or 300h-4, at which time this MOU will terminate for those Classes of wells covered by such delegation and the applicable provisions of this MOU shall survive and remain in effect for those Classes of wells not covered by that delegation.

Either party may unilaterally withdraw from this MOU after a 60-day written notice period, provided that any well(s) MDEQ agreed to plug prior to the expiration of the 60-day withdrawal notice remains covered by this MOU until plugging and abandonment is completed and payment rendered in accordance with this MOU,

This MOU may be extended or modified, at any time, through mutual agreement of the parties. If' the parties determine that such changes are necessary, they will modify this MOU accordingly and obtain new signatures, However the contacts listed for EPA and MDEQ may be updated at any time by written notice of one party to the other party .without amending the MOU. The parties intend to review this MOU at least once every five years.

VII. Legal Framework.

This MOU is a voluntary agreement that expresses the good-faith intentions of the parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. Nothing contained in this MOU serves to limit, alter, or amend a party's duties, rights, or responsibilities as set out in any applicable state or federal statute, law, or regulation.

This MOU does not create any rights or benefits, substantive or procedural, enforceable by law or equity, by persons and entities who are not party to this agreement, against

MDEQ or EPA, their officers or employees, or any other person. This MOU does not apply to any person or entity outside of MDEQ and EPA.

All commitments made by EPA and MDEQ in this MOU are subject to the availability of appropriated funds. Nothing in this MOU, in and of itself, obligates EPA or MDEQ to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with the respective EPA or MDEQ budget priorities. MDEQ agrees not to submit a claim for compensation for services rendered to EPA in connection with any activities it carries out in furtherance of this MOIL Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

SIGNED:

The individuals signing below certify by their signatures that they are authorized to sign this MOU on behalf of his or her agency and that the parties intend to fulfill the terms of this MOLL

For the Michigan Department of Environmental Quality

C. Heidi Grether
Director

Date: 9.19.17

For the United States Environmental Protection Agency, Region 5

Robert A. Kaplan
Acting Regional Administrator

Date: 10-31-17

OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION

Recommendation RM-8: Medical Waste Storage Accumulation Limitation (IN PROCESS)

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.

Response:

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. The DEQ’s Medical Waste Stakeholders Advisory Group met throughout 2017 to develop recommended improvements to the MWRA, including how sharps storage is regulated. The recommendations are anticipated by June 2018.

Contact: Steve Sliver, (517) 284-6595 or sliverS@michigan.gov

REMEDIATION AND REDEVELOPMENT DIVISION

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

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.

Response:

Three of the four proposed solutions have been implemented and the forth 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,

The RRD worked with DHHS and the Toxic Steering Group to develop appropriate screening levels for vapor intrusion. 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 includes 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.

In addition to the tiered approach, the DEQ has developed a calculator that uses the equations in the rules that can be used to calculate the appropriate criteria. On January 10, 2018, the DEQ hosted a webinar for nearly 500 participants to showcase and demonstrate how the DEQ's proposed Volatilization to Indoor Air Pathway calculator implements the proposed rules and generates generic volatilization to indoor air criteria using facility-specific inputs.

The update to the criteria for all hazardous substances is underway. The proposed rules include a process to implement this recommendation. See ORR rule set number 2015-094 EQ. The third public hearing for these rules is scheduled for January 18, 2018. The comment due date has been extended to February 7, 2018.

Contact: Matt Williams at 517-284-5171 or williamsm13@michigan.gov

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

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 Part 201 and Part 7, Cleanup Criteria, of the Administrative 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.

Response:

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.

Current Progress

The Remediation and Redevelopment Division (RRD) has updated 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. See ORR rule set number 2015-094 EQ. The third public hearing for these rules is scheduled for January 18, 2018. The comment due date has been extended to February 7, 2018.

To keep everyone informed as to the status of the rules update, the RRD has posted information on the RRD Website at www.michigan.gov/DEQRRD.

Contact: Joshua Mosher at 517 284-5134 or mosherj1@michigan.gov

Recommendation R-7b: Part 211-UST Regulations (REFERRED TO LARA) (IN PROCESS)

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.

Response:

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. The USEPA is currently reviewing the draft rules. Final promulgation of the rules is expected in 2017.

Recommendation R-7h: Storage and Handing of Gaseous and Liquefied Hydrogen Systems (REFERRED TO LARA) (IN PROCESS)

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.

Response:

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)

Recommendation:

The DEQ should consider "industrial background" concentrations (otherwise known as anthropogenic contamination) when establishing cleanup goals for all hazardous substances. Specifically, R 299.5701 of Part 201, and the Part 5 and Part 10 Administrative 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.

Response:

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.

Contact: Christine Flaga at 517-284-5098 or flagac@michigan.gov

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

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.

Response:

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 reengaged with stakeholders to review the physical-chemical properties, toxicity endpoints, and exposure assumptions as related to the Cleanup Criteria Rules. The CSA Workgroup developed recommendations and provided them to the Director. The update to the criteria for all hazardous substances for all pathways has occurred, pursuant to the Director's response to the Stakeholders' recommendations. Boron is one of the hazardous substances included in the criteria and has been addressed in the proposed rules. See ORR rule set number 2015-094 EQ. The third public hearing for these rules is scheduled for January 18, 2018. The comment due date has been extended to February 7, 2018.

Contact:

Joshua Mosher at 517 284-5134 or mosherj1@michigan.gov

WATER RESOURCES DIVISION

Recommendation W-12: Wetland Mitigation Banks (IN PROCESS)

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.

Response:

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 has been on hold while EPA reviewed the statutory amendments to determine if the changes in the program are consistent with federal law. EPA completed review of the Act 98 of 2013 in December 2016 and found fourteen of the amendments are inconsistent with federal law. DEQ has begun stakeholder and legislative engagement to discuss the EPA decision and develop new statutory amendments which will address the inconsistencies with federal law. The Wetland Mitigation Banking rules are on hold until the statutory issues are addressed. Furthermore, on October 11, 2017, Governor Rick Snyder sent a letter to Mr. Scott Pruitt, EPA Administrator, requesting that EPA reconsider its findings relating to Act 98 of 2013 and DEQ has not yet received a response.

Contact: Amy Lounds, (517) 284-5530, loundsA@michigan.gov