



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

General

January 2018

Recommendation G-1: Rules More Stringent Than Federal (COMPLETED)

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.

Response:

The DEQ is addressing this recommendation through three avenues:

- The DEQ, along with all other state of Michigan departments, submits an annual regulatory plan to the Office of Regulatory Reinvention. The plan identifies which rules are most problematic to the regulatory community and could be reviewed to determine the most business-friendly method of regulation. The DEQ is continuously reviewing rules that conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government. This report is published on [the DEQ rules Web page](#).
- Anyone that has concerns about DEQ rules being unfairly more restrictive than federal regulations are encourage to contact the appropriate division or office chief.
- During the process of promulgating new rules or amending existing rules, all departments must respond to the following question contained in the Regulatory Impact Statement that is reviewed by the Office of Regulatory Reinvention.
 - Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.
 - Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

Contact: Dave Fiedler, (517) 284-6705, fiedlerD@michigan.gov

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

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. **Complete 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 policies 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.**

Response:

The DEQ has reviewed and posted all of their public [forms](#) on the DEQ Public Forms Database. Go to 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 | 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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Recommendation G-3: Administrative Rule Approval Process (COMPLETED)

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.

Response:

The DEQ is promulgating rules within 12 months as stipulated in the recommendation. Below are the time frames for rulemaking requested in 2013.

Rule Set No.	Rule Title	Division	Request for Rulemaking Approved by ORR	Rules Filed with Secretary of State	Number of Days for Rulemaking
2013-021 EQ	Part 15 -Mercury	AQD	3/14/13	10/28/13	227
2013-046 EQ	Water Quality Trading	WRD	3/28/13	8/27/13	151

Rule Set No.	Rule Title	Division	Request for Rulemaking Approved by ORR	Rules Filed with Secretary of State	Number of Days for Rulemaking
2013-052 EQ	Part 11 – Continuous Emission Monitoring	AQD	6/5/13	5/7/14	334
2013-056 EQ	Cleanup Criteria Rules	RRD	6/12/13	12/30/13	201
2013-065 EQ	Part 14 – Clean Corporate Citizens	AQD	7/10/13	9/24/14	440
2013-101 EQ	Oil and Gas Operations	OOGM	11/1/13	3/11/15	494
2013-109 EQ	Part 9 - Miscellaneous	AQD	12/9/13	5/20/15	519
2014-024 EQ	Part 4 SO2	AQD	2/25/14		
2014-023 EQ	Supplying Water to the Public	ODWMA	2/24/14	10/16/15	598
2014-146 EQ	Solid Waste Rules	OWMRP	10/20/14	3/18/15	155
2014-153 EQ	Part 1 - Definitions	AQD	12/3/14		
2014-154 EQ	Part 2 – Air Permits	AQD	12/3/14		

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Recommendation G-4: DEQ Citation of Legal Authority (COMPLETED)

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.

Response:

The DEQ Policy and Procedure No. 04-003 titled “Compliance and Enforcement” Appendix A, Section 2A, requires violation notices to contain a description in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted. DEQ staff have been reminded to follow this procedure.

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