



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

Remediation & Redevelopment Division

January 2018

### **Recommendations R-1: Groundwater/Surface Water Interface (GSI) (COMPLETED)**

#### *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.

#### *Response:*

The DEQ convened key stakeholders for a Collaborative Stakeholders Initiative (CSI) to address long-standing issues associated with Michigan's cleanup and redevelopment programs. Please go to the "[Michigan's Cleanup and Redevelopment CSI](#)" Web site. Go to [www.michigan.gov/deqland](http://www.michigan.gov/deqland), select "Land Cleanup," "Site Investigation and Cleanup," and then "Michigan's Cleanup and Redevelopment CSI."

The CSI GSI Group was responsible for the passage of 2012 PA 190 (Act 190) that amended Section 20120e (MCL 324.20120e) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The legislative changes became effective on June 20, 2012, and create flexibility in allowing for more progressive options in addressing groundwater venting to surface water including mixing zones, alternative monitoring points, and ecological and/or modeling demonstrations.

The GSI Technical and Program Support (TAPS) Team will be developing a DEQ Policy and Procedure that assists staff in understanding the legislative changes and the addressing the

technical aspects of Act 190 that are used for demonstrating compliance and/or the necessity for taking remedial action.

On December 22, 2012, Governor Snyder signed SB 1328 into law (2012 PA 446). Act 446 amended Part 213, Leaking Underground Storage Tanks, of the NREPA and provides for the option of using Part 201, in lieu of Part 213, for evaluation and corrective actions related to the venting groundwater pathway (GSI).

In addition, the Remediation Redevelopment Division (RRD) has provided for additional staff funding in the Water Resources Division (WRD) for GSI assistance and collaboration. This action will provide for a more timely and coordinated review for GSI.

The WRD and CSI GSI Group finalized DEQ Policy and Procedure No. 09-014 that now allows for the use of U.S. Environmental Protection Agency (USEPA) Method 245.1 to quantify the level of mercury in groundwater that is venting to surface water as part of an evaluation of the GSI pathway. This significantly improves the GSI mercury compliance process.

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## **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 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.

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 included 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](mailto: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](http://www.michigan.gov/DEQRRD).

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#### **Recommendation R-4: Part 201 Rules (COMPLETED)**

##### *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.

##### *Response:*

Recommendation R-4 proposes to rescind all rules 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, Recommendation R-4 stated that the 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.

Act 446 amended Part 201 by rescinding 32 rules in total, upon the effective date of the Act which is December 31, 2012. Below is a summary of rules rescinded.

- Part 1. General Provisions (portions of)
- Part 4. Alternative Water Supplies (all)
- Part 5. Response Activities (portions of)
- Part 7. Clean-Up Criteria (portions of)
- Part 9. Baseline Environmental Assessment (all)

Additional Part 1, 5, and 7 rules, 35 in total, will be rescinded on December 31, 2013.

During the CSI process, an effort was made to incorporate the critical rule language into statute to eliminate the need for rules. This was intended to streamline the process further and complete the process sooner. As of today, there are no efforts being undertaken to promulgate rules other than for the criteria. Therefore, this recommendation has been completed.

Contact: Patty Brandt at 517-284-5071 or [brandtp@michigan.gov](mailto:brandtp@michigan.gov)

## **Recommendation R-5: Risk-Based Closures and Site-Specific Criteria (COMPLETED)**

### *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.

### *Response:*

Act 446 amended Part 201 by broadening the use of site-specific criteria to include non-numeric criteria, in addition to numeric criteria, in evaluating the toxicity and exposure risk for sites. Site-specific criteria may be used in a response activity if it can be demonstrated that this criteria better reflects the best available information related to that substance and site conditions.

The Part 213 statutory amendments enacted May 2012 have updated the criteria associated with “free phase” employing current science and the best national practices, and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8-inch accumulation of petroleum in monitor wells and instituted the use of the term light nonaqueous-phase liquid (LNAPL) to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

The amendments have adopted the nationally recognized American Society for Testing and Materials (ASTM) Risk-based Corrective Action for characterizing and assessing risk associated with the sites where LNAPL is present which allows for greater flexibility in managing risks associated with its presence.

In addition to the statutory amendments redefining NAPL, using nationally recognized standards, and allowing for greater flexibility in managing risks associated with NAPL, the DEQ has adopted the nationally recognized and adopted Interstate Technology and Regulatory Council’s (ITRC) evaluative and management practices for LNAPL sites.

The RRD completed policy and procedures and resource materials related to petroleum NAPL definitions and NAPL management on December 5, 2014 and June 24, 2014, respectively. See Recommendation R-6 for more details.

Contact: Patty Brandt at 517-284-5071 or [brandtp@michigan.gov](mailto:brandtp@michigan.gov)

## **Recommendation R-6: Effective Solubility and Free Phase Contamination (COMPLETED)**

### *Recommendation:*

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.

1. 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.
2. In developing any new criteria to address free-phase contamination, the DEQ should use science and look to national best practices.
3. The DEQ should allow regulatory flexibility when evaluating “free phase” situations where there is no demonstrated impact to groundwater present.

*Response:*

The Part 213 statutory amendments enacted in May 2012 have updated the criteria associated with “free phase” employing current science and the best national practices and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8-inch accumulation of petroleum in monitor wells and instituted the use of the term light nonaqueous-phase liquid (LNAPL) to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

The amendments have adopted the nationally recognized American Society for Testing and Materials (ASTM) Risk-based Corrective Action for characterizing and assessing risk associated with the sites where LNAPL is present, which allows for greater flexibility in managing risks associated with its presence.

The Petroleum Nonaqueous-Phase Liquid (NAPL) Management Resource Document was finalized on June 24, 2014 and is available on the [Remediation and Redevelopment Division](#) Web site. The document includes NAPL definitions and NAPL management options consistent with all current science and risk-based decision making. A DEQ Policy, Number 09-023, was finalized on December 5, 2014 and provides guidance to DEQ staff for the management of petroleum NAPL.

Contact: Nick Swiger, 231-876-4458, [swigern@michigan.gov](mailto:swigern@michigan.gov)

### **Recommendation R-7: Storage Tanks (COMPLETED)**

One of the requirements in each of the below recommendations is moving the DEQ storage tank program to the Department of Licensing and Regulatory Affairs (LARA). On October 3, 2012, Governor Rick Snyder issued [Executive Order 2012-14](#) which transfers the Aboveground Storage Tank Program and the Underground Storage Tank Program from the DEQ to the Bureau of Fire Services within LARA. The regulation of leaking underground storage tanks will remain with the DEQ and the Bureau of Fire Services will work cooperatively with the DEQ in identifying leaking storage tanks. LARA will be responsible for completing the rule changes identified in recommendations above, as well as rescind the Transportation of Flammable and Combustible Liquids rules per Recommendation R-7c. The provisions of the Executive Order become effective on December 4, 2012.

If the Michigan amendments are removed from the rules stated above, the proposed amendments to the Part 5 – Spillage of Oil and Polluting Materials rules (R 324.2001 - R 324.2009) will need to address storage tank releases. Additional proposed amendments to the Part 5 rules are found in Recommendation W-1.

LARA, therefore, will be responsible for addressing the following five Environmental ARC recommendations pertaining to tank rule revisions:

- **R-7b** – Part 211 – Underground Storage Tank (UST) Rules: amend rules to incorporate federal standards.
- **R-7d** – Compressed Natural Gas (CNG) Vehicular Fuel Systems: rescind Michigan specific amendments.
- **R-7f** – Storage and Handling of Flammable and Combustible Liquids: rescind Michigan specific amendments.
- **R-7g** – Liquefied Petroleum Gas: rescind Michigan specific amendments.
- **R-7h** – Storage and Handling of Gaseous and Liquefied Hydrogen Systems: rescind Michigan specific amendments.

#### **Recommendation R-7a: Underground Storage Tank [UST] Inspection, Delegation and Certification (COMPLETED)**

*Recommendation:*

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

*Response:*

R 29.2071 - R 29.2077 were rescinded, effective September 10, 2012.

#### **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](#). A public hearing has been scheduled for January 11, 2018. Final promulgation of the rules is expected in 2018.

**Recommendation R-7c: Transportation of Flammable and Combustible Liquids (COMPLETED)**

*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.

*Response:*

R 29.2201 - R 29.2234 were rescinded.

**Recommendation R-7d: Compressed Natural Gas (CNG) Vehicular Fuel Systems (COMPLETED)**

*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.

*Response:*

Effective October 13, 2014, R 29.4601 - R 29.4652 were rescinded, and R 29.4701 - R 29.4755 were added to adopt the National Fire Protection Association's (NFPA) Pamphlet No. 52 entitled "Vehicular Gaseous Fuel Systems Code."

**Recommendation R-7e: Production, Storage, and Handling of Liquefied Natural Gas [LNG] (COMPLETED)**

*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.

*Response:*

R 29.4671 - R 29.4672 were rescinded, effective August 16, 2012.



**Recommendation R-7f: Storage and Handling of Flammable and Combustible Liquids (COMPLETED)**

*Recommendation:*

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.

1. 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).
2. 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.

*Response:*

Effective October 13, 2014, R 29.5101 - R 29.5516 were rescinded, and R 29.5601 - R 29.5917 were added to adopt the NFPA's Pamphlet No. 30 entitled "Flammable and Combustible Liquids (FL/CL) Code."

**Recommendation R-7g: Liquefied Petroleum Gas (COMPLETED)**

*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.

*Response:*

Effective October 13, 2014, R 29.6001 - R 29.6097 were rescinded, and R 29.6101 - R 29.6156 were added to adopt the NFPA's Pamphlet Number 58 entitled "Liquefied Petroleum Gas Code 2014 Edition."

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

*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.

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**Recommendation R-9: Due Care for Indoor Air Inhalation at a Property Subject to Michigan Occupational Safety and Health Administration (MIOSHA) Standards. (COMPLETED)**

*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.

*Response:*

Recommendation R-9 proposes to amend Part 201 so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of a property by applying the MIOSHA and the U.S. EPA workplace exposure criteria for both workers and non-workers in workplaces, in lieu of generic Part 201 criteria, and without regard to whether or not the extent to which the chemical in question is being used in the workplace.

Act 446 of 2012 amended Part 201 by allowing facilities subject to MIOSHA Standards to achieve compliance for indoor air criteria by complying with MIOSHA Standards. Act 446 limits this compliance pathway to only manufacturing facilities regardless of whether the chemical is used at the facility.

The stakeholder process included the Deputy Director for MIOSHA and representatives from the Department of Community Health in developing the statutory language for indoor air inhalation due care considerations. This recommendation is considered completed.

Contact: Matt Williams, (517) 284-5171, [williamsM13@michigan.gov](mailto:williamsM13@michigan.gov)

**Recommendation R-10: Soil Relocation Statute MCL 324.20120c and Associated Rules (COMPLETED)**

*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.

*Response:*

Act 446 of 2012 amended Part 201 by including provisions and notice requirements for relocating contaminated soil within a facility, and from a facility to an offsite location. In addition to clearly defining that only contaminated soils are regulated, the legislation exempts relocated soil from becoming a new facility under Part 201 or a solid waste under Part 115.

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**Recommendation R-11: Source Control Requirements under MCL 324.20114(1) and R 299.5526(4) (COMPLETED)**

*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.

*Response:*

Senator Thomas Casperson introduced SB 891 in early 2014. Under the proposed changes, a “source” would be defined as the place or container (e.g., landfill or underground storage tank) from which the release originated. The bill has passed both the Senate and the House, and 2015 PA 542 was signed by the Governor on January 15, 2015.

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

**Recommendation R-12: Relationship between Part 201 and Part 213 (NOT TO BE IMPLEMENTED)**

*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.

*Response:*

Amendments to Part 213, Leaking Underground Storage Tanks, of the NREPA, became effective on May 1, 2012. The Legislature did not support the combining of Parts 201 and 213 into one statute and one program. Given this, the DEQ will not pursue further action on this item.

**Recommendation R-13: Part 201 Due-Care Plans Submitted as Response-Activity Plans for Small Business Administration (SBA) Loans (COMPLETED)**

*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.

*Response:*

In many lending scenarios, including the SBA loans, a person is often required by the lender to obtain the DEQ’s approval of an analysis of the Part 201 and 213 “due care” obligations at the property. Neither Part 201 nor Part 213 contained a mechanism to obtain the approval. Act 446

includes new processes under both Part 201 and Part 213 whereby a person may submit due care documentation to the DEQ for approval and receive a response within 45 days.

The RRD Policy and Procedure titled, *Time Frame for DEQ Review of Due Care Plan/Report Submitted by SBA Loan Applicants* and identified as [No. RRD-17](#) has been rescinded. As prescribed by the 2012 PA 446 of 2012 amendments, the expedited reviews of due care plans are applied to all due care documentation, not just SBA loan applicants.

The Collaborative Stakeholder Initiative (CSI) Due Care Stakeholder Group has provided recommendations to Director Wyant, and the DEQ has drafted responses to those recommendations for the Director's review. Following the review by the Director, implementation of those accepted recommendations will begin.

Contact: Kathleen Shirey, (517) 420-2503, [shireyK@michigan.gov](mailto:shireyK@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.

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### **Recommendation R-15: Quality Review Team (COMPLETED)**

#### *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.

*Response:*

The RRD's Field Operations Quality Review Team was disbanded in December 2012. It has been replaced with an enhanced District Peer Review Process, wherein the District Supervisor has been given authority to approve all submittals. Ten Technical Support Teams have been enhanced and/ or created within RD to serve as a technical resource to project managers and district staff. A formal [Division Policy and Procedure](#) on both the District Peer Review Team and the Technical Support Teams became effective on September 4, 2012.

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**Recommendation R-16 Flexibility When Site Exceeds Only Secondary Non-Health-Based Standards (NOT TO BE IMPLEMENTED)**

*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.

## **Recommendation R-17 Part 201 Cross References (COMPLETED)**

### *Recommendation:*

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

### *Response:*

As of December 31, 2013, the remaining Part 5 Rules and Part 7 Rules have been rescinded, leaving only the newly promulgated Environmental Contamination Response Activity Rules, and the Part 10 Compliance with Section 20107a (Due Care) Rules. In the Part 10 Rules, there are a few remaining references to sections of Part 201 that have been repealed, and to subsections of 20107a that have been amended and now have different meanings. These 14 erroneous cross references have been identified and will be put forward for consideration in updating the rules in 2014.

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