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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



RUSSELL J. HARDING
DIRECTOR

April 15, 2002

Mr. Robert Springer, Director
Waste, Pesticide, and Toxics Division
United States Environmental Protection Agency
77 West Jackson Boulevard (D-8J)
Chicago, Illinois 60604-3590

Dear Mr. Springer:

SUBJECT: Agreements Reached at the Technical Meetings held on March 7, 2002

In our discussions, the Michigan Department of Environmental Quality-Waste Management Division (MDEQ-WMD) and the United States Environmental Protection Agency (U.S. EPA) have recognized the importance of providing consistent, predictable requirements for Resource Conservation and Recovery Act of 1976 (RCRA) corrective action. In addition, the U.S. EPA supports the MDEQ-WMD's decision to further promote consistent cleanup approaches by utilizing the standards, procedures, and resources of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), wherever reasonable and appropriate as part of the RCRA corrective action process.

As a result, the U.S. EPA will work closely with the MDEQ-WMD to identify and address the Part 201 standards and requirements at any Michigan facilities where the U.S. EPA has the lead role for RCRA corrective action. The U.S. EPA will rely on the MDEQ-WMD to clearly outline those standards and requirements so that they can be included in the U.S. EPA's corrective action process. In this way, the programs will achieve consistent results.

Attached to this letter is a summary of the Agreements resulting from the Technical Meetings on March 7, 2002 between the MDEQ-WMD and the U.S. EPA. Upon your signature of the attachment, it will be ready for distribution and implementation by both agencies. Two copies should be signed by both agencies. One original should be kept by the U.S. EPA and one original sent back to me.

Sincerely,



Jim Sygo, Chief
Waste Management Division
517-373-9523

Attachment

cc: Mr. Gerald W. Phillips, U.S. EPA, Region 5
Mr. Hak Cho, U.S. EPA, Region 5
Mr. George Hamper, U.S. EPA, Region 5
Mr. Gordon Garcia, U.S. EPA, Region 5
Mr. George Bruchmann, MDEQ-WMD
Mr. David Slayton, MDEQ-WMD
Mr. Kenneth Burda, MDEQ-WMD
Mr. Stephen Buda, MDEQ-WMD
Ms. JoAnn Merrick, MDEQ-WMD
Mr. Gary Tuma, MDEQ-WMD
Ms. Sharleen Getschman, MDEQ-WMD
Mr. Ron Stone, MDEQ-WMD
Mr. Al Taylor, MDEQ-WMD
Dr. Deb MacKenzie-Taylor, MDEQ-WMD
Ms. Amy Merricle, MDEQ-WMD

ATTACHMENT
Agreements Regarding Technical Meetings – March 2002

The following is a summary of the agreements reached and objectives outlined in furtherance of these principles at the technical meetings held on March 7, 2002, between the MDEQ-WMD and the U.S. EPA.

1. Memorandum of Understanding (MOU)
In the MOU dated November 3, 2000, the U.S. EPA recognizes the MDEQ-WMD's use of the Part 201 process or its equivalent for its voluntary cleanup program. The U.S. EPA also recognizes that this voluntary cleanup program is an acceptable mechanism for achieving the RCRA corrective action objectives at appropriate facilities.

2. MOU Amendment to address Toxic Substances Control Act (TSCA) issues
MOU Amendment to address TSCA issues
 - a. The MDEQ-WMD and the U.S. EPA are developing an amendment to the MOU to incorporate TSCA/polychlorinated biphenyls (PCBs) regulatory issues.
 - b. PCBs are regulated under the RCRA Subtitle C, which provides the U.S. EPA with the authority to require PCB congener analysis when deemed necessary to protect human health and the environment.
 - c. The MDEQ-WMD will request a written interpretation from the U.S. EPA that the TSCA also provides the U.S. EPA with the authority to request congener analysis for PCBs. This interpretation would confirm that use of congener analysis under Part 201 could be consistent with the TSCA.
 - d. The Waste, Pesticide, and Toxics Division of the U.S. EPA will coordinate with the Office of Regional Counsel and the Office of Enforcement and Compliance Assistance of the U.S. EPA on efforts to approve the amendment to the MOU to incorporate TSCA/PCB regulatory issues.
 - e. Mr. Gerald W. Phillips is the U.S. EPA contact and Ms. Amy Merricle is the MDEQ-WMD contact for this effort.
 - f. To expedite concurrent reviews by the MDEQ-WMD and the U.S. EPA, Mr. Jim Sygo, MDEQ-WMD, will send, under his signature, the draft MOU Amendment to Mr. Gerald W. Phillips, U.S. EPA.
 - g. Approval by the MDEQ-WMD director and the U.S. EPA Regional Administrator will be needed for the MOU Amendment and the associated technical document.
 - h. Mr. Tony Martig, U.S. EPA-TSCA, will be the technical contact for the development of the MOU Amendment with the MDEQ-WMD.
 - i. The Draft Technical Document associated with the MOU Amendment will be forwarded to the U.S. EPA by mid April 2002.

3. Federal and Michigan Voluntary Corrective Action Agreements (VCAAs)
 - a. The U.S. EPA will provide the MDEQ-WMD with confirmation of approval of the model joint VCAA.
 - b. Upon approval of the model, both the U.S. EPA and the MDEQ-WMD agree to use the model VCAA as the basis for all VCAAs.
 - c. The U.S. EPA agrees to explore modification of its streamlined corrective action Order to incorporate the Part 201 requirements in a manner similar to the VCAA.
 - d. Facilities must be in compliance with Michigan Rule 299.9525, promulgated under Part 111, Hazardous Waste Management, of Act 451, in order to be considered eligible for a VCAA.
 - e. The MDEQ-WMD Permits Unit Chief will serve as the initial contact to the U.S. EPA for questions and technical assistance in the application of the Part 201 requirements under a U.S. EPA VCAA, unless other MDEQ-WMD staff are assigned to the project.

4. The MDEQ-WMD Remedial Action Team (RAT) Availability
 - a. The U.S. EPA project manager will present a summary of the review of the Corrective Measures Study (CMS) to the MDEQ-WMD RAT, which will provide the U.S. EPA project manager an understanding as to whether the facility has met its corrective action obligations consistent with the requirements of Parts 111 and 201 of Act 451.
 - b. The MDEQ-WMD will provide the U.S. EPA project manager with written comments from the RAT.
 - c. The U.S. EPA project manager will include all appropriate RAT comments in the development of the Statement of Basis supporting the corrective action decision.
 - d. For the first few projects, the U.S. EPA will submit to the MDEQ-WMD the written Statement of Basis for its review and comment.
 - e. The U.S. EPA staff are encouraged to utilize the RAT for information and advice on matters of interpretation of the requirements of Parts 111 and 201 of Act 451.

5. Legally Enforceable Agreement
 - a. The U.S. EPA will provide notice to facility owner/operators (O/O) at the beginning of the VCAA negotiation process of the availability of the Michigan Legally Enforceable Agreement (LEA) to provide for the necessary implementation and maintenance of land or resource use restrictions, institutional controls, and physical and/or engineering controls that may be required at the facility at the end of the corrective action.
 - b. Should the O/O of a facility choose to enter into a LEA, the U.S. EPA will terminate its VCAA with the facility upon confirmation that the LEA is in place.
 - c. The U.S. EPA agrees to provide notice to the facility O/O at the beginning of negotiations of a streamlined Corrective Action Order of the availability of the LEA to provide necessary implementation and maintenance of land or

resource use restrictions, institutional controls, and physical and/or engineering controls that may be required at the facility at the end of the corrective action.

- d. Should the O/O of a facility choose to enter into a LEA, the U.S. EPA will terminate its Order with the facility upon confirmation that the LEA is in place.
6. Definition of hazardous substances vs. hazardous waste, hazardous waste constituents, and hazardous constituents
The U.S. EPA has agreed to attach (to the VCAA or the streamlined Corrective Action Order as an addendum) the Part 201 hazardous substances to their list of RCRA wastes for Michigan facilities to address.
 7. Part 111, Rule 299.9525 Requirements
The U.S. EPA agrees to send a letter to the list of non-Government Performance Results Act Baseline high priority facilities in Michigan currently under review to advise them that they must be in compliance with Rule 299.9525 in order to be eligible for a VCAA.
 8. Risk-based Criteria and Risk Assessments
 - a. Effective the date of this letter, the U.S. EPA agrees that it will seek to have all new corrective action activities initiated at Michigan facilities use and comply with the Part 201 criteria and the associated requirements as part of RCRA corrective action.
 - b. Cumulative risk decisions during the corrective action process will be evaluated with thorough peer review discussions between MDEQ-WMD and U.S. EPA staff on a case-by-case basis for all U.S. EPA-lead sites.
 - c. Upon request of the U.S. EPA, the MDEQ-WMD has agreed to provide the U.S. EPA staff with training in the use of the Part 201 cleanup criteria and the associated requirements.
 - d. The U.S. EPA will provide the MDEQ-WMD with an outline of training needs necessary for the U.S. EPA to effectively implement the tasks outlined in this letter.
 9. Aesthetic Criteria
 - a. The U.S. EPA agrees to bring the Part 201 aesthetic criteria to the attention of facility O/Os subject to corrective action and encourage a cleanup that will achieve these criteria.
 - b. When necessary, the U.S. EPA will advise the MDEQ-WMD that a facility O/O has failed to meet the Michigan aesthetic criteria and will provide all appropriate data in support of this finding.
 10. Direct Contact
The U.S. EPA agrees to apply the Part 201 criteria for the whole soil profile in evaluating direct contact risks for corrective action decision-making.

11. Mixing Zone

- a. The U.S. EPA project managers will work with Mr. Ron Stone of the MDEQ-WMD or other designated MDEQ-WMD staff, on an as needed basis, to address surface water mixing zone issues in identifying the Part 201 standards and requirements.
- b. The U.S. EPA project manager will contact Mr. George Bruchmann, MDEQ-WMD Assistant Division Chief, for assistance regarding a facility mixing zone determination by the MDEQ Surface Water Quality Division.

12. Groundwater Not In An Aquifer

The U.S. EPA project managers will work with Mr. Ron Stone of the MDEQ-WMD or other designated MDEQ-WMD staff, on an as needed basis, for interpretation of Michigan's "Groundwater Not In An Aquifer" guidance document. A copy can be obtained at www.michigan.gov/deq, then by selecting on the left side "Waste", then "Hazardous Waste", then "Hazardous Waste Management". On this web page, select "Closure and Corrective Action" under the Information heading, after which you scroll down to the Groundwater Not In An Aquifer link.

13. Alternate Concentration Limits

The MDEQ-WMD and the U.S. EPA agree to work cooperatively to address this issue as it arises during the corrective action process for all U.S. EPA lead facilities.

14. Ecological Risk Assessment

- a. The U.S. EPA project managers will work with the MDEQ-WMD designated representative to try to ensure that ecological risk assessment issues are addressed consistently.
- b. A contact person from the U.S. EPA will be provided to Mr. David Slayton, MDEQ-WMD, by the end of March 2002.
- c. The U.S. EPA and the MDEQ-WMD will work together to draft a process document on conducting Ecological Risk Assessments.
- d. The Draft Process Document will include an implementation schedule.

15. Groundwater Waivers vs. Monitored Natural Attenuation

- a. The modified Active Groundwater Remediation Waiver Petition guidance document will be finalized for use in the Corrective Action Program by the MDEQ-WMD by the end of March 2002.
- b. The U.S. EPA agrees to the MDEQ-WMDs' use of the current draft of the Active Groundwater Remediation Waiver Petition guidance. If the final guidance is modified from the draft document, then this would necessitate a review and concurrence by the U.S. EPA on the revised final guidance document.

16. Part 111 Authority

The U.S. EPA and the MDEQ-WMD agree that when referencing the Part 201 requirements when performing corrective action at a Michigan Treatment, Storage, or Disposal Facility, the reference will be linked to a Part 111 statutory or regulatory authority.

In the following example, it has been established that the authority to require the use of the Part 201 standards is found in Part 111, not in Part 201.

The company must use the environmental protection standards of Part 201 for the cleanup and protection of all media as required pursuant to Part 111, R 299.9629(3)(a)(iii) for corrective action or Part 111, R 299.9613(6) for closure.

In witness of this agreement, the parties sign their names as evidence of their approval of the agreement.

For the Waste Management Division of the Michigan Dept. of Environmental Quality

Jim Sygo, Chief
Waste Management Division
Michigan Dept. of Environmental Quality

Date

For the U.S. Environmental Protection Agency, Region V

Robert Springer, Director
U.S. EPA, Region 5
Waste, Pesticides, & Toxics Division

Date