



PRESIDENT'S MESSAGE

By: Mary Miller, MAEP 2009 President

At the Annual Meeting on December 2, 2009, the MAEP honored Andy Hogarth, the former Chief of the Remediation and Redevelopment Division of the Michigan Department of Environmental Quality, with the Outstanding Environmental Professional of the Year award (OEPY). Ninety-five MAEP members were in attendance as Andy was recognized for his accomplishments and contributions to the environment in the State of Michigan, which included developing and/or managing a variety of progressive environmental programs pertaining to the State's environmental regulations including Part 201/213 of the Natural Resources and Environmental Protection Act, 1994 PA 451. Many of the progressive programs developed and implemented in Michigan were later copied by other states, including the risk-based approach to environmental remediation.

During his 40-year career as a Michigan environmental professional, Andy has served on numerous state and national environmental panels, committees, and boards, including the Science Advisory Committee of the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the Brownfield Regional Advisory Group for the Council of Great Lakes Governors, the Industrial Advisory Panel for Michigan State University's Center for Microbial Ecology, the Michigan Environmental Health Advisory Committee, and the Advisory Board of the Michigan State University Victor Institute for Responsible Land Development and Use, which addresses the complexities of land use issues and provides research-based information to the public. He has also co-chaired the Detroit Redeveloping Urban Sites (REUS) Team.

During Andy's humble acceptance speech, he remarked how winning the OEPY was like receiving an academy award because it meant that he was being recognized by his peers. He went on to tell the story of three eye-opening events in his life as a young man that made him want to become an environmental regulator. He has always felt that the State of Michigan is a special place and as a regulator he could always do what was right, even though it was sometimes difficult to determine. After nearly 40 years, Andy has now retired from public service, but not without leaving his own legacy on the environment and environmental professionals of this state. We wish Andy well and hope that he enjoys his much-deserved retirement.

In addition to the OEPY, the Environmental Educational Grants were awarded to groups/organizations dedicated to teaching/informing others about the environment and what things citizens can do to help make certain that Michigan has a viable and sustainable environment for generations to come. This year's recipients included: Bach Elementary School - Waste Minimization; Central High School - Inquiries in Environmental Science; Friends of the Rouge - Schoolyard Habitat Pro-

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PRESIDENT'S MESSAGE (CONTINUED)

gram; Huron River Watershed Council – Miller Creek Film Festival; Monroe County Solid Waste Program – Monroe County Green Schools Initiative; Spring Valley Center for Exploration – Partners for a Sustainable Spring Valley – A Call to Action; Thornapple Kellogg High School – Ecology Development Project; Three Fires Middle School – Investigating Groundwater – The Fruitvale Story; Two Rivers Coalition – Citizen Awareness Project; Waldon Middle School – Stormwater Floodplain Simulation System; and Wildlife Recovery Association – Michigan Wild Hawks and Owls. As you already know, the proceeds from the MAEP annual golf outing fund these worthwhile grants. So, thanks again to all of our golf-outing sponsors and to the golfers.

I'd like to offer a special thanks to the sponsors that helped defer some of the costs of the annual meeting, allowing us once again to hold the meeting free for our membership. The annual meeting sponsors are: Ashtead Technology; Environmental Data Resources (EDR); ESC Lab Sciences; and Professional Concepts Insurance Agency (PCIA).

Finally, thanks to all of the MAEP members for making 2009 another great year. Have a Happy New Year.

Proud Sponsors of the MAEP 2009 Annual Meeting . . .





TOP 10 RISK MANAGEMENT QUESTIONS FACING ENVIRONMENTAL FIRMS TODAY

By: Professional Concepts Insurance Agency (PCIA), an MAEP Institutional Member, and the Professional Liability Agents Network (PLAN)

This material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, confer with a qualified professional who can provide guidance that considers your own unique circumstances.

With a nod to TV's late-night host David Letterman, here are the top ten professional liability concerns we have been hearing from our environmental consultant clients and prospects. It's not a scientific poll, mind you, but a fair reflection of what's on the mind of many of today's environmental and design firms when considering their professional risks. In no particular order:

#10. Should I consider expanding the scope of services my firm offers in order to increase our annual revenues, or is this risky business?

As a rule, expanding your scope of services on each project is an excellent way to increase revenues. What effect such a move will have on your risks depends largely on what types of new services your firm offers to your clients.

Some new services may actually lower your risk. For example, expanded jobsite observation services can help spot potential problems in the early stages and avoid project upsets. Where you might increase your risks is expanding into services in which your firm has limited expertise or experience.

Realize that any increase in revenues may result in an increase in the size of your premiums, since annual fees are a key component in determining the cost of your PL insurance. This, however, does not necessarily reflect an increase in your risks.

#9. Is mold covered on my professional liability policy?

Generally, yes. While specific mold exclusions have shown up on homeowners' policies and other types of personal and commercial property insurance, they are not typically found on professional liability policies. This doesn't mean, however, that mold is not a significant risk factor for environmental professionals.

A mold exclusion could be added to a professional liability policy if an insurer feels your work presents a particularly high mold exposure due to factors such as geographic location or project type. And even without an exclusion, mold could present exposures outside of your professional liability policy. For example, you could be brought into a construction defect claim that triggers a class-action lawsuit alleging bodily injury due to long-term exposure to toxic mold.

Your best advice is to design with mold in mind. Be aware of mold risks in your locale and with your project types. Don't skimp on mold-control measures. Pay close attention to plumbing, HVAC equipment and humidity-control systems, ventilation and filtration, and drainage and runoff controls.



TOP 10 RISK MANAGEMENT QUESTIONS (CONTINUED)

#8. Should I sign my client's take-it-or-leave-it contract?

This is a very difficult question to answer. First, the fact that a client would take such a stance should send up a red flag. Is this the type of entity or individual you want to do business with? But if it's a project or client that is attractive to you from a business standpoint, a client-drafted contract is not necessarily a bad thing. The key is to ensure the contract does not contain onerous language you simply can't accept.

First of all, READ the contract – or have legal counsel do so. Highlight any language that you feel presents risks to your firm. Look for language that asks you to indemnify the client from risks that might otherwise logically belong with the client. For example, does it ask you to take responsibility for the client's negligence or actions? Once you've reviewed it, send it to us with your comments. We can focus on your areas of concern and review it for insurability issues. Keep in mind, if you agree to accept liabilities that would not be yours absent the contractual obligation, those liabilities will most likely NOT be insured!

In the end, it comes down to a risk-versus-reward business decision. We'll be happy to provide advice, but only you know whether you can live with the contract conditions.

#7. Whatever happened to project insurance?

Long ago and far, far away, most professional liability insurers offered a product called project-specific insurance. Generally, this type of insurance covered all of the consulting firms working on a single project up to the policy's dedicated limits. It was typically paid for by the project owner and the fees earned by the consultants did not count in the calculation of their practice policies.

Sounds great, right? Who could lose when project owners had guaranteed coverage up to their desired limits and the environmental firms avoided most if not all the cost? The insurance company, that's who! These policies, for a variety of reasons, resulted in monumental losses for insurers. As claims and loss ratios hit the stratosphere, insurance companies pulled their products off the market and project policies went the way of the dinosaur.

Actually, there are still a few insurers who may offer project policies under the right conditions, but prices are extremely high and policy conditions are not as attractive as before. If you or a client think a project policy may make sense, we'll be happy to investigate options. However, don't expect us to be able to find the same type of attractive product offered back in 1990s.

#6. Will my clients really accept a limitation of liability (LoL) contract provision?

You'll never know until you try! The fact is, many clients accept LoL contract provisions once the reasoning behind them is explained.

The primary line of reasoning goes something like this: The client has the most to gain from a successfully completed project. The consultant's gain is limited to project fees minus expenses. So if the owner has the bulk of the reward, shouldn't it also be willing to accept its fair share of risk?

The best negotiating stance is to avoid a yes/no decision. Provide your client an option – you can either perform your services with unlimited liability for one fee, or you can lower that fee if the client is willing to accept the LoL. We'll be happy to help you in your negotiations of this important contract clause.



TOP 10 RISK MANAGEMENT QUESTIONS (CONTINUED)

#5. What's up with BIM – will it lower or increase my risks?

Building Information Modeling (BIM) has great promise in reducing professional liability risks. By having all project information contained in a single, continuously updated database, it should be easier to manage the accuracy of data and integrate all aspects of the project during the design stage. This leads to better specifications, estimations, budgets, schedules and compliance.

However, most in the insurance, design and environmental industries agree that BIM may actually *increase* a consulting firm's liabilities in the short term. New processes are rarely adopted without trial and error. Since the prime consultant now compiles and manages virtually all project information, contractors and others who rely on the prime for complete and accurate project information will likely point fingers when any project error occurs. There are also liability issues regarding ownership of that information.

The insurance and legal fields will be challenged to adapt to BIM and establish new standards regarding the allocation of liabilities. So, short-term, be prepared for new liability challenges; long-term, you should reap benefits with time and experience.

#4. Should my firm be going "green," and what are the liability issues?

Like BIM, green design represents a significant portion of future work. Every consulting firm needs to investigate the skills needed to design green systems and buildings and move forward boldly with education and training if it decides to go in that direction.

As with BIM, however, new processes invite errors. Liabilities may increase initially. Plus, green design has an added danger – unrealistic client expectations. Facility owners will be expecting significant savings in operating costs as the result of increased energy efficiency. If these savings aren't immediately achieved, they'll likely consider it the designer's fault. So, managing client expectations will be a significant risk management tool for those going green.

#3. How much will my PL insurance cost next year?

That's going to depend on a whole slew of factors. Your premiums will be based on your annual fees, your claims history, the types of projects you've worked on and whether you take advantage of cost-saving opportunities offered by your insurance company – such as completing loss prevention education programs or including prescribed risk management practices.

All things being even, insurance premiums are currently pretty stable. The market is fairly soft and rates may even decrease if it remains soft in the future. However, be sure you consider the entire cost of professional liability protection, not just your annual policy premium. You might find an insurance agent or broker offering significantly reduced premiums. But if you end up with inferior policy coverage or inadequate support and advice in the event of a claim, buying that cheap policy may turn out to be the most expensive decision you've ever made.

#2. What is my greatest professional liability risk as an environmental consultant?

That question is almost impossible to answer because the scope of environmental consulting is so broad. If your firm primarily performs Phase I and Phase II property assessments, for example, your greatest risk might be claims



TOP 10 RISK MANAGEMENT QUESTIONS (CONTINUED)

filed for the cost of site cleanup and lost property value. If you perform facility compliance audits, it might be claims filed for the cost of obtaining compliance and paying regulatory penalties. We can help you examine your particular practice and spot your greatest areas of PL risk.

And the #1 professional liability concern of design firms is: What is the best thing I can do to reduce my PL risks?

That question is pretty easy to answer – manage your client relations. Claims studies show that non-technical factors are the leading cause of claims, and topping the list are communication problems between consultants and their clients.

Stress within your firm the need to have open, honest and clear communications with your clients. Good communications go a long way to uncovering misunderstandings, omissions and errors at the earliest stage possible, before they require an expensive fix.

Equally important, if you have a solid, open and trusting relationship with your clients, they are more willing to seek amicable solutions to any project upsets that arise, rather than immediately calling in their lawyers and threatening you with claims. When your client's attitude is one of "how can we fix it?" rather than "how are you gonna fix it?" you've won half the battle.

For additional information – You may contact Kim Fricke-Young, CEO, PCIA, at (810) 224-5254, or by email at kfricke@pciaonline.com.

ANNOUNCEMENT

Air and Waste 103rd Annual Conference & Exhibition to be held on June 22-25, 2010 in Calgary, Alberta, Canada.

Boost your exposure at the environmental industry's premier education, networking, and solutions event! Go to www.awma.org/ACE2010

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Inquiries, suggestions and contributions are welcome and may be directed to the Executive Director at 517/349-1970, via fax at 517/349-9949 or via email: exec-dir@maep.org.

Articles should be sent in Word format (not Adobe Acrobat). Articles can be accompanied by original photographs or graphics as separate electronic files (i.e., they cannot be embedded in the article). Contributors' opinions are their own and not necessarily those of MAEP.

THE MICHIGAN ENVIRONMENTAL PROFESSIONAL retains the right to edit submissions.



EPA PROPOSES “TAILORING RULE” FOR AIR PERMITTING OF GREENHOUSE GASES

By: Tom Klotz, GZA GeoEnvironmental, Inc.

The Environmental Protection Agency (EPA) expects to issue a fuel economy rule to regulate greenhouse gas (GHG) emissions from cars and light duty trucks in March 2010. Such an action could immediately result in GHGs becoming subject to existing Clean Air Act (CAA) major source thresholds of 250/100 tons per year for the Prevention of Significant Deterioration (PSD) program and 100 tons per year for the Title V operating permit program. These existing major source thresholds are not practical for GHGs because they are emitted at a significantly higher emission rate than criteria pollutants currently regulated under the CAA.

To address this issue, EPA recently issued a proposed rule to tailor the application of the CAA PSD and Title V programs to large GHG emitters. The purpose of the proposed rule, known as the “Tailoring Rule,” is to limit the number of sources subject to major source air permitting.

Under the proposed Tailoring Rule, the PSD program would require new or modified major facilities to obtain pre-construction permits and install “best available control technology” (BACT) for GHGs. If finalized, PSD would apply to new facilities with annual emissions of at least 25,000 tons CO₂-equivalent of six primary GHGs, and to modifications at existing facilities that result in an increase in emissions of between 10,000 and 25,000 tons CO₂-equivalent per year. The proposed rule would also establish a 25,000 tons CO₂-equivalent threshold for the CAA Title V operating permits program.

Because the CAA currently applies emission thresholds of 100 to 250 tons per year for these programs, EPA’s authority to issue the “Tailoring Rule” has been questioned. The agency has cited doctrines of “administrative necessity” and the need to avoid “absurd results” as the basis for tailoring the PSD and Title V programs for GHG emissions. According to EPA, an “extraordinarily large number of sources” have the potential to emit that much CO₂ under the existing thresholds. As a result, regulating GHGs could result in an administrative disaster due to an overload of permit applications that would strain resources at permitting agencies. The consequences could be significant as sources cannot be constructed or operate without permits.

EPA is proposing a two phase program under the Tailoring Rule. The first phase will consist of a five year program designed to address the most significant sources of GHGs. EPA would undertake efforts to streamline the regulations, such as revising the definition of potential-to-emit (PTE), defining presumptive BACT, and expediting permit issuance. According to EPA, the first phase would cover facilities responsible for approximately 70 percent of the nation’s GHG emissions from stationary sources, while excluding small businesses such as farms and restaurants. EPA estimates that nearly 100 additional new and modified sources would be subject to review each year for GHG emissions. Approximately 14,000 new sources would also need to obtain Title V operating permits to address GHG emissions. At the end of five years, EPA would conduct a study and proposal for refining and expanding the regulations during the second phase.

EPA is receiving comments on the notice of proposed rulemaking through December 28, 2009. The proposed rule is available at <http://www.epa.gov/nsr/documents/GHGTailoringProposal.pdf>.

It is important that companies evaluate potential applicability of the proposed rulemaking and how operations may be impacted. In particular, facilities currently evaluating air permitting for proposed projects or in the process of obtaining an air permit are at greatest risk.



POLYCHLORINATED BIPHENYLS (PCBS) IN WINDOW CAULK: WHAT YOU SHOULD KNOW

By: **Matthew Frisch, Fibertec Environmental Services and MAEP Board Member and
Phil Peterson, Fibertec Industrial Hygiene Services**

Polychlorinated biphenyls or PCBs are man-made chemicals manufactured in the U.S. from 1929 until 1979 when their production was banned by the Environmental Protection Agency (EPA). PCBs range in appearance from a light colored oil to yellow or black waxy solids. PCBs are non-flammable, chemically stable with high boiling points, and exhibit good electrical insulating properties. Because of these properties, PCBs had a variety of uses, including (1) as dielectric fluid (in transformers, ballasts and capacitors), (2) in hydraulic oil, (3) as plasticizers in paints, plastic and rubber, (4) in carbonless copy paper, and (5) to maintain the flexibility of caulk. PCBs consist of a subset of the 209 possible congeners and the most common trade name for commercial PCB mixtures are Aroclors. Common aroclors include A1254 and A1242.

Exposure to PCBs comes primarily from eating fish, but occupational exposure can come from construction, renovation and demolition activities where PCB containing products are disturbed. Exposure to PCBs has been demonstrated to cause cancer in animals and have a negative impact on the immune, reproductive, nervous, and endocrine (glandular) systems of the human body. Data strongly suggests that PCBs are a probable human carcinogen.

In recent years, PCBs have been discovered in window and other building caulks. The disturbance of this material has been demonstrated to cause measurable exposures and indoor PCB contamination during improper, uncontrolled removal of windows with PCB containing caulk. School buildings, university buildings, and hospitals in particular were shown to have PCB containing caulks in one study. Over the past several years the removal of window and/or building caulk has been required to accommodate building renovation or window replacement.

In all these cases, a careful hazardous materials inspection (asbestos, lead, mercury, PCBs) and testing have identified the presence of PCBs in caulk, among other hazards, in at concentrations ranging from 100 to 500,000 parts per million (ppm) and the caulks are extremely flexible and resilient, making removal a bit challenging.

In the case of window caulk, the caulk was used to seal the gap between the window frame and the structural opening on the inside and outside of the window. Occasionally, both the interior and exterior caulks are PCB containing, but more often only the exterior caulk is the one containing PCB.

An article published in the Environmental Health Perspectives, Volume 112, Number 10 from July 2004 entitled [An Unrecognized Source of PCB Contamination in Schools and Other Buildings](#) has suggested that uncontrolled window replacement (with PCB caulk) can lead to measurable contamination inside a building, thus necessitating properly trained workers and careful work practices.

Remediation/cleanup personnel generally possess individual accreditation when working for a licensed asbestos or lead paint remediation contractor. The training required to conduct the asbestos and/or lead work provides these employees with valuable knowledge about the use of personal protective equipment and engineering controls necessary to safely conduct PCB removal. Additional hazard communication and worker training are usually required to fill small gaps in the knowledge base of these otherwise qualified workers.

Careful work practices and engineering controls are employed, including the use of critical (plastic) barriers, HEPA filter equipped vacuums, drop cloths, respiratory protection, hand (nitrile gloves) and eye protection, among others.



PCBS IN WINDOW CAULK (CONTINUED)

These efforts are necessary to protect the workers from exposure and prevent contamination of the structure. In some cases, the caulk is also an asbestos containing material. In these cases, waste disposal is particularly complicated and expensive.

A recommended approach is to carefully monitor the work practices and conduct PCB wipe sampling at the completion of the job on a representative number of sills, walls or floors below the actual work. In all cases of PCB results of less than 50 ppm would be considered acceptable under TSCA. To date, no PCBs have been detected in the post work wipe samples, suggesting that careful work and clean up practices executed by well trained workers can successfully remediate PCB window caulk.

Recently, (September 25, 2009) the United States Environmental Protection Agency announced new guidance for school administrators and building managers relative to the matter of PCBs in caulk. The guidance document indicates that the potential presence of PCBs is serious, but should not be alarming. The guidance further lists preventive steps that can be taken and suggests that testing be conducted to determine if caulk contains PCBs and if so, at what level. The guidance is available at the EPA web site (www.epa.gov/pcbsincaulk).

HELP WANTED

Environmental Compliance Specialist experienced in delivering consulting services and products to industries and local units of government. Must be able to manage projects, including planning project schedules, meeting budgets, and forging client relationships. Experience desired, in order of importance: air permitting, including BACT, TAC modeling, wastewater permitting, spill plans (SPCC, SWPP, and PIP) and noise assessment/modeling. Writing and communication skills are critical. Equal Opportunity Employer. Benefits package includes: life/dental/health insurance, 401K plan, company bonus, and flextime.

Salary to commensurate with experience. Please respond by resume to Peter Collins at: pcollins@asti-env.com Office located in Brighton, MI.

MEMBER NEWS

At the recent Brownfields 2009 Conference in New Orleans, two SME projects garnered national Brownfield Renewal Awards. The Mason Run "New Urbanism" Residential Neighborhood and River Raisin National Battlefield Park, both located in Monroe, Michigan, were co-winners in the Social Impact Category.

SME is a long-time corporate member of MAEP.





STATE CLEANUP PROGRAM (PART 201) REVISION UPDATE

By: Gary Klepper, Conestoga Rovers & Associates

Key Update Points:

- ◆ MDEQ proposal of November 2009 is significantly more detailed and changed from the one presented a year ago.
- ◆ A Senate work group is discussing a different proposal identified as a Substitute for Senate Bill No. 437.
- ◆ MDEQ proposal and the legislation that has been introduced through Senate Bill No. 437 are vastly different.

MDEQ and members of the business community have continued year-long efforts to improve the state cleanup and redevelopment program (SCRP). These efforts resulted in the identification of separately developed proposed statutory revisions. This fall, some dialogue between business interests and MDEQ regarding possible revisions began through a Senate work group convened to consider Senate Bill No. 437.

MDEQ has identified proposed revisions that are broad in scope and would (among other things): a) maintain but redefine the “Baseline Environmental Assessment” (BEA) as the basis for exemption from liability for contamination previously caused by others, b) redefine the SCRCP obligations of liable parties, and c) increase obligations for reporting the finding of environmental contamination and for reporting of actions to assure “due care” is exercised relative to use of such properties. Additionally, the Part 201 Environmental Remediation and Part 213 Leaking Underground Storage Tank programs would be combined into one part of Act 451 and changes are proposed in the identification and application of cleanup criteria. MDEQ presented the most recent version of its “redesign” proposal at a stakeholder session on November 10, 2009, and expects to have it posted on the Remediation and Redevelopment Division website by the middle of December. (http://www.michigan.gov/deq/0,1607,7-135-3311_4109_9846_9847-204636-,00.html).

Legislation introduced in the State Senate separately from the MDEQ initiative would make several detailed changes within the framework of Part 201 such as: a) providing a mechanism for a “no further action” letter from MDEQ, b) prohibiting criteria from being more stringent than federal standards, c) establishing detailed requirements for MDEQ review of submittals, including broader participation by the submitting parties, and for MDEQ reporting of program actions, and d) providing for an Environmental Remediation Review Panel to which agency decisions may be appealed. The proposed legislation details certain conditions where exceedances of state criteria will not constitute a “facility” subject to Part 201 obligations, and provides some details relative to the application and interpretation of criteria (particularly with regards to venting groundwater plumes, indoor air, and surficial soil conditions).

Highlights of November 2009 MDEQ SCRCP Redesign Proposal

1. Inquiry, Facility Determination, BEA & Liability Exemption. Exemption from liability to remedy historical contamination will be based upon performance of “inquiry” which includes determining if a property is a “facility”, and reporting identification of a facility to MDEQ. Doing so will constitute a “BEA”. Exemption is no



PART 201 UPDATE (CONTINUED)

longer tied to a BEA being sufficient to “distinguish new from old” as currently exists, nor to compliance with Due Care as had been previously proposed. “Facility” status determination must be made prior to becoming owner/operator of a property. Current owners/operators with knowledge of “facility” status must notify MDEQ of that condition.

2. Due Care Obligations. Owners/operators of a facility continue to have current Due Care obligations, plus additional ones that exist in the federal “Superfund” program (the “common elements” of the Bona Fide Prospective Purchaser liability exemption etc.), and an obligation to periodically certify/report compliance. Due care evaluation, implementation, and documentation, would be required within certain timeframes following notice to MDEQ of “facility” status. Non-compliance can result in administrative penalties and requirements to perform actions on the property. A party fully negligent with regards to Due Care could incur source control obligations. Non-compliance with Due Care will not result in loss of exemption from liability for historical contamination as stated in earlier proposals. Due Care compliance will involve more evaluation and routine reporting than is currently required.
3. Remedial Obligations of Liable Parties. Timeframes and reporting obligations are established for liable parties to implement response activities to address uncontrolled risks/sources, and achieve a status with risks controlled. The status of a facility would be identified as one of the following five “categories”.
 - ◆ Category 1 – Uncontrolled Acute Risks and Sources
 - ◆ Category 2 – Acute Risks Controlled; Chronic Risks & Sources Uncontrolled
 - ◆ Category 3 – Land Use and/or Alternate Water Supply Addresses Potential Exposures
 - ◆ Category 4 – Engineered Controls and/or On-going Actions Addresses Exposures
 - ◆ Category 5 – MDEQ Approved Remedy
4. Red-Tagging. MDEQ authority to prevent delivery of substances to containers on site is extended beyond that currently provided for underground storage tanks.
5. Self-implementation and MDEQ-required approvals. Particular actions requiring MDEQ approval are identified. Adds obligation to consider all environmental effects of remedy implementation and incorporate options to maximize net environmental benefit, thereby providing some acknowledgment of the need for “sustainable” or “green” remedial actions (as currently being promoted by U.S. EPA).
6. MDEQ review, approval, audit, and public notice. Prior to requesting MDEQ approval of certain response activities, newspaper publication of the proposed activities is required.
7. Environmental Science Review Board. MDEQ director may create such a board to advise on technical issues.
8. Release Reporting and Related Obligations. Reportable quantities will be revised to be consistent with Part 5 Rules (spill reporting for Part 31 – Water Resources Protection). Reporting and follow up actions are required for suspected and potential releases by person in control of substance, or owner/operator of property where discovered. Obligations are only incurred relative to materials characterized as “Significant Hazardous Substance Use” but can extend to any release of unknown quantity “that is or may become injurious”. New proposal removes previously proposed notification obligation of generator/transporter of substance (once control of substance is transferred to others).
9. “Premium” as incentive for risk and source control. Includes provisions for liable party to pay a premium beyond the costs of response activity if they have not achieved compliance with a “controlled risk” stage of remedial action.



PART 201 UPDATE (CONTINUED)

10. Cleanup Criteria.

- ◆ Would not be promulgated in rules, but identified in a manner similar to the Rule 57 water quality values for water quality standards. A process is established for annual review of a subset of the substances, with no substance being reviewed more frequently than every three years.
- ◆ Categories of criteria reduced to: a) residential, b) restricted residential, and c) restricted non-residential.
- ◆ Current soil direct contact and ambient air criteria are combined into single criterion, and the groundwater dermal contact criterion is eliminated.
- ◆ Indoor air pathway evaluation revised to discontinue use of current soil and gas criteria and instead incorporate the use of benchmarks promulgated as:
 - ◇ Indoor Air Criteria
 - ◇ Soil Gas Criteria
 - ◇ Groundwater Vapor Intrusion Screening Levels

Observations Regarding MDEQ Proposal

The Good? MDEQ SCRP proposed revisions have evolved significantly from those initially proposed in ways that may be quite positive. In particular, a) BEAs would remain as a clear and highly visible means to establish exemption from liability for cleanup of contamination caused by others, b) the new definition of a BEA will facilitate exemption from liability for historical contamination for new parties who intend to properly use the same substances that previously were released at a property (thereby facilitating appropriate and productive use of the property by removing the current conundrum posed for “category S” BEAs), c) non-compliance with “due care” obligations would not void exemption from liability for historical contamination, d) better science, consistent with the standard of practice that has evolved on the national level, would be used to evaluate the vapor intrusion pathway and e) pathways for “self – implementing” SCRP obligations would be quite clear.

The Unknown? Some particular aspects of the MDEQ November 2009 proposal likely merit close evaluation by stakeholders to better understand how they impact their interests. In particular, potentially liable parties may want to closely examine obligations associated with the categories of remedial action (item #3 above) and the “limited liability relief” that may be achieved. Additionally, a good understanding of the “Premium” as incentive for actions (item #9 above) may be merited. All parties potentially subject to SCRP obligations may want to review details of new reporting obligations, as well as the definitions of several terms which can trigger obligations (e.g., waste, significant hazardous substance use, source, release, and non-aqueous phase liquid).

The Not So Good? Parties (and their consultants) wishing to secure MDEQ concurrence that remedial obligations are complete, have little basis to be any more confident of getting such agreement than presently exists in the SCRP. Such a conclusion invariably reflects judgments as to the adequacy of data sets defining site conditions, monitoring frequency and time frames, tradeoffs as to energy use/collateral environmental damage due to greenhouse gas emissions from aggressive residual hazardous substance management versus passive in-situ management, etc. In particular, the MDEQ SCRP redesign proposal makes no changes in the manner in which groundwater contaminant plumes that may vent to surface water (the “GSI” issue) are evaluated by MDEQ. The “GSI” issue is overwhelmingly the issue which prevents cleanups from being “completed” because of the frequency in which it is encountered, and because the considerable investment of time and money needed to resolve the issue to MDEQ satisfaction (as the program is currently administrated) rarely results in any prevention or abatement of non-compliance with surface water quality standards.

Interested parties are encouraged to become familiar with the MDEQ proposal as posted on the RRD website (http://www.michigan.gov/deg/0,1607,7-135-3311_4109_9846_9847-204636--00.html) and to follow legislative dialogue on the issue.



SARA TITLE III TIER TWO WORKSHOPS

MAEP is a co-sponsor of this Workshop

January 21, 2010 – Eagle Crest Conference Resort, Ypsilanti

January 26, 2010 - Prince Conference Center at Calvin College, Grand Rapids

January 28, 2010 - Lansing Community College, West Campus

Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), also known as the Emergency Planning and Community Right-To-Know Act, requires facilities to report information that can be vital to the community's safety. Over 6,000 facilities in Michigan annually submit Tier Two hazardous chemical inventory reports required by SARA Title III to the State Emergency Response Commission (SERC), Local Emergency Planning Committees (LEPCs), and local fire departments.

Learn how to complete and submit the online Tier Two report at the 2010 SARA Title III Tier Two Workshops, presented by the Michigan Department of Environmental Quality's Office of Pollution Prevention and Compliance Assistance. SARA Title III emergency planning notification requirements and chemical release reporting requirements in Michigan will also be addressed.

This half-day workshop is recommended for owners, operators, and environmental and safety personnel of facilities that have hazardous materials (material safety data sheets required by OSHA) on site. Environmental consultants, LEPCs, and fire department personnel can also benefit from this workshop and are encouraged to attend.

For updated information, go to www.michigan.gov/deqworkshops, click on "Upcoming DEQ Workshops."

WELCOME NEW MEMBERS

The following is a list of new members who have joined the Michigan Association of Environmental Professionals from September– November 2009. A warm welcome to our newest members!

September 2009

Ashtead Technology Instrument Division,
Doug Watson, Rep. (Institutional Member)

Mitchell, Thomas, Student

Ordway, Duston, Ordway Law Firm PLLC

Roth, Brittainy, Envirologic Technologies

Yocum, Brad, Envirologic Technologies

Zakkar, Mohamed, Gannett Fleming

October 2009

Davis, Helen, Prein & Newhof

November 2009

Myers, Jason, EDR

Savage, Craig, Gannett Fleming



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