

September 6, 2016

Heidi Grether
MDEQ Director
Constitution Hall
525 West Allegan Street
Lansing, MI 48909-7973

Director Grether,

The City of Ann Arbor is pleased to provide comments to the Michigan Department of Environmental Quality (MDEQ) on their proposed Part 201 generic clean up criteria.

These criteria are an important part of protecting public health safety and welfare in addition to adding certainty to the remediation, closure and redevelopment of contaminated sites across the state. It is imperative that these criteria be promulgated and begun to be used across the state. The City recommends that the MDEQ promulgate the proposed rule package as proposed (or with minor revisions) to insure that new rules are promulgated this year.

The City is pleased that city staff were able to participate and represent the broader public interest as part of the Criteria Stakeholder Advisory (CSA) group process. Through this process, the CSA developed a clear hierarchy of toxicological data sets to be used by the MDEQ as inputs to develop new criteria. This hierarchy better ensures that the best available science is used.

The City agrees with the CSA recommendation that EPA's Integrated Risk Information System (IRIS) be used when data are available. The City also agrees that the MDEQ

should evaluate whether IRIS is the best available data and MDEQ should choose an appropriate input value using its best professional judgment. In these cases, the MDEQ must be transparent when these choices are made and must justify the rationale in choosing an input different from IRIS.

The City also applauds the members of the regulated community participating in the CSA process. These participants have raised valid concerns about how these criteria affect the regulated community, have supported the use of best science, and have recognized the need to update the criteria including adding a child receptor to the exposure assumptions. The CSA recommended that the MDEQ include a child receptor as part of their consideration in developing new generic cleanup criteria. The use of a child receptor takes a more conservative approach in developing new cleanup criteria. The City supports this recommendation from the CSA and its inclusion in the new rules.

The City supports the MDEQ developing a more nimble approach to updating generic clean up criteria. To that end, the City would prefer to see the hierarchy and the algorithm promulgated in the rules without the table of values. This would allow the MDEQ to recognize new, best available science and use these data to generate new cleanup criteria through an open and transparent process. The MDEQ would publish a new table of values on an annual basis when updates are made.

Similarly, the City recommends that the MDEQ develop a process whereby the regulated community, local governments, NGOs, and the public can petition the MDEQ to review clean up criteria when new science is available or the science on which the criteria is based comes into question. The number of petitions should be capped to ensure that the MDEQ is not overwhelmed by the number of criteria up for review in any given year.

The MDEQ has attempted to update these criteria several times over the past five years, but it has been several years since these criteria have been updated and there is a significant amount of new, best available science that needs to be reflected in the MDEQ cleanup criteria. For example, EPA's IRIS process developed new toxicology data for 1,4 Dioxane in 2010, yet the MDEQ has not updated the state standards to reflect this new information until, finally, the currently proposed cleanup criteria. This is true for many of the other 303 chemicals under review. The process for updating criteria is flawed and needs to be updated so that new science can be rapidly incorporated into criteria.

As a participant in this CSA process, the City recognizes that the process is not complete and that significant concerns remain within the regulated community around a few key pieces of the rules including the use of draft IRIS values, vapor intrusion, and key exposure assumptions. However, the City supports promulgation of the proposed rule package as proposed (or with minor revisions), and commits to continue to support

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the CSA process to work through remaining concerns from the regulated community within the next year.

Sincerely,

Christopher Taylor
Mayor, City of Ann Arbor

Cc: Debbie Dingell, Congresswoman
Rebekah Warren, State Senator
Adam Zemke, State Representative
Jeff Irwin, State Representative
Ann Arbor City Councilmembers
Howard Lazarus, City Administrator
Matthew Naud, Environmental Coordinator