



Impending Changes to Due Diligence; Looking Ahead in 2017

Part 201 of Act 451 Given More Specific Guidelines

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Part 201 of the Michigan Natural Resources and Environmental Protection Act is facing a number of proposed changes. The trend suggests that the MDEQ is working to focus site-specific closure options included in the current rules and regulations on the due care process, a trend that has been developing over the last few years. It should be noted that these changes were originally proposed for December of last year, and are undergoing discussions and revisions. We anticipate that something will be finalized the last quarter of this year. In the meantime, understanding the trends and concepts will assist with site assessments, due care programs and closures that are being conducted this year and may require a different evaluation once the rules are finalized.

Part 201 applies to all sites of environmental contamination, specifically where impacts exceed the residential cleanup criteria. It directly affects buying and selling of commercial and industrial property, as well as redevelopment of Brownfield properties. For assessment, the Department will continue their emphasis on due care obligations, specifically focusing on Vapor Intrusion issues. Vapor intrusion evaluation has been a concern for the past three for four years on former gas station and dry cleaner sites, among other historical uses, or properties within 100 feet of those uses. Review will include physical conditions of the site, and a

heavier reliance on Conceptual Site Models, and a new four step screening model for vapor intrusion.

Based on new information and algorithms, closure guidelines for many chemicals will change. Some of these changes will permit higher concentrations of contaminants for specific property uses, while most of the changes will result in lower cleanup criteria. Even though these changes are not final, ASTI recommends that you review the proposed cleanup criteria when selecting a remedy.

Below are some specific, proposed changes that ASTI expects to have the largest impact:

EXPOSURE SCENARIOS

- Calculation methods will be more specific depending on the exposure scenario, and commonly-used terms will be re-defined to be less subjective.

- **Vapor Intrusion (VI) Criteria** will shift to a tiered (Tier 1 – Tier 3b) classification system.

- **Tier 1** VI screening will assess the site at a “worst case scenario” standard (exceeding Tier 1 will not result in “facility” classification, but will require Tier 2)

- **Tier 2** is site-specific, using geological information (exceeding results in “facility” classification)

- **Tier 3A** is site-specific and will rely on building and land-use data to determine appropriate assessment levels

▫ Tier 3B is reserved for alternative methods and models

In addition to the tiered changes, the MDEQ will be providing an online calculator to assess data and provide instant screening results.

CLOSURE CRITERIA

As a whole, the proposed changes to closure criteria will shift in the direction of more stringent, namely:

- **Residential Drinking Water Standards** will no longer be based on adults-only. The new “children-and-adults” standards will result in lower, stricter criteria for some compounds.

- 15 new chemicals would be added to the criteria tables.

- All routes of exposure (soil, groundwater and vapor screening) will be considered so many substances will end up with lower cleanup criteria, specifically for mutagenic carcinogens and non-carcinogenic toxins.

- Flammability and Explosively Screening Levels (FESL) will be added

- The MDEQ will provide **specific clean-up criteria** depending on the hazardous substance and where it is present.

Overall, many of the MDEQ’s proposed changes result in more specific criteria, with explicit guidelines for acceptable clean-up. ASTI Environmental has traditionally taken a proactive approach to cleanup and closure, and has been using the proposed changes to screen remedies for the past year. This continued approach will ensure that when the current guidelines are promulgated that will not impact the completion of active projects. We have, for the past year, examined proposed changes and will provide information as it becomes relevant.

Looking Ahead in 2017 and Beyond

The recent presidential election has inserted uncertainty into many things, including the environmental regulatory process. With any change in administration there is uncertainty, and it is wise to anticipate how potential policy changes will have an impact on current operations and real estate development plans. Sifting through the current

rhetoric, it’s hard to ignore the common themes: restructuring and streamlining.

Michigan has historically been a leader in environmental stewardship and environmental regulations, for better or worse. Many of the environmental regulations that impact our clients, specifically due diligence and compliance, are implemented and enforced at the state level. Two exceptions are wetlands associated with the Great Lakes and the recent Clear Air Act requirements. While Federal policy change will certainly have an impact on environmental regulations and policy, we feel it safe to assume that at the state level we will continue to implement the existing assessment and closure requirements of Part 201, and that the proposed amendments will continue on track. As for compliance, we anticipate a change in the Title V air permit program, but not in the state Permit to Install procedures.

OTHER CHANGES IN MICHIGAN

The incentive programs under Act 381, the tax increment financing program, will change as of April 1 of this year. Modifications include additional eligible activities, clarification that the intent of the Department (the MDEQ) was to include UST removal and response actions as eligible activities and that LUST site are eligible properties, and the increase from \$500,000 to \$1,000,000 in eligible activities before needing MSF Board approval.

The MEDC has also launched a modification to three incentive programs: the Capital Access, Industrial Property Tax Abatement and Brownfield TIF programs. This modification will permit approval of “speculative” developments for these programs.

For more information on these updates, please contact Tom Wackerman at 810-225-2800.



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