PRELIMINARY REPORT

# ENVIRONMENTAL PROTECTION REGULATORY REVIEW AND REFORM PROJECT

Michigan Department of Natural Resources

Environmental Protection Bureau

November, 1981

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## Preface

The Michigan Department of Natural Resources (DNR) is committed to reviewing the environmental protection regulatory structure to maintain a quality environment while finding ways to streamline programs, reduce costs and provide better service to the public. This report, which summarizes the regulatory review project of the DNR's Environmental Protection Bureau, marks an important first step in this initiative. This report is preliminary since it is our belief that regulatory review and reform must be a continuing process.

We welcome comments on this report and further suggestions on ways environmental protection programs can be improved. Please send suggestions to:

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# Introduction

This report summarizes the process and outcome of the regulatory review project of the Department of Natural Resources' (DNR) Environmental Protection Bureau, carried out over the period February to October, 1981.

This project was initiated in response to two major issues:

* The first major environmental protection law was enacted in Michigan in 1913. Since that time, dozens of new laws aimed at human health and environmental protection have been added. A clear need exists to assess this regulatory structure to determine where laws are obsolete or need modification and to streamline and make programs more cost effective. While this report does not address all issues associated with this complicated regulatory framework, it is a step forward.

* Current economic conditions in Michigan demand attention at all levels toward improving the regulatory climate. Provided environmental and human health protection objectives are met, there is a critical need to ensure regulations do not unnecessarily impede economic growth.

## Scope of Report

This report focuses on regulatory review and reform for environmental protection programs which include:

* Water Quality
* Air Quality
* Solid Waste and Resource Recovery
* Hazardous Waste and Toxic Materials Control

Three chapters are included:

Chapter 1 summarizes DNR positions on general regulatory issues.

Chapter 2 includes an identification of all regulatory reform recommendations received and a department positions on each recommendation.

Chapter 3 points out incentives for economic development afforded by environmental protection programs.

## Regulatory Review Process

In February, 1981, the Environmental Protection Bureau appointed an internal Regulatory Priorities Task Force. The Task Force was charged with identifying proposals for modifying laws, rules and program procedures which appeared to afford limited environmental protection, with particular attention to regulatory burdens in terms of cost and efficiency. In June, 1981, the Task Force issued internal recommendations.

In August, 1981, the proposed Task Force reforms were reviewed with the Environmental Protection Policy Advisory Committee, a 12 member citizen group appointed by Governor Milliken, and many Michigan interest groups. The committee and interest groups were requested by the department to make specific recommendations on the Task Force reforms and to suggest other ways programs could be improved.

In addition, the department continues to participate on Governor Milliken's Regulatory Review Task Force. In September, 1981, the Governor established the Task Force charge: "I have asked the Lieutenant Governor to chair a task force of state departmental directors to review state laws, rules, policies and processes that may inhibit economic growth. Particularly during difficult economic times, the cost to business of unnecessary or outdated regulation can mean the difference between locating a business in Michigan or in another state, between business expanding or not, or perhaps even between a business surviving or failing."

In keeping with the Governor's objectives, this report proposes ways regulatory programs can be improved. Through efforts of the Governor's Task Force, several regulatory reform recommendations were suggested which are addressed in this report.

## Chapter 1

## General Regulatory Review Issues

This chapter contains recommendations on general issues associated with environmental protection regulatory programs.

### 1.1 Statutory Review and Codification Project

By January, 1982, the Department of Natural Resources will request a process to review and codify Michigan's environmental protection statutes.

Although this regulatory review project made progress in singling out needed modifications to laws, rules and procedures, a need exists for a more formal, intense evaluation of Michigan's environmental protection regulatory structure.

### 1.2 Public Participation Requirements

The Environmental Protection Bureau issues hundreds of public notices and holds a substantial number of public hearings and meetings each year at significant public cost. In many cases, laws and rules have public notice and hearing requirements which must be followed. In other cases, public hearings or meetings are held to obtain advice on significant or controversial issues.

The department believes the present public participation process needs to be substantially improved to afford more meaningful involvement in a cost effective manner. Many public hearings and meetings are very sparsely attended. Interest groups have expressed concern that public notices are often located in obscure locations and do not contain sufficient information for the public to know what is proposed, the alternatives and associated impacts.

To provide more meaningful public involvement and increase cost efficiency, the department is seeking advice on a proposal which has two major elements:

1. The department would adopt a policy which would require public notices to contain substantially more information than many of the present notices. The department would provide broad distribution of the notices, particularly to those most affected by the planned action, and ensure that notices are published in an easily understood manner in highly visible locations. This policy would substantially increase costs for public notices.

2. If item 1 above is implemented, the department believes it would be feasible to use public expression of interest or concern to determine when a public meeting or hearing would be required. It is the department's belief that this practice would reduce the number of hearings and meetings held and thereby achieve an overall cost savings. The department recognizes there will be some difficulty

in establishing criteria for determining when a given amount of public concern warrants holding a public meeting or hearing.

In view of the high public costs for meeting public participation requirements and the general widespread dissatisfaction with current public participation practices, the department is currently reviewing the economic and statutory implications of existing and proposed public participation alternatives. The department has also requested the twelve-citizen member Environmental Protection Policy Advisory Committee to seek advice and develop a position on this issue by February, 1982.

Based on the department's assessment and the committee's recommendations, the department will pursue the appropriate procedural, legislative or resource changes to improve public participation programs early in the 1982 legislative session.

1.3 Permit Coordination

Currently the Environmental Protection Bureau is not able to offer a true "one-stop" shopping concept for permit programs. Different statutory deadlines and conditions exist for permit issuance. Some permits are subject to approval by the U.S. Environmental Protection Agency. In other instances, either the Water Resources Commission and/or the Air Pollution Control Commission are required to take action on permit applications. Under the existing legal system, it is not feasible to offer a true consolidated environmental protection permit. Virtually no comment has been received on this issue.

However, in response to long standing concerns expressed by industry and business, the Environmental Protection Bureau established the Office of Environmental Planning in the Environmental Services Division as the central contact point for coordinating response to developments and projects which require more than one environmental protection permit. These permits include primarily those issued under Act 245, P.A. 1929, the Water Resources Commission Act; Act 348, P.A. 1965, the Air Pollution Act; and Act 641, P.A. 1978, the Solid Waste Management Act. The office also serves as a focal point for permit coordination liaison for developments which need permits from both the Environmental Protection Bureau and/or other DNR bureaus or state agencies.

Permit coordination services include:

* Referring permit applicants to appropriate DNR contacts.
* Holding preapplication conferences.
* Providing unified department responses on proposed developments.
* Tracking the status of action on permit applications for major developments.
* Liaison with the Department of Commerce's Office of Economic Development.
* Distribution of permit applications and instructions.
* Development of a permit and license guidebook for Michigan (scheduled to be completed in November, 1981).

The emphasis of this service is to initiate work very early in the planning stages of proposed developments to ensure that all environmental requirements are recognized and appropriate permits are pursued. Rather than providing technical guidance to permit applicants, this service focuses on making sure that appropriate contacts are made and that timely advice and guidance is provided.

Questions on these functions should be directed to: Department of Natural Resources, Environmental Services Division, Office of Environmental Planning, P.O. Box 30028, Lansing, Michigan 48909, Telephone: (517) 373-8542

For projects requiring more than one environmental protection permit, stipulations are attached to a permit which state that the permit will not become valid until all other necessary permits are secured. This provides a level of coordination and minimizes the chances for development to proceed at an economic risk while ensuring that all requirements are met.

The department endorses the Governor's recent commitment to establish a new "one-stop" permit and license assistance center in the Department of Commerce. When established, this center will provide a single point of contact for business and industry to understand the full range of permits and other approvals which may apply for a given project. The center will also assist in reviewing forms and procedures to streamline programs.

1.4 Permit Streamlining

The department conducted an internal assessment to identify common factors which create delays in the issuance of environmental protection permits. Based on this analysis, and views expressed by many interest groups, there are several factors common to all or some of the permit programs which warrant attention:

* The ability of a permit applicant to submit an "administratively complete" permit application.
* Time delays in issuing permits for projects which require an environmental impact statement and review by the Michigan Environmental Review Board.
* U.S. Environmental Protection Agency concurrence on certain permits.
* Water Resources Commission approval of surface and groundwater discharge permits.

Administratively Complete Applications:

Most permit programs require permit applications to be administratively complete before they will be processed. A major reason for delayed action on permit applications is due to the fact that many administratively incomplete applications are submitted. Several interests have expressed concern that clear guidelines are not established so that an applicant

can determine what constitutes "administratively complete".

The department is seeking comments on a proposed policy which would require a determination of administrative completeness for all permit and license applications (for the environmental protection programs) within fifteen (15) working days of receipt of the application. By no later than the 15th day, the applicant would be notified of the determination. Administrative completeness would be judged solely on whether or not the elements required by statutes and rules to be included in an application are provided. This review would not take into consideration the adequacy of the information provided. If elements of the permit application were found to be unacceptable, this would be grounds for permit denial.

The department would like further specific suggestions on how to improve guidance so that permit and license applications can be made complete.

Environmental Impact Statements/MERB Review:

The Department of Natural Resources requests the Governor's Task Force on Regulatory Review to formally consider the benefits and costs provided to the public by the often multi-layered review of developments and projects by the Michigan Environmental Review Board (MERB) and the Toxic Substances Control Commission (TSCC). The department believes that, without first prejudging the present system, a thorough analysis of the purpose and conduct of MERB and TSCC is needed, with specific emphasis on: 1) expediting response to issues and reducing public costs; and 2) assessing interagency coordination mechanisms to determine if certain functions of MERB and TSCC should be modified.

Approval of Permits by U.S. Environmental Protection Agency:

The issuance of surface water discharge permits may be delayed due to untimely action and agreement by the U.S. Environmental Protection Agency (EPA).

To address this issue, the department has formally requested the EPA to waive their review of permits for certain classes of facilities, including:

1. All minor Publicly Owned Treatment Works (POTW's) having a discharge of less than 1 million gallons per day (MGD).

2. All noncontact cooling water discharges of less than 500 MGD.

3. All minor industrial discharges.

The department is also working with EPA to establish a generic permit for such industries as those which only discharge noncontact cooling water.

The department is pursuing EPA approval of these modifications as part of the renegotiations of the existing memorandum of agreement between

Michigan and EPA for the delegation of the National Pollutant Discharge Elimination System program.

These revised EPA review requirements may expedite issuance of many permits by one to two months or more.

Water Resources Commission Approval of Surface and Groundwater Discharge Permits:

The Water Resources Commission is currently required to take formal action on surface and groundwater permits.

The department believes that the issuance of certain permits can be expedited and that the functions of the Water Resources Commission could be significantly improved by delegating certain permit issuing authority from the Commission to staff.

Under Executive Order 1976-8, the Water Resources Commission retains authority to issue (or deny) wastewater discharge permits, storage permits and to promulgate water quality standards. The department will work with the Commission and the Department of Attorney General to secure delegation from the Commission to staff the responsibility for issuance of all discharge permits for minor existing, new and increased uses of the waters of Michigan for wastewater disposal. The department will pursue delegation to staff for the issuance of permits for all non-controversial major existing discharges and storage permits.

Permits for controversial, existing, major discharges; controversial storage permits; new, major discharges; and significant increases in major discharges would continue to be issued by the Commission. This modification would enable the Commission to devote more attention to significant issues while at the same time, expedite the issuance of many permits.

## 1.5 Administrative Rule Process

The Department requests the Governor's Task Force on Regulatory Review to carry out an assessment of the administrative rule process (established under Act 306, P.A. 1969, the Administrative Procedures Act). The department believes the current process causes several problems which are shared by most state agencies which, in turn, impact negatively on public service. The most significant issue is the time required to promulgate administrative rules. The department believes some oversight of agency rule making is essential to ensure rules reflect the legislative intent of statutes. The department has supported the establishment of this form of oversight in the promulgation of federal regulations.

It is the department's position, however, that certain modifications to the present rule promulgation process should be made which: 1) remove impediments to the timely promulgation of rules; and 2) provide for some relief in the event the required rules are not promulgated during a reasonable period of time.

With respect to public participation in the rule promulgation process, it is department policy to provide and request views on proposed rules from affected groups.

## Chapter 2

## Positions and Planned Actions on Regulatory Reforms

This chapter presents department positions on regulatory reforms. For each reform an indication of whether the reform was recommended from within the department (X) or by an interest group (O) is provided.

These reforms and corresponding department positions are organized according to: (1) water quality; (2) air quality; (3)solid waste and resource recovery; (4) hazardous waste and toxic materials control programs; and (5) general issues associated with more than one program.

### 2.1 Water Quality

1. Recommendation - Revise the Part 21 rules of the Water Resources Commission Act dealing with wastewater discharge permits to reflect changes in laws that have occurred since 1973. (X)

   Response - The department agrees and has initiated the review process. The department will propose revised rules to the Water Resources Commission during the first quarter of 1982. As part of this process, the department will recommend the Commission adopt the federal consolidated permit application forms.

2. Recommendation - Delete dual licensing requirements for transporters of hazardous wastes. (X)

   Response - The department has drafted legislation to eliminate this duplication by providing that any person licensed as a transporter under Act 64, P.A. 1979 (the Hazardous Waste Mangement Act) is not required to obtain business or vehicle licenses under Act 136, P.A. 1969 (the Liquid Industrial Waste Haulers Act). The department will work with the Governor's Office to seek a sponsor for this legislation.

3. Recommendation - Develop streamlined ("generic") permits for certain wastewater discharges so that certain permits may be issued in a matter of days. (X, O)

Response - By January, 1982, the department will seek approval of a generic permit from EPA for noncontact cooling water which has an insignificant environmental impact and other insignificant discharges such as certain discharges from mobile homes, campgrounds, condominiums, and non-operating quarry pump-out water and others.

4. Recommendation - Reduce monthly operating report requirements placed on water dischargers. (X)

Response - By the end of 1981, the department will require all dischargers, with the exception of major and significant minor dischargers under the National Pollutant Discharge Elimination System (NPDES) program, to submit routine operating reports on only a semi-annual basis. This has been approved by the Water Resources Commission.

5. Recommendation - Eliminate the practice of issuing notices of noncompliance to all water discharge permittees that have notified the DNR of an excursion. (X)

Response - The department believes it is necessary to continue to acknowledge receipt of excursion notices and to review their significance and actions taken. Our vehicle to do this is the notice of non-compliance.

6. Recommendation - Streamline the processing of wastewater discharge permits, including establishment of a central permit issuing staff. (X, O)

Response - The department agrees to take steps to expedite the issuance of wastewater discharge permits. The Water Quality Division will propose modifications by January, 1982.

7. Recommendation - Eliminate unnecessary delays in the review of facility plans for wastewater treatment facilities. (O)

Response - The department will establish a model timeframe for reviewing facility plans and responding to the applicant on any deficiencies. If this timeframe cannot be met, the department will so notify the applicant and provide the applicant with a revised review deadline. The federal program is also being reviewed and the department expects some reforms at the federal level will occur.

8. Recommendation - More stringent effluent limitations or water quality standards should not be proposed unless there is a compelling need to protect the people of the State of Michigan. (O)

Response - The Water Resources Commission is currently proposing changes to only the Part 57 standards which cover toxic substances. As changes in water quality and/or increased discharges from other sources occur, there is a continuing need to adjust effluent limitations and water quality standards to protect receiving waters.

9. Recommendation - The DNR should issue general stormwater runoff permits. Companies are now left vulnerable because the EPA requires these permits which the state will not issue. (O)

Response - The department will seek an agreement with EPA in renegotiating the NPDES memorandum of agreement to have the state issue permits for general stormwater runoff from industrial facilities which will be managed under a "generic" permit concept and will not be subject to review by EPA. The department hopes to conclude negotiations with EPA by January, 1982.

2.2 Air Quality

1. Recommendation - It is recommended that Part 2 of the administrative rules for the Air Pollution Act be amended to expand the exemptions and/or specify in the rules required controls for general categories of minor sources without requiring a permit. (X)

Response - The Air Quality Division could proceed with such rule promulgation to exempt general categories but are limited somewhat since the current enforcement capabilities do not provide for effective enforcement for rule violators. Accordingly, a statute amendment which would provide for civil penalties would enable the rules to be more enforceable and permit exemptions would be more feasible (with civil penalties for rule violations, the department would be able to provide more exemptions than are now possible.)

2. Recommendation - To provide for easier and more frequent legal enforcement of the Air Pollution Act (Act 348, P.A. 1965) and to provide for broader exemptions of certain facilities from air permit requirements, it is recommended the Act be amended to provide for civil penalties in addition to the criminal penalties which now exist. (X)

Response - The department will pursue civil penalties to provide more effective enforcement of the Air Pollution Act. This would reduce dependence upon the permit process as the primary enforcement tool. In turn, the Air Pollution Control Commission would be able to substitute equipment standards for permit requirements in the rules. The department has sent to the Governor draft legislation on civil penalties.

3. Recommendation - It is recommended that Part 13 of the Air Pollution Act rules, which now require development of an episode abatement program for most sources, be amended to eliminate unnecessary requirements for smaller sources. (X)

Response - By November 30, 1981, the department will produce a list of sources which should be exempted from episode abatement requirements. Presently, the department is investigating whether or not larger sources can be exempted from requirements and if certain geographic areas of the state can be exempted.

4. Recommendation - It is recommended that the Air Pollution Control Act rules be amended to require a specific time limit on the trial operation under a permit to install. (O)

Response - The department believes that this proposal would unduly restrict a company's ability and time to demonstrate that they can satisfactorily operate their new source. If industry chooses to seek this amendment, the department will support it.

5. Recommendation - It is suggested that more use be made of conditional approvals on non-major sources to allow permits to be issued in 60 days. (O)

Response - The department does not generally support conditional approvals due to inherent risks to industry. The department has increased staff in the Air Quality Division Permit Unit to decrease the amount of time required to process a permit. Most permits are now processed within the 60 day timeframe. Currently the department commits to notifying permit applicants if their application is complete within 30 days of submittal of the application. The Air Quality Division will meet with any company to discuss the substance and timing of air permit applications.

6. Recommendation - It is suggested the department translate the current non-criteria pollutant guidelines into proposed rules. (0)

Response - The department will initiate the process to promulgate rules for non-criteria pollutants.

7. Recommendation - It is recommended the state offset rules be withdrawn and the state enforce existing federal offset requirements. (0)

Response - The department has redrafted the rules to bring Michigan's offset requirements in line with federal requirements. These draft rules are now being distributed for comments by industry and interest groups.

8. Recommendation - It is recommended that the Air Pollution Act rules be revised to allow the Air Pollution Control Commission, for reasonable cause, to establish an emission limit for a source less stringent than that specified in the Michigan Rules or relax the requirements for permitting a source provided minimum federal requirements are met. (0)

Response - The emission limits specified in the Commission's rules are designed to require the installation of reasonably available control technology. A lengthy public participation process was followed prior to promulgation of these rules. The department believes flexibility exists in these rules and that compliance with the rules has not been a problem. In specific cases where the Act and rules are determined to be unreasonable, the Air Pollution Control Commission may act on a case-by-case basis.

9. Recommendation - Air Pollution Control Act Rules 240 and 241 should be reviewed and portions should be deleted. The state of the art in air modeling changes rapidly and flexibility should be provided to use different models. (0)

Response - The department recognized that flexibility was needed when these rules were promulgated. The flexibility to use new models is incorporated into existing rules.

10. Recommendation - It is recommended that the Air Pollution Act rules include a provision for officially delegating permit issuing authority to local agencies. (O)

Response - The current Air Pollution Control Commission rules provide for the Commission's suspension of enforcement for any or all portions of their rules to a local agency. For example, this provision would allow for delegation of permit issuing authority to local agencies. To date, no local agency has applied for this suspension. We do not believe rule change is necessary at this time.

11. Recommendation - Amend the Air Pollution Act rules to allow the installation of research and development projects. (O)

Response - The current rules allow for the installation of research and design projects similar to the federal provisions for innovative air pollution control equipment. Procedurally, this is accomplished with a conditional permit approval. In addition, the current rules exempt laboratory equipment from the permit process.

12. Recommendation - Streamline and improve coordination on air permit applications. (O)

Response - The Air Quality Division coordinates review of permit applications within DNR and with other state agencies. The department believes it is important to coordinate with these agencies on permits that will have a direct impact on their programs so that a permit for a new source does not have an unacceptable impact on another environmental protection or environmental health program. The Air Quality Division has a central Permit Unit which coordinates these functions (see also Section 1.3 permit coordination).

13. Recommendation - Expedite the processing of air permit applications which would provide air quality improvements. (O)

Response - The department agrees to give high priority to permit applications that would provide air quality improvements. This has, in fact, been a longstanding policy of the Air Quality Division.

Some of these improvements are, however, major renovations which require an extensive review.

NOTE: On October 27, 1981, the department received several draft recommended reforms relating to air quality from the Michigan Coalition for Clean Air. Due to the date these draft recommendations were received, the department was unable to develop a response which could be included in this document. The department will develop a position on each of the final recommendations.

2.3 Solid Waste and Resource Recovery

1. Recommendation - Eliminate the licensing of refuse transfer facilities now required under Act 641, P.A. 1978, the Solid Waste Management Act. (X)

Response - By early 1982, the department hopes to eliminate the permitting and licensing of transfer facilities which have containers with a volume of 75 cubic yards or less and do not provide any compaction. The department will also propose to exempt all transfer stations from hydrogeological survey, environmental assessment and groundwater monitoring requirements. The department will also recommend these facilities be exempted from licensure renewal.

2. Recommendation - Eliminate or modify the regulation of municipal collection centers for junk vehicles and farm implements. (X)

Response - The department will propose legislation to remove these provisions from Act 641 by early 1982.

3. Recommendation - Amend the proposed Act 641 rules to provide clear standards or guidance for providing variances "by the solid waste control agency for reasons it considers to be justifiable" (R 108(5) of the proposed rules). (O)

Response - The department has modified proposed Act 641 Rule 108 accordingly and hopes to have the rules adopted by November, 1981.

4. Recommendation - Amend the proposed Act 641 Rules to provide performance

standards for meeting the objectives of the Act (similar to those contained in Rules 404 and 405 of Act 64, P.A. 1979). (O)

Response - The department will consider this recommendation in future changes of the Act 641 rules, contemplated for fall of 1982.

5. Recommendation - The responsibility for groundwater protection should be delegated to the Water Resources Commission staff. This should be clarified in the Act 641 proposed rules. (O)

Response - Groundwater protection responsibilities are placed in several department divisions by statute. The department cannot change these responsibilities by rule.

6. Recommendation - Issue general guidelines identifying acceptable recycling programs applicable to certain generic waste streams and appropriate methods for implementing such reuses. (O)

Response - The department will develop guidelines for reuse of specific generic waste streams by July, 1982.

7. Recommendation - Develop performance criteria instead of detailed specification requirements for facilities in the Act 641 proposed rules. (O)

Response - The criteria for Type III landfills are now based almost entirely on performance criteria. The department wants to evaluate the success of this approach prior to proposing any revision to the Type II landfill criteria. We are concerned that application of performance criteria for certain types of facilities would cause uncorrectable problems.

8. Recommendation - Exempt small facilities from licensing requirements under Act 641.

Response - We agree that small transfer station operations should be exempted (see number 1, above). The department does not agree that small landfills should be exempted.

9. Recommendation - Request legislative oversight deliberations on the implementation of Act 641. (X)

Response - The department has requested special legislative oversight deliberation on issues pertaining to Act 641.

2.4 Hazardous Waste and Toxic Materials Control

1. Recommendation - Eliminate the licensing of certain on-site hazardous waste facilities which do not require an extensive hazardous waste evaluation and are acceptably controlled under other statutes. Examples include plating pretreatment operations, incineration of flammable but non-toxic compounds, neutralization systems, and wastewater treatment plants managed under NPDES. (X, O)

Response - The department believes sufficient regulation is provided under laws and rules other than Act 64, P.A. 1979, for certain facilities. The department has requested legislative oversight on Act 64 implementation at which point duplicative regulation will be addressed.

2. Recommendation - The "Industrial Discharge Authorization Form" under Act 64 should be eliminated by MDNR and replaced with a "Permit-by-Rule" approach to grant blanket authorizations for industrial discharges which comply with local ordinances (consistent with Section 4(2) of Act 64). (O)

Response - The department supports regulating discharges into municipal sewer systems using a permit-by-rule system. This approach is not allowed, however, under the current construction of the Act. As a result, a statutory amendment would be required to implement this recommendation. It should be pointed out, however, that adopting this aproach may result in a net increase in regulating these facilities.

Presently, the department has deferred regulation of these dischargers so long as other regulatory programs (NPDES permits, pretreatment regulations, sewer use ordinances, etc.) provide adequate control. Currently, only those industries actually discharging a hazardous waste into a municipal sewer system need to consider obtaining an Industrial Discharge Authorization Form and then only if they wish their discharges to be totally exempt from regulation under Act 64. Since the current level of regulation is minimal, almost any requirement imposed under a permit-by-rule system would entail a greater level of regulations.

Use of the form provides a major benefit to municipalities in that industries must fully disclose what hazardous wastes they are discharging into municipal sewer systems before the municipality assumes responsibility for the discharge.

Until the Act is modified to allow "permit-by-rule" regulation, the department supports continued use of the form.

3. Recommendation - Eliminate the DNR policy which asserts that existing facility status under Act 64 only applies to the same type and quantity of waste the facility received with prior department approval. Request the Attorney General to outline the criteria to be used in determining if a facility is existing or new. (O)

Response - Section 16 of the Act exempts existing facilities from the construction permit/site approval board process. It was the intent of this section of the Act to only allow previously authorized activities to continue without site approval board review. Allowing a facility to change its scope of operations without going through the construction permit process is inconsistent with our understanding of the statute and its legislative intent. The department does not support this recommendation.

With regard to the second element of this recommendation, the department believes that well defined criteria already exist for determining whether a facility qualifies as "existing".

4. Recommendation - Provide clear guidance on what constitutes a demonstration of proof of financial capability for operating licenses under Act 64. (O)

Response - The department supports this recommendation and will develop some recommended financial instruments. The department will also draft proposed amendments to the rules to provide clarification.

5. Recommendation - Consider reclassifying stable metal hydroxides as a non-hazardous waste. (O)

Response - Act 64 provides for the exemption of certain wastes on a case-by-case basis. The department will consider any request for specific exemptions.

6. Recommendation - Add a subrule to Rule 906 (Act 64 rules) so that out of state disposal facilities need not issue a certification of disposal. (O)

Response - Out-of-state facilities are not within the jurisdiction of Act 64. Therefore, the department supports this recommendation and will seek this change in the first round Act 64 rule changes.

7. Recommendation - Modify the Act 64 rules for short term storage secondary containment requirements to be consistent with the recent Federal Resource Conservation and Recovery Act (RCRA) regulations (40 CFR, 264.175). (O)

Response - The department supports this recommendation and will seek the recommended change in the first round Act 64 rule changes.

8. Recommendation - Establish a procedure to allow for the timely adoption of regulatory changes proposed by EPA to RCRA, such as the recent paperwork reduction regulations. (O)

Response - The department supports RCRA/Act 64 standardization so long as these revisions are consistent with the intent of Act 64. Many reporting requirements under Act 64 will be proposed to be eliminated in the first round Act 64 rule changes and numerous RCRA regulations will be adopted by specific reference.

9. Recommendation - Eliminate Act 60, P.A. 1976 which regulates PCB compounds. (O)

Response - The department will support abolishing those provisions

of Act 60 which duplicate provisions of other state or Federal laws.

10. Recommendation - Eliminate copies 1 and 4 of the present hazardous waste manifest to reduce paperwork and conform to RCRA. (O)

Response - The department does not support this recommendation. The copies of the manifest proposed for elimination are the copies submitted to the department. These copies are the heart of the hazardous waste tracking system. Without these copies, the department would not be able to ensure that hazardous waste shipments are being properly disposed.

11. Recommendation - Eliminate the Act 64 certificate of disposal. (O)

Response - Issuance of a certificate of disposal is the trigger mechanism that transfers a generator's liability for a shipment of hazardous waste to the disposal facility. This concept was strongly advocated by industry when the Act was being drafted. The Department does not propose to change this provision.

12. Recommendation - The RCRA "empty drum" rule should obviate the unnecessary manifesting of empty drums (containing less than 1 inch of waste) for all drums except those containing acute hazardous wastes (which must be triple rinsed before disposal under Act 64). (O)

Response - The department is now regulating empty containers under Act 64 in a manner consistent with RCRA.

13. Recommendation - Make the Act 64 Waste Characterization Report optional depending on vendor needs and case-by-case assessment of individual waste streams. (O)

Response - This recommendation will be discussed with interest groups during the first round Act 64 rule changes. The department, at this point opposes this recommendation.

14. Recommendation - Make state issued restrictive covenants consistent with Act 64 and Act 64 rules. (O)

Response - The restrictive covenant was drafted by the Attorney General's office. It is their opinion that the language of the covenant is necessary, appropriate and consistent with Act 64.

15. Recommendation - Apply for interim authorization under RCRA. (X, O)

Response - The department is committed to achieving interim authorization for Phase I of the RCRA program. Michigan anticipates achieving Phase I interim authorization status by spring of 1982.

16. Recommendation - Reactivate the Act 64 rules committees to initiate review and appropriate revision of the Act 64 rules. (O)

Response - The department will reconvene the Act 64 rules committees soon in anticipation of the first round Act 64 rule changes. The department hopes to initiate this process during late spring, 1982.

17. Recommendation - Publish an outline of the differing requirements between Act 64 and RCRA. (O)

Response - This comparative summary is available on request to the DNR's Office of Hazardous Waste Management.

## 2.5 General Issues

1. Recommendation - Do not include requirements in permits which are not related to or covered by the laws and rules for the specific permit being sought, or address enforcement issues unrelated to the specific permit or facility in question. Do not delay permit issuance in instances where a company may be in litigation on a matter unrelated to the specific permit or facility in question.

(O)

Response - It is department policy to ensure that all environmental requirements are met in the permitting and licensing of facilities. When necessary, the department will continue to ensure that all permits and licenses will not be issued until the department is satisfied that all environmental protection statutory requirements will be met.

2. Recommendation - Eliminate the practice of issuing quasi-legal policies and procedures for regulatory programs which should be subject to the administrative rule process. (O)

Response - No matter how detailed the rules are, they always are subject to interpretation. In such cases, the department has two choices. We can give case-by-case interpretations or we can put interpretations in writing for application to all facilities. In many cases, the department has put its interpretations in writing. This has given the public opportunity to express their views and some policies have been amended accordingly. The department believes it must continue to establish administrative policies for the programs it administers. The department believes the process for promulgating administrative rules should be streamlined so that policies and procedures, where appropriate, can be approved through the administrative rule process in an expeditious manner. With respect to administration of Act 64, P.A. 1979, the Hazardous Waste Management Act, the department has established a new public advisory group to assist the department in drafting policies and procedures.

3. Recommendation - Governor Milliken and Dr. Tanner should issue a joint policy statement which makes a clear commitment to streamlining programs. (O)

Response - Dr. Tanner is willing to issue a joint statement.

4. Recommendation - Improve standardization in administrative rules by using the language contained in the Michigan Environmental Protection Act: ("pollution impairment or destruction of the air, water or other natural resources") instead of such terms as harmful, injurious, adversely affected or others. (O)

Response - The department agrees that standardized terms should

be used in rules to the extent possible. However, rules must also be consistent with the terms contained in the relevant statute. The terms harmful, injurious, etc., are contained in our statutes and administrative rules accordingly.

5. Recommendation - In developing laws and rules and in administering permit programs, develop a means of ensuring local land use controls are considered. (O)

Response - The department considers local land use controls in administering permit programs. Act 641, P.A. 1978, for example, provides that future solid waste facilities will be developed only when they are included in solid waste plans developed at the local level.

6. Recommendation - Eliminate the Michigan Environmental Review Board. (O)

Response - The role and function of the Michigan Environmental Review Board (MERB) is outside of the purview of the department. The department has requested the Governor's Task Force on Regulatory Review to carry out an assessment of Executive Order 1974-4 which created the board to determine if improvements in efficiency and cost can be made.

7. Recommendation - For all permit programs, issue a public notice on the permit application as soon as the application is determined to be complete rather than waiting for internal review of the application to be completed. (O)

Response - The department now follows this practice for certain permit applications and will expand it where appropriate.

## Chapter 3

## Incentives for Economic Development

Sound environmental protection programs provide several incentives for economic developments. This chapter reports on the type and availability of information generated by environmental protection programs which may be useful to business and industry in siting economic developments in Michigan.

### 3.1 Solid Waste Disposal and Treatment Sites

For many economic developments, it is important to know the available capacity of solid waste disposal areas, transfer stations and processing plants before locating new facilities. The DNR's Resource Recovery Division is now generating available capacity data from information contained in the data bases from county solid waste management plans, prepared under Act 641, P.A. 1978, the Solid Waste Management Act. By March, 1982, the Resource Recovery Division should be able to provide this information to prospective developers, assuming the local plans are sufficiently complete.

To obtain this information, contact:

Department of Natural Resources
Resource Recovery Division
Solid Waste Management Planning
P.O. Box 30028
Lansing, Michigan 48909

Telephone: (517) 373-1818

### 3.2 Resource Recovery and Recycling

The Commerce Department's Michigan Energy Administration has funded a waste stream assessment. This assessment, combined with data from the county waste management plans, will provide a more definitive assessment of the quantities of recyclable materials now included in Michigan's solid waste stream. This information should be of considerable benefit in attracting recycling industries to Michigan.

To obtain information on the availability of recyclable materials, contact:

Department of Natural Resources
Resource Recovery Division
Resources Recovery Section
P.O. Box 30028
Lansing, Michigan 48909

Telephone: (517) 373-0540

## 3.3 Wastewater Treatment Capacities

In the past ten years, the Department of Natural Resources has administered $2.7 billion in state and federal funds to construct new and improved wastewater treatment facilities. There are many communities in Michigan which are attractive for residential, commercial and industrial development due to the availability of wastewater treatment capacity and good facility performance.

Presently, there are about 50 community wastewater treatment systems which now serve 10,000 people or more and have plant flows greater than 1.0 million gallons per day which have capability to accommodate significant development and have a plant effluent performance record which is acceptable based on current water quality criteria.

To receive information on wastewater treatment capacities, contact:

Department of Natural Resources
Water Quality Division
Wastewater Operations Section
P.O. Box 30028
Lansing, Michigan 48909

Telephone: (517) 374-9493

## 3.4 Air Quality Offsets and Air Quality Monitoring

The department intends to submit an accommodative State Implementation Plan (SIP) to the U.S. Environmental Protection Agency for VOC non-attainment areas. The accommodative SIP would identify a growth cushion for the non-attainment area as a whole and would therefore allow new sources and expansions of existing sources in non-attainment areas without "case-by-case" offsets. By the end of 1981, the Air Quality Division will have identified the specific ozone non-attainment areas in which it is feasible to have an accommodative SIP.

In the interim, the Air Quality Division is attempting to inventory air quality offsets, with emphasis upon locations of the state where development is proposed.

In addition to air quality offset information, the Air Quality Division's ambient monitoring program provides information which is of considerable benefit to industry. In many cases, information generated by the ambient air monitoring program can be provided to industry and thus be used by industry in lieu of carrying out their own pre-construction monitoring.

To obtain information on air quality offsets or the air quality monitoring program, contact:

Michigan Department of Natural Resources
Air Quality Division
Permit Unit
P.O. Box 30028
Lansing, Michigan 48909

Telephone: (517) 322-1333

## 3.5 Stream Assimilative Capacities

Michigan's rivers and streams have varying capabilities to effectively accept or assimilate surface water discharges without causing negative environmental or human health impacts. Certain stream segments, which are unable to accept significant additional waste discharges and still meet water quality standards, are classified as "limited" stream segments.

For any potential development which may have a surface water discharge, it is important to know if the intended receiving water can accept the wastes.

To receive information on Michigan's water quality limited streams, contact:

Michigan Department of Natural Resources
Environmental Services Division
Comprehensive Studies Section
P.O. Box 30028
Lansing, Michigan 48909

Telephone: (517) 373-2867

## 3.6 Pollution Control Facilities Tax Exemption Program

Industries which install air or water pollution control facilities are eligible to be exempt from Michigan sales tax and property tax associated with the cost of purchasing and constructing pollution control facilities. Act 245, P.A. 1965 established the exemption policy for air pollution control facilities and equipment. Act 222, P.A. 1966 established the policy for water pollution control.

Application for tax exemption is made to the State Tax Commission. The Commission seeks approval from the Department of Natural Resources, which reviews the application to determine that the facility or equipment is designed and operated primarily for the control, capture and removal of pollutants from an air or water discharge.

Through 1980, 920 water pollution control facilities were certified for an estimated tax savings to industry of $44,597,355. Certified air pollution control facilities totalled 913, with an estimated tax savings to industry of $91,764,173.

In addition to these programs, industries can lessen federal income tax payments by rapidly amortizing the cost of pollution control facilities. Guidelines for rapid amortization were established under the Federal Accelerated Depreciation Tax Reform Act of 1976.

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