



The Part 201 Cleanup Criteria and Land Application:

An Overview...

Phil Schrantz
Remediation and Redevelopment Division





Purpose:

- Provide context for the current interplay of Part 201 and other DEQ programs:
 - Effects of Part 201 liability standard.
 - Degree of “harmony” among programs addressing similar practices.
 - Provisions of Part 201 relating to relocation of contaminated soils.



Statutory Evolution:

- Michigan Environmental Response Act, 1982 (“Act 307”)
- Employed strict liability standard
- Not risk-based - required cleanup to pre-release conditions, even though decision-making in other regulatory programs was often risk-based.



Statutory Evolution:

- Act 307 administrative rules promulgated in 1990. Introduced risk-based approaches to cleanups. 3 types:
 - Type A: Cleanup to background (not risk-based).
 - Type B: Cleanup to risk-based criteria.
 - Type C: Cleanup that relied upon exposure controls rather than contaminant removal.



Statutory Evolution:

- Part 201 was amended on June 5, 1995.
- Changed liability standard to causation, established land-use based cleanup criteria using different risk assumptions.
- Amended Part 201 administrative rules were promulgated in December, 2002. Cleanup criteria were codified in those rules.



Definitions:

- “Hazardous substance” means any substance that poses an unacceptable risk to public health, safety, welfare, or the environment. Includes standard regulatory lists from federal programs.
- “Release” is defined broadly and includes the abandonment of containers of hazardous substances that represent a threat of release.



Definitions:

- “Facility” means any area, place, or property where a hazardous substance in excess of residential criteria has been released, ... or otherwise comes to be located.
- This definition is critical as many other aspects of Part 201 depend on the existence of a Facility.



Definitions: “Permitted Release”

- “Permitted release” means 1 or more of the following:
 - (i) A release in compliance with an applicable, legally enforceable permit issued under state law.
 - (ii) A lawful and authorized discharge into a permitted waste treatment facility.
 - (iii) A federally permitted release as defined in CERCLA.



Permitted Release – Consequences:

- Authorizations that allow placement of wastes onto the land may constitute permitted releases.
- Part 201 “Due Care” provisions may not provide sufficient authority to assure protectiveness.
- Cleanup of contamination resulting from permitted releases must be addressed under other statutes.



Current Cleanup Criteria:

Based on current/anticipated land use, as defined by zoning. 4 general categories established by statute:

- Residential
 - Industrial
 - Commercial
 - Recreational
- Generic Criteria Calculated
- Rely upon Site-specific Criteria
-



Current Cleanup Criteria:

- Compliance with criteria most commonly achieved in two ways:
 - Generic Remedy
 - Limited Remedy
- Rules also provide for calculation of site-specific criteria.



Current Cleanup Criteria:

- Generic criteria have been calculated for specific exposure pathways in soil and groundwater.
- Exposure Pathways for Groundwater:
 - Drinking Water
 - Volatilization from Groundwater to Indoor Air
 - Dermal Contact
 - Groundwater/Surface Water Interface (GSI) criteria are Part 31 water quality standards.



Current Cleanup Criteria:

- Exposure Pathways For Soils:
 - Drinking Water Protection
 - GSI Protection
 - Groundwater Contact Protection
 - Volatilization to Indoor Air
 - Volatilization to Ambient Air
 - Particulate Inhalation
 - Direct Contact (dermal and incidental ingestion)
- Land application can result in any or all of the Part 201 exposure pathways being an issue.

Based on leaching
from soils to
groundwater



Part 201 – Soil Relocation:

- Part 201 authorizes the relocation of contaminated soil, under certain circumstances without prior DEQ authorization.
- Part 201 prohibits relocation of soil unless it is determined not to pose a threat - defined as the presence of hazardous substances in excess of applicable criteria.
- Allows soils to be relocated only to similarly contaminated locations.



Part 201 – Soil Relocation:

- Requires relocated soils to be provided same degree of control, including engineered controls and/or any necessary land or resource use restrictions.
- Parties relocating soils must notify DEQ and document basis for their determination that relocation is appropriate.



Part 201 – Soil Relocation:

- Does not apply to sediments generated by maintenance dredging.
- Does not apply to solid waste, or wastes defined as “other waste regulated by statute under Part 115.
- Does not apply to soils that are hazardous wastes under Part 111/RCRA.
- Does not apply to soils designated as inert under Part 115.



Part 201 Criteria – Larger Context:

- Some DEQ programs have used Part 201 criteria in making decisions about the placement of materials onto the land:
 - Part 115 “Inertness” Rules
 - Part 31, Part 22 Groundwater Discharge Permitting Rules
- Others haven’t:
 - Part 117 Septage Wastes
 - Federal Section 503 Biosolids Management



Part 201 Criteria – Larger Context:

- Part 201 cleanup criteria represent levels of hazardous substances in soils and groundwater that are protective of public safety, health, welfare, and the environment.
- The Part 201 criteria were developed in the context of releases that had already occurred, but were not intended to regulate the disposal or management of wastes.