DRAFT Part 115 Inert and Compost Rules
Meeting Summary
April 17, 2009

Participants		
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1. Handouts:
    - Agenda
    - Compost-Inert Ad Hoc Committee Members List
    - Draft Part 115 Meeting Summary from April 1, 2009
    - Part 115 Inert and Composting Rules Presentation
    - Current Regulations (April 17, 2009)
    - Low-Hazard Industrial Waste
    - Proposed Rules
    - Industrial By-Product Categories

2. Liability Issues – Rule 109

   Continuation of the discussion from the last meeting, where several stakeholders expressed concerns about liability for any environmental contamination or nuisance resulting from the utilization of a waste authorized under Part 115. There appear to be two issues: 1) whether the creation of a Part 201 "facility" should be a violation under Part 115; and 2) who (generator, broker, end-user) is liable under Part 115, Part 201, and any other applicable laws for any claims of contamination, injury, etc., resulting from the use of the waste.

   Regarding the prohibition on creating a Part 201 "facility," some stakeholders were concerned that the proposed Rule 109 created a violation of law that does not currently exist. The DEQ recognizes that Part 201 may not have a penalty for creating a "facility." Part 201 is not a preventive program, however. Part 115 is a preventive program, and the DEQ explained that the proposed Rule 109 prohibits the creation of a Part 201 "facility" because it does not want an authorization to utilize a waste that would otherwise be disposed in a landfill to cause environmental harm. It was noted that Rule 109 pertains only to the management of the waste prior to the end use, recognizing that some wastes that would be authorized for use could create a Part 201 "facility" by virtue of the contaminant concentrations exceeding the Part 201 residential criteria. It was also noted that a similar provision prohibiting the creation of a "facility" is already contained in the Part 22 Rules (R323.2204(2)(f)).

   Given the current proposed redesign of the Part 201 program, some concern was expressed that the implications of Rule 109 are unknown as the Part 201 requirements could change. It was pointed out that the specific Part 201 rules in effect when the Part 115 rules are promulgated would apply, regardless of whether the Part 201 rules were subsequently amended. One way to address this concern may be to write all applicable Part 201 criteria into the Part 115 rules.

   Regarding generator, broker, and end-user liability under various applicable laws, it is not likely that the rules can address anything beyond Part 115 liability. Whether the generator could gain some liability protection by complying with rules that specified what is expected of the generator (e.g.,

DRAFT

to notify the end-user of all conditions or limitations on the use of the waste) is uncertain. Stakeholders who have some ideas on how to address this issue were encouraged to draft some rules for consideration by the committee.

The DEQ has scheduled an internal meeting to further discuss these issues on April 29th, and should have additional information to share with stakeholders at the next rules meeting

3. Inert Criteria for Site Specific Use – Rule 116(5)
Following up on discussions at the last meeting, the DEQ explained that the intent of proposed subrule 116(5) is to limit consideration of waste utilization that is contingent upon long-term controls. The DEQ's authority to require sophisticated engineering controls, financial assurance, etc., for waste utilization is questionable. Most important, if these things are needed, questions arise as to whether the project is a remediation, already addressable under a Part 201 remedial action plan, or a legitimate beneficial use of waste. Further, only "durable entities" could be considered in the rare circumstances when the more sophisticated controls are necessary. Neither the DEQ nor stakeholders could come up with dependable criteria to expand the durable entity concept beyond units of government.

Projects that would fall within the scope of the rule would be rare (i.e., one every ten years) base on past experience.

The committee listed possible types of controls that might be used to demonstrate that a pathway (e.g., human direct contact) was not relevant:

- Natural soil barriers
- Pavement
- Building
- Drainage-way
- Vegetation
- Groundwater monitoring
- Groundwater pumping
- Slurry walls
- Deed restriction
- Local ordinance

It was agreed that clean soil placed as a cover and natural soil barriers were not engineering controls for purposes of the subrule. (Proposed rule 116(3)(c) was intended to allow for site-specific determinations based on hydrogeological conditions, and the DEQ will review that rule for possible clarification.)

Ultimately, the committee agreed to drop the proposed rule given the lack of demonstrated need to try to accommodate overly complex proposals that

DRAFT

would be hard to distinguish from remediation projects. It can be revisited if the committee determines in subsequent rules discussions that specific, more-complex beneficial uses need the special accommodation that the rule would provide.

4. Petitions – Rule 118
   It was questioned if the proposed rules were adding new parameters that a generator would be responsible to address. We explained that we were just putting into writing the current list of required parameters. The generator is responsible for any contaminant found in their material. The proposed rules add another approved leaching test and make it possible to use modeling to address contaminants. The department limited the parameters of concern for those waste streams that we have seen numerous testing results.

5. Current regulations – self-implementing. Beneficial reuse (Rules 120a-120d).
   Provisions for low-hazard waste use already currently listed. Proposing to add additional wastes to the listed low-hazard waste. It was explained that category 4 were the least contaminated materials and that category 1 were the most contaminated. Industrial by-products are defined in Rule 103(p).

   The group had a discussion on maximum depth of material that is appropriate for alternate daily cover (ADC) at licensed landfills. The draft rules propose a 6 inch maximum. The workgroup did not want a limit in the rules. We explained that since industrial by-products used for ADC are site/source separated material that the department would not be collecting disposal fees on these materials in the future and we wanted to ensure that the minimum amount of materials be used that meet the statutory requirements. We will talk to Margie Ring (lead state engineer) on this issue and report back to the workgroup.

   The group inquired if there was a way for the Michigan Department of Agriculture to report to the DEQ the volumes of waste material that were used under the MDA licenses. We will talk to Solid Waste committee about this issue with fertilizers (Rule 120a). Need a way to measure use and a different date of reporting since the DEQ reporting operates on a calendar-year and the MDA works on a fiscal year.

   There were many questions raised related to uses, volume limits, and storage requirements contained in the self-implementing beneficial use rules. It was pointed out that some of the rules contain provisions that could be amended by the director while other rules did not contain this provision. In addition the requirements related to speculative accumulation do not appear to be consistent with the current definition. Staff will take another look at the rules and make sure they are consistent with the conditions related to the possibility of the director to amend provisions and ensuring that the speculative accumulation requirements line up

DRAFT

6. Next Meetings – Part 115 Proposed Agenda (Rules are listed in order of importance):
    - May 6 – Rules 121a through k, 101, 102, 103, 104, 105
    - May 29 – Rules 110, 113, 114, 126, 127, 129, 103 m and q
    - June 10 – Possible Meeting
    - June 26 – Possible Meeting
    - July 17 – Possible Meeting
    - July 31 – Possible Meeting

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