

September 23, 2010

Chairman Clemente and Committee Members:

Thank you for the opportunity to comment on the package of bills before you. MMA supports the package of bills, as these bills propose a number of key reforms to the Michigan's cleanup program (Part 201). These changes will encourage cleanup and redevelopment of brownfield properties throughout Michigan while protecting the environment and the State's natural resources.

MMA represents about 2,500 members that operate in the full spectrum of manufacturing industries and account for 90% of Michigan's industrial workforce, directly employing over 500,000 Michigan residents.

Michigan is a manufacturing state. Manufacturing is the largest single sector of the Michigan economy, creating 20% of the gross state product (GSP), or \$76 billion. This contribution is nearly double the contribution of the next largest sector, real estate, with just \$43 billion in GSP.

MMA and its members have, for years, supported Part 201 and worked with the department to improve its implementation. While improvements have been achieved, MMA believes that the process needs to be re-engineered to promote protective remedies, with faster and less overall cost to both the implementing parties and the department.

In 2006, the then Department of Environmental Quality, now Department of Natural Resources and Environment (DNRE) asked Public Sector Consultants (PSC) to facilitate a stakeholder-driven process to discuss and identify potential improvements to the programs. A group of experienced individuals met periodically between 2006 and early 2007 to identify and discuss problems and improvements to the Part 201 and brownfield programs. PSC then issued a report in April, 2007 documenting that process.

At the end of 2007, Michigan enacted legislation addressing the recommendations in the PSC report associated with improving Michigan's brownfield program. But nothing has been done yet to address improving Part 201. The problems identified in the PSC report and other problems identified since that report continue to substantially bar increased investment in remediation and redevelopment in Michigan. The over-arching theme representing the greatest barrier is conservative decision-making by the DNRE that leads to ambiguity and a lack of finality. This imposes an environmental and economic cost to the State as investors are hesitant to undertake a redevelopment project and brownfield sites are not remediated.

The Part 201 program must be reformed for Michigan to move forward and appeal to those interested in investing in brownfields. This package includes a number of key reforms that are necessary to advance the program. These reforms center on streamlining the Part 201 processes, creating flexibility, and allowing sites to achieve finality.

Key Reforms Contained in the Package

1. Achieving Closure.

The fundamental objective of the Part 201 program is to cleanup sites so that they are adequate for a use going forward. Achieving a level of closure is critical in attaining that goal. The State's current program is overly complex with no clear endpoint for cleanups.

This has been detrimental to the program and the State, resulting in less redevelopment of

brownfield sites and the State's urban centers. The bills include a number of changes to aid reaching closure.

Section 20114D allows individuals to self implement a cleanup and obtain closure through a No Further Action (NFA) report. This process allows cleanups to move forward through the use of private experts without having to stop and obtain DNRE approval ahead of time or along the way. Once the cleanup is finished, the individual can submit the NFA report for Department signoff. This change will greatly reduce the workload of the Department and encourage site cleanup.

The section also includes timelines to streamline the DNRE approval process FNA reports. The legislation establishes response times of 150 days or 180 days if a public hearing is required. If the agency fails to meet the timeframes, the NFA report is deemed approved.

2. Groundwater Surface Water Interface (GSI) and Mixing Zones.

The rules, and their interpretations, regarding GSI and mixing zones have served as one of the greatest impediments to obtaining closure to a site. Evaluation of water quality at the GSI is an important factor in evaluating a site and determining how to obtain closure. However, the process currently in law fails to accurately address what that water quality is due to a limitation in flexibility within the rules. The bill eliminates that rigid approach in section 20120E and allows for more flexibility in monitoring to more accurately measure the water quality at the GSI. This change puts Michigan in line with how other Great Lakes States are monitoring and allowing for flexibility and is also consistent with EPA guidance.

3. Creation of Review Panel.

Section 20114E creates a technical review panel of experts to serve as an appeals board and advise the Director of the DNRE on disputes over technical, scientific, assessment of risk. During the cleanup process it is not uncommon for disputes to arise between the private sector experts and the DNRE. Under current law, the only avenue of appeal is to the courts, where generally they differ to the expertise of the Department due to the technical nature of the subject. This new review panel will serve as a forum that is capable of understanding and evaluating the dispute. The bill includes criteria for panel members and exclusion to avoid potential conflicts of interest. The panel will make a recommendation to the Director on all disputes; the Director will then make a determination.

4. Protection from Liability.

The Part 201 statute is first and foremost a liability statute. The statute was geared around protecting those who were not responsible for a contaminated site and protecting responsible parties from liability once they cleaned up a site to the appropriate standards. Liability protection must be included in order to incent parties to move forward on a site. Cleanups of sites can cost millions of dollars, and failure to protect entities that do the right thing would be an extremely flawed policy. Fortunately, the bills not only retains this important concept, but builds upon it by allowing applicants to achieve closure and liability protection by instituting land use and resource use controls or deed restrictions. The inclusion of these concepts will promote more cleanups and lead to further redevelopment of brownfields where economic stagnation has occurred. Certainty and predictability are key components to the business community and this addition provides both.

5. Site Specific Criteria.

Section 20120B of the legislation allows land owners more flexibility in using site-specific criteria, including the ability to take into account recent scientific advances, data specific to that site, non-numeric site-specific criteria. Currently, many Part 201 cleanup criteria are out-of-date or of questionable scientific validity. Further, the criteria are, by nature, "generic" (i.e., they are based on very broad and conservative assumptions about property use that may not apply to a particular property). While Part 201 currently allows for the use of site-

specific criteria in place of generic criteria, such use has been made very difficult and does not allow a party to take into account the most up-to-date science or practical facts about the property. The reforms made in SB 437(S-3) alleviate these concerns and allow for more accurate determinations of contaminated sites. This will lead to resources being utilized in areas of real concern and where prioritize should be focused.

6. Establishment of Metrics to Measure Program Performance.

Section 20112A requires the agency to report on its website a number key performance measures. These include the number of approvals of plans, the number of approvals for reports, and the number of baseline environmental assessments received to name a few. Measures are important in determine if a program is successful and to measure our State's competitiveness to other states. The metrics set out in this section should provide a baseline for future comparisons and to evaluate the program's success.

7. Limitation on Rules and Operational Memorandum.

The bill prohibits the use of operational memorandum in a manner that would be binding on the regulated community. Operational memorandum is a tool for internal the agency guidance. The package includes specific language stating that. The legislation also repeals several out of date rules that are inconsistent with the legislation and its goals of creating a more efficient process under Part 201.

In conclusion, the package of bills to reform Part 201 incorporates the fundamental changes necessary to Michigan's cleanup program in order to encourage brownfield redevelopment and stimulate the State's economy. We all have a goal of a cleaner environment with a robust economy. This package is a tool to do that and will aid in making Michigan more competitive in the future. MMA urges your support for bills. If you have any questions please feel free to contact me at gross@mma-net.org or 517-487-8543. Thank you.

Best Regards,



Randy Gross

