

**MDEQ Director, Steve Chester Responses To Committee Questions**  
**Senate Committee on Government Operations**  
**February 11, 2003**

**1. What is your opinion of the current clean up and liability standards under Part 201 of the Natural Resources and Environmental Protection Act (NREPA)?**

*The 1995 amendments to Part 201 of the Natural Resources and Environmental Protection Act (NREPA) establishing risk-based cleanup criteria linked to land use represent an innovative, rational, intelligent approach to address historical contamination. Michigan's approach of allowing development of site-specific criteria not only insures that the public receives adequate protection through determination of appropriate cleanup levels based upon the risk associated with specific exposure, it also provides the regulated community with flexibility in the design and implementation of remedial action plans while saving both public and private dollars.*

*While the efficacy of statutes imposing strict liability on the owners and operators of contaminated facilities in terms of accelerating the rate at which the regulated community has adopted pollution prevention measures may be debated, it is clear that certain elements of strict liability - such as extending strict liability to innocent third-party purchasers of contaminated property - were counterproductive. Michigan's approach of providing incentives and tools to local units of government to actively encourage and foster reuse of environmentally distressed property is, categorically, the right approach. Indeed, we must find new ways of taking so-called "brownfield" development to new levels to both protect our environment and rebuild our cities.*

**2. What are your ideas regarding public input into DEQ permitting decisions? Do you have plans to restore the various boards and commissions that were eliminated in the early 1990's? If so, what are your plans on ensuring that the system does not also return to permit backlogs and delays that were common back then ?**

*I believe that fostering civic participation and providing meaningful opportunities for public input is critical to establishing responsive, effective governance. We intend to foster constructive communication through nonpartisan engagement of all affected and interested stakeholders. This does not mean reestablishing the boards and commissions that have been abolished by the last administration, but it will mean the creative use of advisory committees, stakeholder groups or other processes designed to build consensus and breach historical divides. Just as the Senate Majority Leader advanced Great Lakes issues through the work of the Great Lakes Conservation Task Force, and before that, built consensus on environmental cleanup issues by establishing working groups of stakeholders, I plan on working with Senator Sikkema, the Legislature, the regulated community, and the public to advance the interests of all of Michigan's citizens.*

**3. How should regulatory and enforcement programs be funded?**

*As a general principle, I am in favor of reasonable regulatory and user fees. Valid regulatory fees, imposed under the general police power authority that pay for the administration of programs designed to protect public health and safety or mitigate the adverse effects of a particular use of public trust resources are, in my view, entirely appropriate provided, the regulatory fees are not imposed for unrelated revenue raising purposes. User fees directed at assuring that those who make consumptive use of public trust resources pay their fair share of the cost of providing public benefits or who receive a service, program, or privilege in exchange for paying the fee are also appropriate. The impending budget deficit provides us with a unique opportunity to reexamine and redesign our regulatory and user fee systems to establish fair and equitable funding mechanisms that derive revenue from those actively using our resources or receiving the benefit of our services.*

#### **4. What is the single most important threat facing the state's natural resource base?**

*The lack of comprehensive, rational land use policies and inadequate guidance and assistance to local units of government not only negatively impacts natural resource base, it threatens the resiliency of our cities and ultimately our economy. Our land is undergoing dramatic changes caused by the absence of a strong shared vision and state policy on protection of valuable farmlands, open spaces, cities and ecologically significant lands. The unplanned and uncontrolled consumption of greenspace impairs the quality of our land, water and ecosystems, and, if not met with strong leadership and vision, threatens our social and economic well-being and undermines government's ability to deliver and maintain public services. I believe we must act now in a bipartisan effort to protect our resource legacy and make our cities livable again. The Granholm Administration has announced the appointment of a bipartisan council lead by William Milliken and Frank Kelley and comprised of leading Michigan citizens, local government leaders and land use and urban planning experts to develop long-term land use planning recommendations. I will participate as a member of the Council.*

#### **5. Would you support a reconsolidation of the DEQ and the DNR?**

*Yes. Governor Granholm has made clear that it is her intention to reunify the DEQ and DNR. It will not be done hastily, but prudently. We will not reorganize without purpose.*

*We appreciate more everyday that all of our environmental and natural resource programs are inextricably linked. We should do all we can to ensure that our environmental professionals work in an environment that emphasizes collaboration and cooperation. It is not just a matter of facilitating communication between divisions and programs or implementing best management practices. It is more than speaking in one voice. It is learning, sharing experiences and responsibilities, forming values and establishing a culture. It is professional collaboration, problem solving and teamwork. It is the enriching experience of being part of a mission to protect, conserve and enhance a natural resource heritage that is of immeasurable value and beauty. Reunifying the DNR and DEQ will help recapture those intangible qualities that helped make the DNR a*

*national leader in natural resource management and environmental protection.*

*6. The state has frequently been challenged by a conflict between the need to protect its natural resources with the need to protect private property rights. A good example of this situation is the practice of beach grooming in the Saginaw Bay area where property owners have been fined by the DEQ and the U.S. Environmental Protection Agency over certain grooming practices on newly-surfaced lands along Lake Huron. Do you support an increasing role for private citizens to act in the public trust and perhaps give up some private property rights?*

*The example cited above presents an array of issues arising from falling Great Lakes water levels and the ensuing exposure of bottomlands and aquatic plant growth in areas below the ordinary high water mark. The situation is illustrative of the tension created by the concerns of shoreowners, developmental pressure and the economic concerns of near-shore communities on one hand, and the legal obligation to prevent impairment of public trust resources, the duties mandated by Article 4, Section 52 of the Michigan Constitution, and concern for littoral and lake ecology on the other. Despite these apparent conflicts, I am confident that the law as well as good science allows for reasonable accommodation of the disparate interests in most circumstances. As mentioned previously, I intend to remain open to citizen and stakeholder input, and will evaluate each circumstance on its own merits, mindful of the need to protect shorelines while at the same time respectful of the property owner's investment interest in their lakeshore lands.*

**7. Michigan and other Great Lake states have an important and unique duty to safeguard the integrity of the Great Lakes. What can Michigan do to guard against diversion of the Great Lakes water for other parts of the country that need our water?**

*I agree with the 2002 Great Lakes Conservation Task Force Report finding that there is an immediate need to enact legislation that will protect our aquifers and regulate water withdrawals. Wisconsin and Minnesota have such statutes in place. A comprehensive water usage strategy is long overdue and, more importantly, is a necessary element of any effort to defeat Great Lakes water exports. As the Report states, any new law must prevent harm, conserve and enhance Great Lake resources, afford due process, and be "even-handed in the promotion of conservation both within and outside of the Great Lakes Basin" so that it survives constitutional challenge.*

*I also agree with the Senate Task Force recommendation to enhance the DEQ's ability to monitor and coordinate both water quality data and other hydrological data. In protecting aquifers and regulating water withdrawals, we must have the best data available in order to make appropriate administrative decisions as well as to aid permit applicants in gathering information. Ultimately, we must create an integrated inventory and database in which all USGS, state and regional information concerning our lands, rivers, wetlands and aquifers is collected and analyzed so that we can make intelligent and informed decisions on the use of our waters.*

*Consistent with the Great Lakes Charter and Annex 2001 we need to renew our efforts to foster cooperation and collaboration with the Great Lakes states and provinces, regional congressional delegations, the Canadian government, the Great Lakes Commission and International Joint Commission, to identify constitutionally sustainable strategies to conserve and control demand of waters in the Great Lakes Basin.*

**8. Michigan has a broad prohibition on polluting our state's waters, yet the dumping of ballast water in the Great Lakes continues to bring in more aquatic nuisance species into the waters, clearly violating this prohibition. What steps would you take to stop the introduction of new non-native species in the Great Lakes?**

*Non-native aquatic nuisance species cause, by US EPA's estimate, \$5,000,000,000 in economic damage annually and wreak havoc in tens of lake ecology. The rate of introduction of new species continues to accelerate. ANS are a crisis and we must move decisively. Unfortunately, the greatest obstacle continues to be the lack of feasible and effective technological solutions. Prophylactic measures, in terms of ballast water exchange, are of limited effectiveness and are difficult to enforce.*

*Nevertheless, I believe that we will solve the ANS problem and that the stakeholders - shippers, manufacturers employing Great Lakes vessels, researchers and regulators - are all poised to implement workable solutions as soon as such solutions are identified. Our best strategy is to continue to use all available means to foster innovation and sustain efforts to find solutions. These include:*

*Encouraging other states and the provinces to enact analogs to Public Act 114 of 2001;*

*Keeping the pressure on EPA to repeal 40 CFR 122.3(a) exempting ballast water from regulation under the Clean Water Act (Late last year, then Attorney General Granholm, together with Attorneys General from New York, Illinois and Minnesota filed a brief in the Ninth Circuit Court of Appeals urging such action);*

*Working with Congressional delegations to pass ANS legislation and secure funding - ANS have disrupted coastal ecology in every area that is the locus of shipping activity;*

*Educating the public generally, and especially the boating community, of the importance of taking precautions to ensure that watercraft do not spread ANS.*

**9. What is your view of the role of the Attorney General in enforcing department decisions?**

*I look forward to a strong working relationship with the Attorney General and intend to rely on his advice and counsel. As past Directors of the DEQ have done, I also intend on relying on the Attorney General's staff who have been charged with enforcing Michigan's environmental laws and providing counsel to the agency. This will include enforcement*

of DEQ decisions.

**10. What is your opinion of voluntary compliance programs such as the environmental audit and privilege law and the various incentive programs like the Clean Corporate Citizen program currently in effect in the DEQ?**

*The DEQ, under my watch, will afford every opportunity to the regulated community to comply voluntarily with our environmental laws. We will not only provide assistance, we will work actively to encourage innovation and creativity to help the regulated community implement programs that go beyond command and control strategies and, perhaps, transcend traditional regulatory paradigms.*

*Part 148 of NREPA (the environmental audit program) appears to be working. The 2002 Annual Report of Voluntary Disclosure Submittals indicates that in the last reportable one year period, the DEQ received 516 notices of intent to perform an audit and that the regulated community reported 83 violations of permitting or reporting requirements. I am not aware of any information that suggests that this program is being abused.*

*Michigan has been a leader in the implementation of P2 (pollution prevention) programs, including the Clean Corporate Citizen program. I will foster and support providing assistance and incentives to encourage and reward businesses that are proactive in their approaches to environmental compliance issues, and will actively seek ways to provide technical assistance and support to small businesses, in particular.*

**11. Michigan was recently challenged by a federal mandate requiring inspections and enforcement of noncompliant underground storage tanks, but rather than immediately enforcing the law and risk running many gas station owners out of business through shutdowns, the DEQ chose to phase in enforcement over an extended period of time. Do you support this type of policy?**

*It is not clear what DEQ "policy" is being referred to. There appear to be two possibilities. First, both federal regulations adopted in 1988, 40 CFR 280.21, and corresponding Michigan regulations promulgated in 1991, 1991 AACS R 29.210, established a December 22, 1998 deadline for upgrading or replacing certain existing underground storage tank (UST) systems in order to minimize the risk of leaks. It IS my understanding that DEQ's stated policy in 1998 and 1999 was to immediately enforce those regulations. Specifically, the DEQ's policy was to "red tag" (i.e. prohibit any further filling or use of) any substandard tanks identified after the December, 1998 deadline and to take civil or criminal enforcement action against owners of substandard USTs who failed to replace or remove such tanks within one year as required by applicable regulations. The DEQ's stated policy also included prioritizing facilities for enforcement action purposes based upon several factors, including the number of violations by particular owners and whether tanks had actually leaked at the site. I believe that such a policy was both reasonable and appropriate because it required full compliance with the long-established deadline under applicable law, while prioritizing enforcement efforts based upon the extent of the violations and the degree of*

*environmental harm involved.*

*Second, and more recently, DEQ determined that some 253 facilities where USTs were supposedly "upgraded" to meet the December, 1998 deadline by a particular contractor, Corrpro Companies, Inc., were not in compliance with the applicable standards because Corrpro used tank assessment procedures not approved by DEQ as required by the administrative rules. In July 2002, DEQ notified the owners and operators of those facilities of the problem and requested that they take specific actions to verify the integrity of the tanks, including tank tightness tests and internal tank inspections. The letter did not establish a specific deadline for compliance. It is my understanding that DEQ has, as a policy matter, decided to allow the affected parties a reasonable time to comply, and has informally indicated that it may allow up to a year to complete the necessary corrective measures. That decision was based upon factors such as the owners' apparent good faith efforts to comply with the original 1998 deadline and practical considerations involving the limited number of contractors available to perform the internal tank inspections. I am informed that DEQ has stated its intention to continue to monitor compliance with the July, 2002 request on a case by case basis, and has expressly reserved the right to take enforcement action at any time as appropriate. I believe that under the circumstances, DEQ's approach to this matter has been a reasonable one. Where, as here, the regulated person has apparently acted in good faith to achieve compliance, but through no fault of their own has not done so, I think it makes sense to exercise some discretion in taking enforcement action, to allow the person a reasonable opportunity to achieve compliance, while still reserving the state's ability to take action as needed to assure protection of health and the environment.*

**12. Would you support the creation of a citizen oversight board for the DEQ similar in operation to the way the NRC functions with the DNR?**

*As mentioned earlier, Governor Granholm has made clear that it is her intention to reunify the DEQ and DNR. With reunification, the agency will be under the jurisdiction of the constitutionally-created Natural Resources Commission (NRC). Given the Governor's intent, it seems prudent to forego creation of a statutorily-based environmental commission which, eventually, will be superceded by the NRC. Pending reunification of the agencies, I believe providing meaningful opportunities for public input can and should be achieved through the creative use of advisory committees, stakeholder groups and other processes designed to build consensus and promote public discourse on issues regarding environmental protection and natural resource preservation (see answer to Question 2 above).*

**13. Do you support giving broad authority to the DEQ to set permit fees?**

*On a program specific basis, I believe the DEQ should have the power to assess fees pursuant to specific criteria and guidance delegated from the legislature. For example, the 2002 Great Lakes Conservation Task Force Report recommends the consideration of a NPDES permit fee which covers initial and renewal applications, surveillance, monitoring activities and enforcement costs. Specific legislation granting such authority*

*would be welcomed. A comprehensive grant of general fee assessment powers could, on the other hand, be challenged as an unlawful delegation of legislative authority.*

**14. Are you in favor of continuing to use the expertise of the Michigan Science Advisory Board - a panel of scientific experts used to research and make policy recommendations on controversial environmental issues?**

*Yes.*