Frank Foster 12/5/2012

Committee Chairman: Committee of Natural Resources, Tourism, and Outdoor Recreation

Dear Mr. Foster and Committee members,

Your task in discussing Senate Bill 1328 today is not an easy one. On Monday, December 3, 2012, I spoke with a DEQ staff member with a Phd who remarked to me, "Yes, if I had a second full time job I could probably understand the whole bill."

This bill is large train with many cars, and after watching car by car go by, the reading of this bill is almost hypnotic. My greatest concern as a representative of CCRR, Concerned Citizens for Responsible Re-development, is that the bill is too compartmentalized, not multi-media in approach, and that some people understand parts of it, but that key members of the DEQ and Legislature cannot comprehend the "all of it." The reason for my concern is this: The lawyers who represent the regulated community will become the masters of it. They will understand the details, they will know where it can be bent, they will know which teeth are wiggly, and they will be well-paid as they endeavor to help their clients do as little as possible while saving as much money as possible. It's their job. But is this the intended result of Senate Bill 1328?

Over the past two years I have spoken personally with over 200 different DEQ staff members, at all levels in DEQ's organizational chart. Morale is low. Staff has been reduced. Funding has been reduced. The present Part 201 Clean-up legal requirements and practices do not equip them to do their jobs, which is to oversee the protection of Michigan's Environmental Quality and ensure its health and vitality. Here a few quotes from individuals with whom I have spoken.

Comment to citizen. June 17, 2010. "It is a huge fallacy that the DEQ is involved pro-actively in many of these important matters. They are not the 'whipping boys' that the public thinks they are. **They can make strong suggestions, but there are very few mandates. Best management practices are encouraged but not required."**

Perhaps this is why the lawyers representing the owners of a 100 year-old tannery, about to be demolished, could get away with writing the following statement on an application for MEGA funds through the MEDC. On June 16, 2010 this company, when asked about current property conditions, stated the following, **"There is no known contamination on the property."** (Act 381 Work Plan, Section 2.0) Meanwhile, a worker whose job it is to install monitoring wells and take environmental samples, told it this way. **"There is enough contamination on a tannery to gag a maggot. That's why I double up on what I wear."** Meanwhile ACT 451: 324.20107a, Section 20107a makes it pretty clear that if a owner "has knowledge that their property is a facility," then they have environmental obligations. This company must have had some knowledge of contamination. In 1994 an ESA done on a portion of the site identified areas of contamination. Don't know how this information, on file with the DEQ Recreation Department, was missed.

Furthermore, because **Michigan law** does not require a property owner to do pre-demolition environmental testing of a (likely) contaminated site, **if** they have no plans to sell the property, the DEQ can only make **'strong suggestions' and encourage best practices.**

Here are a few more quotes from DEQ staff, endeavoring to motivate the above-mentioned company to operate according to best management practices-- by making conditions for receipt of the MEDC money, one of them being requiring the company to have a Phase I/Phase II ESA of the site *prior* to demolition.

- "This note is in relation to the proposed demo of a tannery site in Michigan. Several of us in DEQ have some concerns about this demolition, however we don't have evidence of contamination, so we are limited in what we can do.
- Water Resources has toured the site, denied termination of the industrial storm water discharge permit, and had concerns that there could be contamination of soils on the site. One of the buildings is located right on top a creek that goes into the river. No data however.
- MEDC is asking for our assistance—should they place conditions on their tax increment funding?
- We are also concerned about leaching to the river once the plant is demolished and the pavement is removed.
- **The concern is that they will decide that don't need the MEDC money after all. The hope is that since that are saying that they want to be good corporate citizens that they will do the Phase I/Phase II ESA.**

In short, the company withdrew their application for the MEGA funds, the demolition occurred, and concerned citizens sent a Preliminary Assessment to the U.S. EPA Region 5. The petition was accepted, completed, and now the CERCLA report has verified that the site is indeed contaminated and is a "Facility." So now the company has been mandated to do further investigation and remediation of this site.

Changes to Part 201 could easily weaken the efforts of this mandate.

- Changes in GSI determinations could make it easier to wiggle out of Best Management practices and solutions.
- The section regarding re-locating soils, unless the activity is strictly enforced, could open up a whole new chapter of "appearance-based" environmental responsibility and evasive compliance rather than the reality-based **environmentally responsible actions**.
- The section regarding UST's and changes made to the law in this section
- Any attempts to re-define/ and or make more murky important definition such as that of a facility, or risk-based, or site-specific, etc.

To close, I would quote Vince Lombardi, " It's hard to be aggressive if you are confused," so that I could re-phrase it in this way, "It's hard to protect the environment and for the DEQ to do their job if Michigan Law is confusing, murky, and lenient."

Please take Senate Bill 1328 off the fast track until there is greater understanding of its far-reaching and long-term implications. Thank you, Lynn M. McIntosh for CCRR