



MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

Annual Regulatory Plan

Report Period:
July 1, 2023 to June 30, 2024

Authority:
MCL 24.253

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Michigan Department of Environment, Great Lakes, and Energy Executive Summary

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) is responsible for a total of 61 rule sets. EGLE will be evaluating 14 of the rule sets for possible revisions within the next 12 months.

During the past 12 months, three rule sets were promulgated:

- 2022-66 EQ - State Revolving Loan Fund
- 2022-18 EQ - Part 6. Emission Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions
- 2022-39 EQ - Part 1. Well Construction Code

EGLE has five rule sets undergoing the rulemaking process:

- 2023-5 EQ - Hazardous Waste Management
- 2023-11 EQ - Part 1. General Provisions
- 2023-13 EQ - Part 8. Emission Limitations and Prohibitions – Oxides of Nitrogen
- 2023-14 EQ - Part 9. Emission Limitations and Prohibitions – Miscellaneous
- 2023-15 EQ - Part 10. Intermittent Testing and Sampling

EGLE Rule Sets Being Evaluated for Revision from July 1, 2023 to June 30, 2024

Division	Rule Set Title	Rule Citation
Air Quality	Part 2. Air Use Approval	R 336.1201 - 1299
	Part 3. Emission Limitations and Prohibitions – Particulate Matter	R 336.1301 - 336.1374
	Part 6. Emission Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions	R 336.1601 - 336.1662
	Part 18. Prevention of Significant Deterioration of Air Quality	R 336.2801 - 336.2823
	Part 19. New Source Review for Major Sources Impacting Nonattainment Areas	R 336.2901 - 336.2908
Drinking Water & Environmental Health	Supplying Water to the Public	R 325.10101 - 325.12820
	Groundwater Quality Control Rules	R 325.1601 - 325.1781
	Public Swimming Pools	R 325.2111 - 324.2199

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<u>Finance</u>	None	
<u>Materials Management</u>	Control and Licensing of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM)	R 325.5150 - 325.5180
	Hazardous Waste Management	R 299.9101 - 299.11107
	Medical Waste	R 325.1541 - 325.1549
	Solid Waste Management	R 299.4101 - 299.4922
<u>Oil, Gas, and Minerals</u>	Mineral Wells	R 299.2301 - 299.2531
	Oil and Gas Operations	R 324.101 - 324.4106
<u>Remediation & Redevelopment</u>	None	
<u>Water Resources</u>	Part 41. Sewerage Systems Rules	R 299.2901 - 299.2974

**Department of Environment, Great Lakes, and Energy
Air Quality Division (AQD)**

1. Rule(s) to be **processed** between July 1, 2023, and June 30, 2024. [Give brief description.]

The need for modifications to the following rules are being evaluated at this time:

Part 2. Air Use Approval (R 336.1201 – 336.1299)

Potential updates necessary for per- and polyfluoroalkyl substance (PFAS) emissions as well as minor updates to renewable operating permit and new source review rules as needed.

**Part 3. Emission Limitations and Prohibitions – Particulate Matter
(R 336.1301 – 336.1374)**

A new rule is being considered to prohibit or substantially restrict the use of a type of equipment called an air curtain incinerator.

**Part 6. Emission Limitations and Prohibitions – Existing Sources of Volatile
Organic Compound Emissions (R 336.1601 – 336.1662)**

Potential updates necessary to revise language surrounding southeast Michigan due to redesignation to attainment on May 19, 2023.

Additional updates include the reasonable available control technology (RACT) rules to better align with industry practices and address administrative revisions.

**Part 18. Prevention of Significant Deterioration of Air Quality
(R 336.2801 – 336.2823)**

Address a misinterpretation from a recent court ruling.

**Part 19. New Source Review for Major Sources Impacting Nonattainment Areas
(R 336.2901 – 336.2908)**

Address a misinterpretation from a recent court ruling.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023 and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None.

3. Has the division failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

The Part 6 Rules do not currently align with recent updates in designations for the southeast Michigan area and now require additional clarification.

- A. Describe whether there is a continued need for the rules.

Yes, there is a continued need for Part 6 Rules.

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- B. Provide a summary of any complaints or comments received from the public concerning the rules.

Comments have been received for the Part 6 Rules requesting additional clarifying language for the removal of the southeast Michigan areas from the more stringent standards now that the area has been redesignated.

- C. Describe the complexity of complying with the rules.

The Part 6 Rules are complex because industries in southeast Michigan are currently included in the rule language but a variance states they do not need to comply.

- D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the Part 6 Rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

EGLE evaluated revisions to the Part 6 rules in 2023; however, since then there was a regulatory decision approved by the United States Environmental Protection Agency (USEPA) to redesignate the southeast Michigan area back into attainment for the 2015 Ozone standard.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

EGLE's Regulations, Laws, Rules, and Policies [website](#), directs the public to the MOAHR administrative rules websites, as copied below:

[Michigan Office of Administrative Hearings and Rules \(MOAHR\)](#)

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[Pending Administrative Rules](#)

Track EGLE rules going through the rulemaking process by searching MOAHR's pending rulemaking system.

6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets

Part 6. Emission Limits and Prohibitions – Existing Sources of Volatile Organic Compound Emissions

The rule set was effective May 18, 2023.

Outstanding Rule Sets

Part 2. Air Use Approval

Part 18. Prevention of Significant Deterioration of Air Quality

Part 19. New Source Review for Major Sources Impacting Nonattainment Areas

**Department of Environment, Great Lakes, and Energy
Drinking Water and Environmental Health Division (DWEHD)**

1. Rule(s) to be **processed** between July 1, 2023 and June 30, 2024. [Give brief description.]

The need for modifications to the following rules are being evaluated at this time:

Supplying Water to the Public (R 325.10101 – 325.12820)

Part 1 – Part 28 promulgated under the Michigan Safe Drinking Water Act, 1976 PA 399 (Act 399) will need to be amended. Whether this will occur between July 1, 2023 and June 30, 2024 is dependent on several factors including:

- The USEPA promulgated Lead and Copper Rule Revisions (LCRR) under the federal Safe Drinking Water Act, provisions of which will need to be incorporated into state administrative rules. However, the USEPA has indicated revisions to the LCRR are likely to occur before the rule's effective date. The outcome of the USEPA's anticipated revisions will impact the DWEHD's rulemaking timeline.
- The USEPA has published proposed drinking water regulations for per- and polyfluoroalkyl substances (PFAS) and proposed revisions to Consumer Confidence Reporting requirements. Once final rules are promulgated, Michigan will need to incorporate these regulations into state administrative rules. The timing of the USEPA's final rule will impact DWEHD's rulemaking timeline.
- EGLE conducted a comprehensive review of these rules in 2022 which may result in rule revisions. The timeline for rule changes will depend on the nature and scope of recommended revisions and the timing of rulemaking required by the items above.

Groundwater Quality Control Rules (R 325.1601 – 325.1781)

The division recently conducted a preliminary review of the Michigan Water Well Construction and Pump Installation Code (Well Code), adopted under Part 127, Water Supply and Sewer Systems, of the Public Health Code, 1978 PA 368, as amended (Part 127). This review may result in recommendations for rule revision.

Public Swimming Pools (R 325.2111 – 325.2199)

In 2022, legislation was passed allowing food and beverage service at public pools. EGLE will need to amend the current rules to remove conflicting language and add rules supporting the statute's language to ensure the health and safety of pool users.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023 and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None

3. Has the agency (division) failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

Part 117, Septage Waste Servicers, of the Natural Resources Environmental Protection Act, 1994 PA 451, as amended (NREPA) (Specifically MCL 324.11701 – 324.11720).

EGLE has not had the resources to promulgate rules for the Part 117 septage waste receiving facilities and continuing education requirements. However, EGLE has successfully implemented the receiving facility and education provisions using the statutory authorities.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Supplying Water to the Public (R 325.10101 – 325.12820)

Concerns have been expressed regarding the financial and logistical challenge to regulated entities, particularly as it relates to recent revisions to lead and copper requirements.

- A. Describe whether there is a continued need for the rules.

Yes, these regulations are critical to protecting public health.

- B. Provide a summary of any complaints or comments received from the public concerning the rules.

Municipalities are concerned with the cost associated with full lead service line replacement and challenges associated with accessing private property to replace lead service lines.

- C. Describe the complexity of complying with the rules.

Lead and copper regulations are extremely complex, including extensive sampling, reporting, treatment, and education requirements.

- D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of these rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies. However, the USEPA is currently updating federal lead and copper regulations (noted in question one above), which will result in the DWEHD updating Michigan's lead and copper requirements as needed.

- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

EGLE promulgated revisions to Michigan lead and copper rules in 2018. The USEPA's most recent revision to federal lead and copper requirements were promulgated in late 2020, however the effective date was immediately extended by the new administration for additional review. The USEPA subsequently let the rules proceed, but plans additional revisions before the effective implementation date.

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Increased attention on lead in drinking water is driving more stringent regulations nationwide. Additional federal and state funding is being made available to assist with service line replacement costs.

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6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets

Part 1. Well Construction Code (R 325.1601 – 325.1781)

This rule set was effective May 26, 2023.

Outstanding Rule Sets

Supplying Water to the Public (R 325.10101 – 325.12820)

Public Swimming Pools (R 325.2111 – 325.2199)

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**Department of Environment, Great Lakes, and Energy
Finance Division (FD)**

1. Rule(s) to be **processed** between July 1, 2023 and June 30, 2024. [Give brief description.]

None

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023 and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None

3. Has the agency (division) failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

None

- A. Describe whether there is a continued need for the rules.

N/A

- B. Provide a summary of any complaints or comments received from the public concerning the rules.

N/A

- C. Describe the complexity of complying with the rules.

N/A

- D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

N/A

- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

N/A

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

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Completed Rule Sets

State Revolving Loan Fund

This rule set rescinded effective March 27, 2023.

Outstanding Rule Sets

None

**Department of Environment, Great Lakes, and Energy
Materials Management Division (MMD)**

1. Rule(s) to be **processed** between July 1, 2023, and June 30, 2024. [Give brief description.]

Control and Licensing of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) (R 325.5150 – 325.5180)

The MMD may promulgate a new part in the Ionizing Radiation Rules for Radioactive Material, which are promulgated pursuant to Part 135, Radiation Control, 1978 PA 368, as amended, to provide for the licensing of TENORM. Currently, TENORM is regulated by guidance on a case-by-case basis. Promulgation of formal licensing rules will make the process more consistent.

Hazardous Waste Management (R 299.9101 – 299.11107)

If the MMD is able to complete promulgation of 2023-5 EQ during the timeframe covered by this document, it may initiate rulemaking to the Hazardous Waste Rules, promulgated pursuant to Part 111, Hazardous Waste Management, 1994 PA 451, as amended, to incorporate a process framework into the existing corrective action rules, which currently focus on technical requirements not procedural requirements.

Medical Waste (R 325.1541 – 325.1549)

Changes to the Medical Waste Regulatory Act, Part 138, of the Public Health Code, 1978 PA 368, as amended (Act 368), to bring it up to current industry standards; address emerging communicable diseases; address stakeholder concerns with sharps storage and management; expand local health department inspection authorization and funding; and bring registration fees in line with needed program work. Upon enactment of the statutory changes, the rules will need to be updated to align with the statute.

Solid Waste Management (R 299.4101 – 299.4922)

The USEPA has authorized Michigan to administer its state Solid Waste Management Program in lieu of the federal program. Amendments to Part 115, Solid Waste Management, of the NREPA, were passed on December 28, 2022, and became effective on March 29, 2023. These statutory changes switch the program focus from landfill disposal to materials management, add authorizations for additional materials management facilities, and change the county planning focus from landfill disposal capacity to materials management facility capacity. The rules require updating to align with the statutory changes.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023, and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Medical Waste (R 325.1541 – 325.1549)

Environmental Advisory Rules Committee (EARC) Recommendation RM-8 states, “Amend Part 138, Medical Waste, of Act 368 or rules governing the disposal of medical waste to require the disposal of sharps that are used strictly for non-medical procedures (a) when the storage container is full, or (b) annually, whatever comes first.”

- A. Describe whether there is a continued need for the rules.

Yes.

- B. Provide a summary of any complaints or comments received from the public concerning the rules.

The EARC identified the Medical Waste Rules as needing updating to address concerns from businesses, manufacturers, and local government.

- C. Describe the complexity of complying with the rules.

The Medical Waste Rules are basic and add clarity to the statutory provisions.

- D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the Medical Waste Rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The last evaluation of this rule set was in 2000. If the statute is amended as noted in items 1 and 4, the issue would be addressed, and the rules would need to be amended to align with the statute.

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6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets
None
Outstanding Rule Sets
Control and Licensing of TENORM (R 325.5150 – 325.5180)
Medical Waste (R 325.1541 – 325.1549)
Solid Waste Management (R 299.4101 – 299.4922)

**Department of Environment, Great Lakes, and Energy
Oil, Gas, and Minerals Division (OGMD)**

1. Rule(s) to be **processed** between July 1, 2023, and June 30, 2024.

The need for modifications to the following rules are being evaluated at this time:

Mineral Wells (R 299.2301 – 299.2531)

Part 625, Mineral Wells, of the NREPA, requires EGLE to hold all information and records on applications and permits for mineral wells as confidential for ten years or more. The administrative rules require permit applicants to provide a copy of the first page of the permit application to the clerk of the township and the landowner. That rule may be viewed as in conflict with the statute and requires release of some information that may be proprietary and is probably not essential for the public to know. Mineral well industry representatives did not object to the rule when it was proposed; however, a problem arises when staff must tell a citizen that we cannot release any information about an application or permit. The OGMD proposes to amend the rules to require release of basic information to local government and to any person who inquires, and to post the information on the weekly permit list on the department web site.

In addition, the OGMD would like to propose changes to the single well conformance bond amounts to better align with present day plugging costs, incorporate language to address potential conformance bonding for unpermitted test wells in the western upper peninsula, and provide additional flexibility for the blanket test well permits in multiple counties.

Finally, based upon legislative changes to Part 625 statute, the OGMD may need to incorporate changes in the administrative rules to address several emerging well types related to storage and sequestration of carbon that were not considered when Part 625 was enacted. Other types of emerging deep energy well types such as compressed air energy storage, hydrogen storage, and deep well closed loop geothermal wells are also not well addressed.

The proposed rule revisions would also correct several errors in the current rules.

The OGMD proposes to convene the Mineral Wells Advisory Committee as a stakeholder engagement group to explore these proposed rule changes and to submit a Request for Rulemaking to begin the rulemaking process.

Oil and Gas Operations (R 324.101- 324.4106)

Part 615, Supervisor of Wells, of the NREPA gives EGLE broad authority to prevent waste in the permitting, operation, and closure of oil and gas wells and associated facilities. There is statutory authority allowing issuance of orders, instructions, and letters, as well as promulgation of rules necessary to implement the statute. With many oil and gas fields becoming uneconomic and depleted, there is risk associated with non-compliance, insolvency, and companies turning wells over to the State Orphan Well Program. To limit future plugging, remediation, and restoration liability, the OGMD is considering what actions are necessary to reduce future risk that taxpayers will have to plug wells left by some operators. Proposed changes to administrative rules R 324.206 (Well Transfer Requirements), R 324.209 (Temporary Abandonment Requirements, and R 324.212 (Conformance Bond Amounts) may be prudent to

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improve controls, limit exposure, and increase ongoing coordination with operators to address plugging liability concerns on a continual basis. Recently, the United States Congress provided for significant funds to address orphan well plugging liabilities around the nation. In addition to that effort, states with oil and gas production are looking at their regulations with an eye towards limiting future plugging liability at existing sites, and ensuring new oil and gas sites have negligible potential to become orphan well liabilities.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023, and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

The OGMD intends to review several administrative rule sets to determine if administrative rules or portions of administrative rules may be obsolete and able to be rescinded through expedited rulemaking process.

3. Has the agency (division) failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Mineral Wells

Changes to Mineral Wells Rules regarding confidentiality, conformance bonding amounts, and the addition of emerging well types into the program may be viewed as problematic to industry; engagement of the Mineral Well Advisory Committee will be essential in determining if the Request for Rulemaking will include these additional rules.

Oil and Gas Operations

Changes to reduce future plugging liability to operators and the state of Michigan will be beneficial to many operators in helping to reduce liability in an ongoing fashion through active well management and recognition of uneconomic conditions within wells. However, some operators who have taken such measures proactively may view additional requirements as punitive and unnecessary. If this rulemaking is pursued, stakeholders will be engaged, and the OGMD will utilize the Oil and Gas Advisory Committee as a primary, but not exclusive, sounding board in development of requirements.

- A. Describe whether there is a continued need for the rules.

Yes, there is a continued need for the Mineral Wells and Oil and Gas Operations Rules.

- B. Provide a summary of any complaints or comments received from the public concerning the rules.

Mineral Wells

Some public complaints have been received regarding confidentiality in Part 625. The statute addresses confidentiality and what can be shared with the public; however, proposed clarification of R 299.2311 (Application Requirements) would

allow the OGMD to share additional items that are already shared with the public via the township clerk receiving the first page of a permit application. The proposed changes would also convey well location information, whether hydrogen sulfide gas is expected, the casing and cementing program proposed, and details regarding the expected base of the lowest freshwater interval.

Oil and Gas Operations

There are national conversations and concerns regarding orphan well liability to the states when companies become insolvent. The OGMD shares some of those concerns and believes requirements can be clarified and strengthened in areas of transfer requirements, active well management and temporary abandonment requirements, and the number of wells allowed on a blanket bond to greatly reduce future plugging liability to the state of Michigan and the Orphan Well Program (Part 616).

C. Describe the complexity of complying with the rules.

Mineral Wells

The establishment of emerging well types into the program have some degree of complexity since much of what is emerging has not gone through wide-spread development. Stakeholder engagement will ensure that any rule changes are nimble to account for these unknowns. The proposed Mineral Wells rule clarification to address the handling of confidentiality and conformance bonding primarily affects OGMD workflows and not the regulated community's compliance with rules.

Oil and Gas Operations

Most changes to rules and requirements will be beneficial to operators to help limit plugging liability on an ongoing basis rather than incentivizing waiting until the end of economic life to plug. Realistic evaluation of well potential and plugging wells in compliance with R 324.903 (Commencement of Plugging) is key to reducing future liability. This will require companies to make ongoing investments to plug wells and restore sites; some operators will argue wells may have potential secondary recovery potential. Rule changes would require greater evidence of that potential, economic viability, and anticipated timelines. Also, for blanket bond amounts and numbers of wells allowed to be on a bond, retroactive application of the rule would be very difficult in that it could result in massive amounts of wells becoming instantly uneconomic, companies going bankrupt and the state of Michigan receiving thousands of wells. That reality is a real complexity but should not stop the OGMD from investigating changes that can be done to limit liability through active well management, realistic blanket bond amounts to ensure compliance with Part 615, and especially eliminate plugging liability for future drilled or transferred wells by limiting the amount of wells that can be on a blanket bond moving forward.

D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules do not conflict with or duplicate rules or regulations adopted by the federal government or local units of government.

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- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

Mineral Wells

The Mineral Wells Rules were last reviewed in 2008. Since then, there have been a few projects where the department has reviewed controversial permit applications and tried to engage the public. Without the ability to share very basic information that the township already has, lifting some of the confidentiality requirements will ease this engagement and promote transparency. With respect to emerging well types and technological advances, the OGMD expects these well types to gain momentum moving forward and could constitute a regulatory gap that requires oversight to ensure that the environment and public health and safety are protected.

Oil and Gas Operations

The Oil and Gas Operations Rules were last revised in 2018, changing single well bond amounts and adding well integrity requirements involving injection wells. At that time, the Orphan Well Program had not received a significant number of wells from a blanket bond holder. Since that time, the OGMD has had two natural gas operators holding nearly 260 wells become insolvent, and there were a few oil and gas operators who were declared insolvent through compliance actions resulting in nearly another 100 wells being added to the orphan well list. In 1996 administrative rule changes, R 324.212, R 324.212(d) allowed for unlimited amounts of wells on a \$250,000 blanket bond, which appears to be a divergence from the previous situation where a blanket bond covered a maximum of 100 wells. Since that time there are a few companies that have amassed over 1,000 wells, with one company owning/operating over 6,000 wells. Looking at this rule may not address what has been done but can certainly prevent the situation moving forward and avoid adding to the existing concern.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

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6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets

None

Outstanding Rule Sets

Mineral Wells (R 299.2301 – 299.2531)

Oil and Gas Operations (R 324.101- 324.1406)

**Department of Environment, Great Lakes, and Energy
Remediation and Redevelopment Division (RRD)**

1. Rule(s) to be **processed** between July 1, 2023 and June 30, 2024. [Give brief description.]

None

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023 and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None

3. Has the agency (division) failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50)

The cleanup criteria provided in the current rules have not been updated substantially since 1998. Based on previous stakeholder discussions, opportunities were identified to update the rules based on more recent science and potential improved processes.

- A. Describe whether there is a continued need for the rules.

Yes, there is a continued need for these rules.

- B. Provide a summary of any complaints or comments received from the public concerning the rules.

Concerns from both the regulated community and public have been expressed in previous discussions regarding the rules. The concerns will be revisited at such time when a determination is made to move forward with rule revisions.

- C. Describe the complexity of complying with the rules.

The Cleanup Criteria Requirements for Response Activity rules are complex in nature. The complexity of complying with the rules continues to be an integral component of stakeholder evaluation.

- D. Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules are state cleanup criteria and do not duplicate federal regulations.

- E. Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

EGLE promulgated revisions to this rule set in 2013, 2017, and 2022. The entire rule set pertaining to EGLE's cleanup and redevelopment programs last underwent a comprehensive review by the Criteria Stakeholders Advisory Group and the public, March 2014 through January 2018.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

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6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets

None

Outstanding Rule Sets

None

**Department of Environment, Great Lakes, and Energy
Water Resources Division (WRD)**

1. Rule(s) to be **processed** between July 1, 2023 and June 30, 2024. [Give brief description.]

The need for modifications to the following rules are being evaluated at this time:

Part 41. Sewerage Systems Rules (R 299.2901 – R 299.2974)

- The WRD is proposing new definitions or modifying existing definitions under R 299.2903:
 - “Combined sewer overflow (CSO)”
 - “Department”
 - “Public”
 - “Public sewer or sewerage system”
 - “Retention Treatment Basin (RTB)”
 - “Sewerage system”
 - “Sewer system”
 - “Treatment facility”
 - “Treatment works”
- Collection system and retention treatment basin facility classifications are being introduced to allow for operator certification for those systems under R 299.2911, R 299.2918, R 299.2925, and R 299.2925a.
- Additional language to clarify construction/alteration of non-municipally owned sewer or sewerage system, asset management plans, and escrow accounts or letter of credit for those systems under R 299.2935.
- Additional language to clarify revisions to approved plans under R 299.2942.
- Additional language to clarify enforcement under R 299.2960.

EGLE cannot proceed with additional rulemaking under Part 31 until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA. If rulemaking authority is granted, see number 4 for the rules that will be considered for processing.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2023 and June 30, 2024. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None

3. Has the agency (division) failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

The rules outlined below are important for the continual protection of public health and the environment. EGLE cannot proceed with rulemaking until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.

Part 4. Water Quality Standards (R 323.1041 – R 323.1117)

Recommendation to modify Rule 323.1043(I) “Bioaccumulative chemical of concern (BCC)” to align with the language in 132.2 Definitions from 40 CFR Part 132 Final

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Water Quality Guidance for the Great Lakes System. This change in definition is important in that it allows for continued protection of human health and the environment. These edits acknowledge that additional chemicals meeting the definition of a BCC, and thereby posing significant health concerns, are likely to be identified in the future as monitoring and scientific understanding advances. EGLE should be able to react to protect Michigan citizens and wildlife by categorizing future pollutants as BCCs that fit the strict definition of a BCC.

Recommendation to add qPCR under R 323.1062(1) as an additional form of “compliance” with the *E. coli* criteria, and to add a (6) to reflect a new criterion based on qPCR for beach closure decisions. This change acknowledges new technologies and monitoring techniques being used by many local health departments (LHD) and helps these departments use their data for both use assessment, while establishing thresholds to assist the LHD in beach closure decisions.

Recommendation to add language to R 323.1100(2) that recognizes additional human health concerns for body contact. This change acknowledges the potential for other water quality conditions to directly impact human (and potentially wildlife/pet) health through contact; parameters like algal toxins and pH have been identified as potentially harmful to contact in Michigan and the ability to clearly reflect these parameters that can impair contact use is important.

Recommendation to add language to R 323.1100(7) that accounts for additions of streams to lists after the 1997 version of the “Designated Trout Streams for the state of Michigan,” Director’s Order. This change continues to protect all streams identified in the 1997 Director’s Order (101.97) while acknowledging that additional waters have since been identified that are suitable for coldwater fisheries and should be protected as such. Conversely, streams that are no longer appropriate for managing as coldwater fisheries from a Department of Natural Resources perspective, and so have been removed from subsequent list, should maintain their coldwater fishery protection to keep focus on both human-induced impacts to those waters and the potential for future restoration of coldwater fishery use support. Through the National Pollutant Discharge Elimination System, antidegradation will also apply to any point source discharges.

Recommendation to update R 323.1057 for Aquatic Life, Wildlife Toxicity, and Human Health Toxicity sections. Several specific updates are needed to bring the overall aquatic toxicity, wildlife toxicity, and human health toxicity procedures up to date with current scientific approaches as well as adding clarifications to current language. These changes are intended to update the current aquatic toxicity evaluation methods to be more in line with current scientific consensus (Environmental Protection Agency Region 5 states) and to provide clarity on the approach where current language may be ambiguous or incomplete. This will improve the scientific credibility and defensibility of the resulting aquatic toxicity values.

Recommendation to revise R 323.1057(7) so EGLE can comply when/if rulemaking authority is lost. Promulgated values tables should be eliminated. A process should be outlined for a general annual literature review of new toxicity data. The current 5-year reviews list is often not relevant and results in no updates to R 323.1057(7) water quality standards (no new information available for selected chemicals). It

would be a better use of staff time to have a general annual literature review completed for the previous year – to include review of any chemical that is stimulating research interest during that period.

Part 5. Spillage of Oil and Polluting Materials Rules (R 324.2001 – R 324.2009)

Recommendations W-1 and W-10 of the Environmental Advisory Rules Committee (ARC) contain specific changes to the Part 5 rules that would make compliance less onerous. Additionally, EGLE wants to include PFAS as a polluting material.

Part 8. Water Quality-Based Effluent Limit Development for Toxic Substances (R 323.1201 – R 323.1221)

Recommendations to update R 323.1213 to eliminate specific Code of Federal Regulations (CFR) years for analytical methods; update R 323.1219 to eliminate specific CFR year for Whole Effluent Toxicity (WET) methods; and update R 323.1219 so the most sensitive aquatic test species shall be used to determine WET compliance. Adding this language will provide clarity and help with consistency in review of WET results.

Part 21. Wastewater Discharge Permits (R 323.2101 – R 323.2197)

Recommendations to revise Rule 323.2189 to remove CFR years issued per the Clean Water Act, which would ensure consistency with R 323.2137; replace permit-by-rule in R 323.2190 with a general permit process for all sites one acre and greater; and incorporate waste tracking requirements and assurances that land application meets permit requirements under R 2196(5)(e)(1).

Part 22. Groundwater Quality Rules (R 323.2201 – R 323.2240)

Recommendation W-4 of the Environmental ARC proposes clarification of the types of discharges that do not require groundwater permits – like what is done in the storm water regulations. Recommendation W-9 proposes expanding the permit-by-rule categories and eliminating categories requiring groundwater discharge permits for projects with minimal or no impact on groundwater.

Part 23. Pretreatment Rules (R 323.2301 – R 323.2317)

Recommendation to offer publicly owned treatment works the option to implement some federal regulations that are now less restrictive than the current Pretreatment Rules. The actual amount of regulatory relief offered to industry will depend upon whether municipalities exercise the flexibility offered by the proposed rules.

Part 24. Land Application of Biosolids (R 323.2401 – R 323.2418)

Recommendation to update Rule 323.2403 and 323.2413 to clarify procedural requirements of issuance of a land application permit and residuals management plans including minimum requirements for a complete application, frequency of renewal, submittal of required monitoring, and inspection and sampling authority of the state of biosolids application sites (consistent with permitted site inspection authorities) to monitor adherence to all state and federal requirements.

A. Describe whether there is a continued need for the rules.

Yes

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- B.** Provide a summary of any complaints or comments received from the public concerning the rules.

Many complaints that WRD receives are due to the lack of consistency between federal and state laws. Once rulemaking authority is granted, it is expected that complaints and comments will decrease in the areas where rules are streamlined and/or align with the law.

The Part 5 Rules and Part 22 Rules will be thoroughly reviewed and amended as appropriate to address Environmental ARC recommendations W-1 and W-10 and W-4, W-9, and W-12, respectively. The Environmental ARC voiced concerns about these two rule sets.

- C.** Describe the complexity of complying with the rules.

It is difficult for the regulated community to comply with rules that have not been updated for many years and may not reflect the changes that have taken place in other areas of federal and state law and rules. These inconsistencies are complex and confusing when the regulated community is working towards compliance. If Part 31 rulemaking authority is granted, the WRD is proposing rule changes that will assist with the complexity and confusion.

- D.** Describe whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

All current rules mentioned above (number 4) conflict with any similar rules or regulations adopted by the federal or local units of government because EGLE does not have rulemaking authority under Part 31, Water Resources Protection, of the NREPA. If Part 31 rulemaking authority is granted, WRD is proposing rule changes that will fill gaps left by federal regulations and/or align with regulations already promulgated at the federal and/or local level. Some rule changes may be considered more stringent if they are filling a gap that is not in current USEPA standards.

- E.** Provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The last evaluation of the Part 4 Rules was in 2006.

The last evaluation of the Part 5 Rules was in 2001.

The last evaluation of the Part 8 Rules was in 2006.

The last evaluation of the Part 21 Rules was in 2006.

The last evaluation of the Part 22 Rules was in 1999.

The last evaluation of the Part 23 Rules was in 1995.

Part 24 Rules were promulgated in 1999. No revisions have been made since promulgation.

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5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

EGLE's [Regulations, Laws, Rules, and Policies website](#) directs the public to MOAHR's administrative rules websites as copied below:

[Michigan Office of Administrative Hearings and Rules \(MOAHR\)](#)

MOAHR maintains Michigan's promulgated administrative rules. The above link will take you to EGLE's administrative rules, organized by division.

[Pending Administrative Rules](#)

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6. Please provide a list of the items identified for action in the 2023 ARP that have been completed and those that remain outstanding.

Completed Rule Sets

None

Outstanding Rule Sets

Part 41. Sewerage Systems Rules (R 299.2901 – R 299.2974)