

**Transcript for**  
**Public Hearing on Proposed Revisions to Administrative Rules**  
**MOAHR 2018-12EQ**

October 16, 2019

This is a transcript of the October 16, 2019, public hearing on the proposed revisions to the administrative rules promulgated pursuant to Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The public hearing was held in the ConCon Conference Room, Constitution Hall, in Lansing, Michigan.

SPEAKER:

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BLAYER: Welcome to today's rules hearing. We are here today to talk about the proposed amendments to the hazardous waste management rules, also known as the Part 111 rules. Ok.

Michigan's hazardous waste program, as I just mentioned, is administered under Part 111 and its administrative rules. Michigan is a delegated state, having received its initial authorization in October of 1986. The package that we're here to discuss today covers both federal and state-initiated revisions.

When we're considering what program amendments to pursue, we look at the federal program revisions, we monitor the, ah, Federal Register, and then participate on an authorization workgroup with EPA Headquarters and Regions, and all of the other states. That provides a good network to evaluate what the feds are proposing as well as talk to states other that are like us and see what their plans are. We also have revisions to the state program. We participate in a variety of state workgroups whether its, ah, vapor intrusion, cleanup, TSCA, the remediation team or RAT. So those are avenues that we utilize to talk to professionals in other state programs and see how those programs are proposed to be changed, see how they would mesh with our program, and then look at different changes. We also have our staff propose changes based on practical experience, either administratively or in the field based on what they see during inspections whether they be licensing, compliance, or corrective action. And then we do also get proposed revisions from the public. And by public, that is not limited to companies. That just basically means anybody outside of the Department. Sometimes EPA will want us to tweak some regulations. Ah, sometimes we might get an organized interest group or various, ah, entities, that represent larger cross-sections of business sectors that we regulate.

When you're looking keeping pace with the federal program and keeping up your authorization, you have to consider three things. You need to determine consistency with the federal program, stringency, in other words you cannot be less stringent than the governing federal program, and scope. We can be broader in scope. The main thing there is that would not become part of your delegated program. And, that's a fancy way of saying you can administer it but EPA will not codify that and make that part of their regulations. So, they would not be coming into our state and enforcing those rules. Whereas anything that is at least as stringent as or consistent with the federal program, they would have the ability to over file. To date we have had over 30 amendments to Part 111 and the rules package before us right now represents the 12<sup>th</sup> amendment to the base program rules.

Briefly, want to discuss the administrative rules promulgation process in Michigan. It has been changing over the years, and both in terms of process and who it, who has obligations for participation in that process. When you're preparing draft rules, you will notice different types of font. Additions are shown in bold. Items proposed for deletion are shown in strikethrough text. That is draft 1. Then we proceed, move on to draft 2 where persons that are designated program exports in a given area of the program review it. That's an internal review. By way of example, we have a financial assurance expert that reviews Part 7. We have geologists that review Parts 5 and 6 as it relates to geology and hydrogeology. We have engineers that look at the licensing. We have waste characterization, ah, experts that spend most of their time in Part 2 of the rules. And then we have a designated staff expert for compliance, and that is usually one of our field inspectors. And that way we can make sure that it is not just Lansing looking at the package as a whole but we get input from everybody that has, ah, some stake in the program and administering it. We then have to file a Request for Rulemaking, a fairly short form. It is a way that you notify the Michigan Office of Administrative Hearings and Rules that you are interested in pursuing revisions. You have to talk about why you are going to pursue those revisions and, um, a brief schedule, and kind of highlight what you are going to do. It is really just a way for that entity to assign a number and start tracking what activity you do. You then, we then proceed to draft 3, which is our Short List review. This is not a formally required part of the process but we have found it extremely helpful to do anyway. Ah, the Short List review is a high-level review. We are looking just for, um, not minute details but from a larger perspective do you have an issue with this proposal. There's about 80 people on the Short List. It is composed of entities that regulate, or excuse me, represent larger entities. For example, you are not going to have every automaker on the list. You would have, ah, Michigan Manufacturer's Association so they'll represent the autos as well as other manufacturing. You have the Chemistry Council. So, they represent the chemical manufacturing. We have hospital associations looking at pharmaceuticals and other, ah, wastes that that business section might generate. You also have the, um, small business representatives. So, these are largely composed of groups that represent other people. We then move on to draft 4, taking into account all of the comments we've received and produce another draft and that is what is submitted for informal review by MOAHR and the Legislative Service Bureau, or LSB. Ah, MOAHR looks at it with respect to do you have the statutory authority to do what you're proposing and the Legislative Service Bureau reviews it for compliance with legal drafting. So, they're looking at grammar, word usage, things like that. Draft 5 is usually where we end up at the required public hearing process. I think this is actually draft 6 that is before us today just because we got some additional comments after

the fact from the Legislative Service Bureau. There is a copy of the draft rules over there if you would like one. We also have a copy of the Regulatory Impact Statement and Cost-Benefit Analysis that is required for you to do prior to those entities approving you to move forward with the public hearing.

In conjunction with the hearing, we have the Long List. Ah, for lack of a better term, it is longer than the Short List and it is just anybody that has expressed an interest in acquainting themselves with the hazardous waste program, whether it's statute, rules, guidance, what have you. Um, notice of the hearing was also put into EGLE's Calendar, the Michigan Register, and ah, the Detroit area newspaper, Lansing State Journal, and Marquette Mining Journal. After this process, we will prepare an executive overview talking about the hearing process, how many comments we got, what the nature of the comments were, did they result in changes, etc. We'll update the rules and we'll compile all of that information into a Joint Committee on Administrative Rules Report, or JCAR Report. That is then submitted through our front office over to MOAHR who, in turn, sends it on to the Joint Committee. The Joint Committee is a legislative body composed of state senators and representatives. They will, LSB and MOAHR will formally certify the rules. In other words, that's their final chance to require any changes and by putting their formal seals on them, that tells everyone that they have reviewed it, that the statutory authorities necessary are in place, and that the verbiage is consistent with the required format. The Department, during that time, prepares the Certificate of Adoption for our Director's signature. And, um, also during that timeframe, JCAR will take a look at the package and determine if they want to, ah, pass them on for recommendation to be filed, or if they want to file a petition to stop the rules process. Either way, the requirement is that the draft rules, once submitted to JCAR, have to remain with them for 15 session days. They can waive that 15-day period but often it's just, ah, they get them. If they have reason for us to go over, they might invite us to one of their committee hearings to provide a presentation. But usually, it's just we're here and, um, once the 15 days toll, the Michigan Office of Administrative Hearings and Rules can file them with the Great Seal and then they take effect 7 days later. At that point, we provide all of this information to Region 5 in the form of an authorization application and that at some period of time in the future, after some back and forth, they go ahead and authorize the state for those revisions. And then they also codify them. That's a fancy term for, ah, if you look in 40 CFR, you will see all states' regulations codified in there in print. So, if you ever want to see what is a matter of law in a given state and what is authorized, you can look at that section and determine that.

The package at hand, as I mentioned earlier, does contain federally-initiated revisions. The more significant ones relate to confidentiality determinations for haz waste import/exports. It incorporates the second half of the e-manifest rule. It incorporates the generator improvements rule, or some people refer to it as GIR. And then, it also incorporates the 2018 court vacatur of certain provisions in the definition of solid waste, or DSW.

E-manifest went, became effective June 30<sup>th</sup> of 2018. Manifests are now submitted to the U.S. EPA, not to the state. Although, I think we still get some on occasion. Currently, there is still the ability to submit paper copies and also electronic copies. That may change to all electronic at some point and time in the future but we have not received information yet. And, ah, as a result, the user charges that went out recently, and I think the last delinquent notices

are going out, for manifest processing charges cover just up until when e-manifest went into effect. And then after that date, we no longer collect processing fees.

Generator improvements rule went into effect at the federal level May 30<sup>th</sup>, 2017. It is not currently in effect at the state level because it does contain a number of provisions that are less stringent, and it also was promulgated under RCRA and so it does take effect in delegated states until those states pick it up. It is a major restructuring of Part 3, a long overdue restructuring. But it does look a lot different in terms of, ah, where provisions appear in order and which rules and where they use to. It changed the CESQG to VSQG, very small quantity generator, instead of conditionally exempt. There was concern by EPA that there was really not an exemption for that quantity of waste and, therefore, they didn't like that terminology. So, they did change it. There are two optional provisions in the generator improvements rule as far as states are concerned. Michigan is pursuing both of them. We do have provisions that will allow very small quantity generators to send their waste to large quantity generators that are under the same corporate umbrella for consolidation before sending on to a designated facility.

The other, ah, optional provision has to do with episodic events. You're allowed one unplanned or planned event each year, and there is an optional waiver should you desire a second one. It, the way it is written, it has to be the other type so if you have a planned event, your second one would have to be an unplanned event and vice versa. Obviously, if they are both unplanned and they have to do with weather considerations, acts of God, those kind of things, we're certainly willing to work with companies to, ah, help them negotiate the regulations should that happen. There is regulatory relief offered. There is no regulatory relief from the user charges. So, in other words, if you are a large quantity, or a small quantity generator and because of your episodic event you become a large quantity generator, you don't have to comply with all the regulations but you still have to pay the user charges associated with your highest level of generation in the year. And, if you do have a notification, you are asked to notify your districts and then send an updated form into the central office. For the most part, our generator improvement rules are consistent with the federal provisions. There are a couple departures, and they are departures from where the feds landed in the generator improvements rule. They are not departures from what is currently required in Michigan. So, although it is not consistent with the federal provisions, it doesn't represent a new requirement for generators. And, um, under the new regs, you have to use a hazard indicator and the words hazardous waste, you don't have to use a name or a number. And, we are requiring that those numbers still be provided on containers and tanks. We also have maintained secondary containment requirements consistent with what generators or TSDs would have to do now.

There are a few state-initiated revisions. We are continuing to take a look at our Michigan-only listed wastes, S wastes or severely toxic, and U wastes. As of right now, we are proposing 52 of them for deletion. The reason for those deletions could be a number of things. It could be that it's not generated any more. It's kind of an archaic waste from previous production processes. It has cleanups standards established under Part 201, therefore, if we were to find, if it is not generated and we were to find a release of it, we would still have 201 to address that cleanup. And, in some cases, the toxicity, the science has

changed and there's just no reason for them to maintain listing. There are some expanded options for verification sampling related to secondary groundwater monitoring parameters. We are adding aerosol cans as a universal waste. We are out ahead of the feds on that. The feds have proposed a draft so we are trying to take a look at the draft and figure out where they're going to land and so that, hopefully, whatever we finalize will not require revision similar to what was required for electronic devices and fluorescent lamps. And then, as always, we've cleanup up typographical errors that have found and updated all of the reference material that we adopt for information regarding where you can get it and how much it would cost to do that.

Ok, with that, we've asked each attendee to fill out an attendance card. And if you wish to read any comments into the record, please indicate that on your attendance card. The public comment ends next week, October 24<sup>th</sup> at 5 o'clock. You, ah, can submit your comments verbally today. If you do have verbal comments, we ask that you provide a written copy as well at this time, or you can submit them in writing either hard copy or electronic form. Um, my address is there as well as my email and you can send the comments directly to me. Ok, we are getting a little be ahead of ourselves here but with that, I would ask that if there is anyone that wished to provide any public comments into the record. Seeing that no one raised their hand and no one wishes to speak, I will now formally close the hearing. And that formal closing of the hearing will take place at 2:02 p.m. on October 16, 2019.

*This transcript is provided by the Michigan Department of Environment, Great Lakes, and Energy.*