

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND
ENERGY

Public Hearing for the Administrative Rules Cleanup Criteria Requirements for
Response Activity

Thursday, July 8, 2021

APPEARANCES:

For the Michigan Department of Environment, Great Lakes, and Energy:

- Mr. James Ostrowski, Manager, Environmental Support Division
- Leslie Smith, III, Environmental Assistance Specialist, Environmental Support Division
- Josh Mosher, Assistant Director, Remediation and Redevelopment Division
- Patty Brandt, Environmental Quality Specialist, Remediation and Redevelopment Division
- Kevin Schrems, Environmental Quality Specialist, Remediation and Redevelopment Division
- Eric Wildfang, Toxicology Unit Manager, Remediation and Redevelopment Division
- Dale Shaw, Regulatory Affairs Officer, Information Management Division

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Zoom Public Meeting

Thursday, July 8, 2021 – 2:01 p.m.

MR. OSTROWSKI: Okay. Good afternoon everyone. It's 2:01, so we're going to get started. There's about 10 people logged in at the moment, and I'm sure we'll have a few more log in as we get started. Good afternoon, my name is Jim Ostrowski, and I'm the Hearings Officer for this public hearing on the proposed administrative rule revisions to 2020-130 EQ, Cleanup Criteria Requirements for Response Activity rules. Just a couple of housekeeping things as we get started here. First of all, all lines are muted. When we get to the actual comment period, I'll explain how that will work so we can unmute your line so you can make your comment, but for right now, all the lines are muted. Just to advise you as well, we're also recording this hearing. So, you'll be able to find that on our YouTube channel in the next couple of days, but it is all being recorded.

Okay, just want to do some introductions. With me today are Joshua Mosher. He's the Assistant Director of the Remediation and Redevelopment Division, RRD, and he is representing the director of the department, as the decision maker. Dale Shaw, EGLE Regulatory Affairs Officer, is also here today. And Kevin Schrems, Environmental Quality Specialist with RRD. And also, Les Smith with Environmental Support Division is here as well. So, he'll be working with me in the background, and helping with moderation.

All right, just to go over the hearing agenda, first we will begin with some background information about why we are here. Then we will describe the purpose of the hearing, and how your comments will be considered. Following that, we will outline the procedures under which we will take your comments and describe what will happen after today's hearing. Then it will be time to hear your comments. We will spend the majority of today's time listening to those comments. And in a minute, I'll explain a little bit more how that will work. But until then, I'm going to turn it over to Josh Mosher for some background information. Go ahead, Josh.

MR. MOSHER: Good afternoon, everybody. I'm Josh Mosher, Assistant Director for the Remediation and Redevelopment Division. We are the

division that administers the state environmental remediation programs. So, the Michigan Department of Environment, Great Lakes, and Energy's Remediation Division is responsible for promulgating Michigan's Cleanup Criteria rules. The laws governing this responsibility can be found in Sections 20104 and 20120a of Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act. That's 1994, Public Act 451, as amended. We are here for a public hearing on proposed revisions to the Cleanup Criteria Requirements for Response Activity rules. These proposed revisions are available on the Michigan Office of Administrative Hearings and Rules website. And we also provided a link to the rules in the chat, so you'll find the link there.

The purpose of this proposal rule set is to add the previously established criteria for the seven per- and polyfluoroalkyl substances, commonly referred to as PFAS, and a new table under the Rule 44 part of the rules, which contains the generic PFAS criteria for groundwater cleanups. No other Generic Cleanup Criteria are being revised as part of this rule set. The rule builds on the promulgated... and approved the promulgated, the rules promulgated... sorry, the rule's promulgated by EGLE, and approved by the Environmental Rules Review Committee in 2020, that established the PFAS standards for safe water at public water supplies.

So RRD followed the process prescribed in Part 201 to develop values for the generic groundwater criteria for the drinking water pathway, for these seven PFAS. However, those values differ from the state drinking water standards that were promulgated in August of 2020, and in this circumstance, when the calculated criteria for the drinking water pathway differs from the state drinking water standard, then the regulations dictate that their criteria must be the state drinking water standard.

So again, the state drinking water standards were promulgated in August 2020, and the Remediation Redevelopment Division calculated groundwater cleanup standards, and they differ from those state drinking water standards.

So, the statute requires us to use the state drinking water standard and promulgate those as our criteria. Therefore, this rule proposes the state drinking water standard, as the Part 201 Generic Groundwater Criteria for the drinking water pathway, consistent with state law.

This proposed rule will ensure that the drinking water of all Michigan systems, whether from a public water supply or from a private well, are equally protected. Currently, nearly 3 million people obtain their drinking water from a private well within the state.

This rule also creates regulatory certainty for individuals that cause, or are impacted, by PFAS contamination in ground water used for drinking water.

Michigan uses the Generic Cleanup Criteria to determine facility status under Part 201. Determining facility status is the threshold for all

responsibilities and requirements of the cleanup program. Michigan's Generic Cleanup Criteria also provide a party responsible for addressing a contaminant, with the appropriate tools, to determine if response activities, or other actions, should be taken at a contaminated site, to prevent unacceptable exposure to the public. The responsible party can use the Generic Cleanup Criteria as the cleanup levels to achieve no further action at a contaminated site. The responsible party also has the ability to use site-specific criteria, based on site-specific risk assessments, approved by the department, in lieu of the Generic Cleanup Criteria. The purpose of today's hearing is to take comments on the proposed revision to the rules, for only the seven PFAS hazards.

MR. OSTROWSKI: All right, thanks Josh. I'll take it over from here. Let's go over the rule making process. Now I'll explain the rule making process, and how your comments will be used.

In order for the rule promulgation to occur, the department must follow the procedures set forth in the Administrative Procedures Act of 1969 and the Michigan Office of Administrative Hearings and Rules' procedures. The purpose of today's hearing is to give anyone interested in the proposed rules an opportunity to provide information that the department can use in making its decision.

The notice of public hearing was published in four newspapers of general circulation, the Bay City Times and Grand Rapids Press on June 20th, 2021, the Traverse City Record-Eagle on June 23rd, 2021, and the Marquette Mining Journal on June 24th, 2021. Copies of the Notice of Public Hearings, Regulatory Impact Statement, proposed rules, and summary of the proposed rules were made available to those interested. And as just noted in the chat, you'll find a link to all those documents as well, if you'd like to look at them.

Okay. To ensure today's hearing is conducted in a fair manner, we will follow these steps. First, we will call the names of those who have indicated they would like to make a statement, when they registered for the hearing. When your name is called, your microphone will be un-muted, and as you begin your comments, please state your name and any group or association you might represent. After we have called on those who requested the comment during registration, we will open it up to all others to make a comment. At that time, you can click on the raise hand icon on your zoom toolbar to indicate that you would like to make a comment. If you are joining by telephone only, you can type #2 on your phone to raise your hand.

Please remember, as you begin your comments to state your name and any group or association you may represent. When all the comments have been completed, we will ask if anyone else would like to make a statement. Each person will be given five minutes to make their comments, we will indicate to you when you have one minute left. Please begin wrapping up your comments, and end within the allotted time. If need be, we will indicate when your time has ended.

Please understand the purpose of the hearing today is to provide an opportunity to receive and listen to your comments, only. The hearings process does not allow for open discussion, or questions about the proposed rules. EGLE staff will not be responding to questions or comments during the hearing.

This hearing is being recorded, and your comments will become a part of the information the department will consider, when finalizing the proposed rules. The public comment period for the proposed rules ends on August 9th, 2021 at 5:00 p.m. If you have written comments or materials that you would like to submit, please email them to the email address on your screen, which is: EGLE-RRD@Michigan.gov. You'll want to email them by 5:00 p.m. on August 9th. Also on your screen, you'll note the mailing address you can send it to, which is: EGLE Remediation and Redevelopment Division, Attention Kevin Schrems: P.O. Box 30426, Lansing, Michigan, 48909-7926.

Following the public hearing, we will review the written and verbal comments received during the comment period. Once this review is done an agency report will be prepared. The agency report will explain any additional changes EGLE may have made to the proposed rules, as a result of the comments received. It will also summarize who is in favor of the draft rules, and who is opposed to them.

The proposed rules and agency report will be submitted to the Michigan Office of Administrative Hearings and Rules, or MOAHR, and the Joint Committee on Administrative Rules or JCAR. JCAR is a bipartisan legislative committee made up of five House and five Senate members, that provide legislative oversight on the rulemaking process. The agency report will be available on EGLE and MOAHR's website, or by contacting the RRD office. Once approved, the rules will be filed with the Secretary of State and will take effect seven days after filing.

You can follow along with the rule-making process, step-by-step, by going to the Michigan Office of Administrative Hearings and Rules website. I will now begin calling the names of those who have indicated that they would like to make a statement. All right, everyone. Got done reading all the official things, so now we're going to start taking comments from you all. And like I said in my statement, I will start calling the people who indicated they wanted to make a comment when they registered. We've only got a couple of those. And after we do that, I'll ask you to raise your hand. Or it looks like... I don't think we have anybody on just the phone, so you can use the raise hand icon. All right. So, I'm looking at my list of people, and Les going to help me get these people unmuted.

The first person that indicated they wanted to make a comment, was Mark Dekruyter. And then after Mark, Brian Considine. So, Les, if you could, help me get... Mark unmuted, and Mark, you should be able to unmute yourself. And remember you each have five minutes, and I'll be keeping track on my phone here, and I'll let you know when you have one minute left. Then when your time's expired too, if you've used it all up. So Mark... If you can, you should

see a... You should be able to unmute yourself. Mark, are you there? It should be in the lower left-hand corner of the Zoom screen.

All right, so I don't... It looks like he doesn't want to make a comment. If you do decide after we're done, you would like to make a comment, you can just raise your hand later on. That's fine. And Brian Considine, I just saw in the question box, last, he put on there, "I'll pass my time to someone else." Oh, okay. So... I just saw that. So, Brian, if you change your mind, you can raise your hand. That's no problem. Those are the only two people who preregistered, and said they wanted to make a comment. So, Les, can you put up the next slide there?

MR. SMITH: Sure. We have a hand.

MR. OSTROWSKI: Yeah. Just to remind you if... So that's the people that preregistered, so now if you'd like to make a comment, you can either raise your hand and I'll call on you, and we'll unmute your mic that way. If you are on the phone, and for some reason I don't see you, I'll find the phone, only you just hit #2 on the phone. So, we do have someone with their hand raised: Cyndi Roper. Cyndi, you should be able to unmute yourself. There you go.

CYNDI ROPER

MS. CYNDI ROPER: Great. Thank you so much for this opportunity. My name is Cyndi Roper, and I'm a Lansing-based Senior Policy Advocate for the Natural Resources Defense Councils' Safe Water Initiative. On behalf of our more than 3 million members, and online activists, including roughly 70,000 members in Michigan, the Natural Resources Defense Council appreciates the opportunity to comment on the Michigan Department of Environment, Great Lakes, and Energy's proposed rules to apply the maximum contaminant levels for per- and polyfluoroalkyl substances, or PFAS, as the Generic Cleanup Criteria for groundwater used for drinking water.

We laud the Whitmer administration for advancing these standards to level the safe drinking water playing field for Michiganders, regardless of whether they get their drinking water from, a private well or a public water system. We strongly support the proposed rules.

The Natural Resources Defense Council has played a leadership role in advancing solutions to the PFAS crisis through our efforts at the nation's Capital, and in states throughout the U.S. In Michigan, we released a PFAS in drinking water report in March of 2019 and called on EGLE to establish MCLs that would best protect public health.

Given the extensive PFAS contamination in Michigan, EGLE should not attempt to balance industry's acceptance of its proposed cleanup criteria for groundwater used as drinking water, against protecting the public's health. It's time for industry to accept responsibility for chemical contamination, resulting from their successful lobbying efforts, that allow chemicals to be

released without proving they are safe, that block public health protective standards, that protect them from liability for their pollution, and more.

EGLE displayed leadership in adopting the PFAS MCLs when our federal government wouldn't act. And while those drinking water protections didn't go as far as NRDC advocated they should, they represented an important step forward.

The issuance of emergency rules that are currently in place, and the promulgation of these Cleanup Criteria rules to include PFAS MCLs, represent important measures to ensure all Michiganders have the same drinking water protections, regardless of whether they are served by a public water system or a private well. Thank you again for your efforts.

MR. OSTROWSKI: All right, thank you for your comment. Okay, I'm going to ask now if anyone else would like to make a comment. Again, just click the raise hand icon on your toolbar there. I'll give it an awkward few... Minute or so, if people want to change their mind and make comments, so... I will leave it open.

MR. SMITH: We have a...

MR. OSTROWSKI: Yeah, I... Okay. It looks like we got another person with their hand up. Yaneli Sanchez? You should be able to unmute your mic on your end and remember to restate your name and any association you might be with. Go ahead.

YANELI SANCHEZ

MS. YANELI SANCHEZ: Alrighty, thank you. My name is Yaneli Sanchez. I'm an undergraduate student at Eastern Michigan University, and I'm also a resident of Wayne County. I think this rule comes at a particularly important time, not only in the context of climate change and our environment, but also in... '19 pandemic. The Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry both recognize the potential health effects of PFAS. They have even released a statement on the potential intersection between PFAS exposure and COVID-19. Some research suggests that high levels of certain PFAS can lead to increased cholesterol levels, changes in liver enzymes, small decreases in infant birth weights, decreased vaccine response in children, increased risk of high blood pressure in pregnant women, and increased risk of kidney or testicular cancer.

The one that stands out to me the most is the decreased vaccine response in the children. Especially at this time when the Delta variant is rampant, and more variants are likely to come. I feel like PFAS are not helping our efforts to inoculate everyone, and to reach the goal of herd immunity. So, I feel like that's something important to recognize, not just the environmental effects, but also the public health effects, especially now that we're trying to get everyone vaccinated, and we don't want to have any reduction in the efficacy. I think I'm done, thank you.

MR. OSTROWSKI: All right, thank you. Thank you for your comment. Appreciate that. All right. So, I'm looking at my board here to see if anybody else has got their hand raised. Les, are you seeing anyone?

MR. SMITH: I am not presently seeing any new hands.

MR. OSTROWSKI: Okay, then. Well, Josh, looks like that's about all the people who indicated they wanted to make comment. We've taken them, so... I can move on to my closing statement though, then. So... I don't know if, Les, you want to move it to the next slide, that way we can show people how to make comments. There you go. We'll have that up there while I'm reading rest of my closing statement here for you all, and then we'll close this up. And Les, interrupt me if I... Because I've got my screen down. Nope, it looks like there's still no hands up. Okay. All right.

So, thank you for your comments and cooperation. We appreciate that you have shown an interest in the proposed rule revisions by taking the time to be here today. As previously mentioned, the public comment period ends Monday, August 9th, 2021. In order to be included for consideration, comments must be received, not postmarked, by 5:00 p.m., on August 9th. They must be received by 5:00 p.m. on August 9th, 2021. If you provide a verbal public comment today, it is not required you follow up with today's comment with writing a public comment as well. Please submit any comments in writing to the email address on your screen: EGLE-RRD@Michigan.gov.

The next step in the process is preparing the agency report to the Joint Committee on Administrative Rules, or JCAR. That report will contain a summary of the comments supporting and in opposition to the rules. Any changes the proposed rules will have to be based upon comments received during today's hearing, and written comments received during the public comment period, which ends August 9th, 2021.

The agency report will be available on the department's website, or by contacting the RRD office. The report and the final rules then go through another round of review and approvals by the Legislative Service Bureau and ORR before they are forwarded to JCAR. JCAR has 15 full session days in which to consider the rule package. The hearing is now closed. Thank you. And as we close things up, I'm going to go to the next slide, really quick here, and we'll have... If you have questions after the hearing, needed more information, you can contact Kevin Schrems at the phone number and email address on your screen, and he's listening in here today as well, as you saw earlier. And I'll turn it over to Joshua Mosher to see if he's got any other final comments.

MR. MOSHER: Yeah. Thanks Jim. No, I just wanted to say thank you again, everybody, for your interest in participating in this very important part of the public process, to move this public health and environmental issue forward. And we look forward to reviewing the comments, as it pertains to this matter, so we can finalize the rule making process. Thank you.

MR. OSTROWSKI: All right. Thanks, Josh. Just want to remind you all that this hearing was recorded, and it will be posted on our YouTube channel probably early next week. And the YouTube address URL is up on the screen, or you just go to YouTube and search E-G-L-E, and our site should pop up, and you can find the recording for this hearing and all other public meetings and hearings and all sorts of other good stuff on that YouTube channel. All right. So, I want to thank you all for joining us today. Thanks to our EGLE team that was here, and Les, for being on, and thank you all for spending some time, and commenting, and listening in. Thank you very much and have a great rest of your day.

(Proceedings concluded at 2:25 p.m.)