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VIA E-MAIL

TO: Senator Paul Wojno, Chair, JCAR
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FROM: Sydney Hart, Legislative Liaison, Office of Legislative Affairs *Sydney Hart*

DATE: December 3, 2024

SUBJECT: Joint Committee on Administrative Rules (JCAR) Briefing Memo for Rule Set No. 2023-13 EQ

Rules Background

Michigan's Air Pollution Control rules, part of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, address a variety of programs and pollutants including permitting, criteria and toxic air pollutants, odors, and a variety of other air related topics. This rule package addresses the Part 8 rules, which deal with one pollutant specifically, oxides of nitrogen, or more commonly referred to as "NOx."

The rules in Part 8 regulate sources of NOx emissions and apply to a variety of process types such as: stationary internal combustion engines, boilers, combustion turbines, process heaters, hot mix asphalt plants, engine test cells, lime kilns, and glass manufacturing. The Part 8 rules also satisfy requirements of the federal NOx State Implementation Plan (SIP) Call program, which addresses ozone season NOx emissions through establishment of a statewide NOx emission budget and requirements surrounding monitoring.

Summary of Proposed Rule Changes

The Part 8 proposed rule set contains rules developed to fulfill federal Clean Air Act, 42 USC 7401 et seq (CAA) requirements for sources of NOx. Michigan must create new rules to address a change to a moderate classification in nonattainment areas under provisions of the National Ambient Air Quality Standards (NAAQS). These rules are often referred to as NOx "Reasonably Available Control Technologies" (RACT). For past NAAQS, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) was not required to promulgate RACT rules for NOx sources in the nonattainment areas established under those standards. With the establishment of a new standard and a new classification, EGLE must create RACT rules to align with requirements of Section 182(b)(2) of the CAA. EGLE must promulgate new rules setting emission standards and operational requirements for certain types of NOx emission sources for the nonattainment areas.

Additionally, existing Part 8 rules addressing the “NOx SIP Call” federal program will be modified to address minor improvements suggested by representatives of the United States Environmental Protection Agency (USEPA).

Stakeholder Engagement

The rules have been drafted with input from stakeholders to address their concerns as sufficiently as possible while still complying with the requirements outlined in the federal CAA. This stakeholder workgroup was originally established in late 2019 and convened periodically, both in person and virtually, to discuss work and research during the development of these rules. In addition, EGLE staff communicated between meetings with the stakeholders through emails to provide updates on work and share draft versions during the rulemaking process. No official voting or meeting minutes were documented.

The stakeholders consisted primarily of environmental consultants, facility environmental staff, environmental group representatives, and academia representatives, as well as additional EGLE staff.

Public Engagement and Public Hearing/Comment/Information

A public hearing was held on May 22, 2024, in the Ford Conference Room in Constitution Hall, Lansing, Michigan. The public hearing was also available virtually. This public hearing was for three rule packages: Part 1, Part 8, and Part 9 rules. Nine people attended the hearing in person, all of whom were EGLE staff, and nine attended virtually. Eight people spoke at the hearing; five of whom were staff members conducting the hearing. Two people spoke at the hearing regarding the Part 8 rule package.

The public comment period was held April 22, 2024, to May 22, 2024. The EGLE Air Quality Division (AQD) received five written comment submittals.

Modifications Made Due to Public Comment

AQD staff assessed the comments received during the public comment period and hearing, and made the following changes, generally:

- Typographical errors were corrected; language was modified and improved to reduce confusion or unclear phrasing.
- Equipment specific “exemptions” from rule requirements based on its subjectivity to Federal Implementation Plans were removed as likely not approvable by the USEPA.
- A request was made to remove language exempting equipment subject to federal regulations due to risk of misapplication. Instead of removing this flexibility, wording was added to reduce risk of misapplication.

- Maximum timeframes for alternative and source wide RACT approvals were removed to increase flexibility.
- Periodic reporting requirements were added for RACT sources to meet CAA requirements.
- The timing of testing requirements for some processes was modified.
- Reference to a date in the draft rules that has since passed was removed.
- Concerns about wording that may allow the department excessive discretion over approval of alternate methods of compliance were addressed by strengthening wording to ensure equivalency in alternatives.
- Wording was removed that implied sources were responsible for sending documentation to the USEPA for alternative RACT approval and clarified that it is the AQD's responsibility.

Significant Issues Not Incorporated in the Final Proposed Rules

The following concepts were suggested and discussed; however, due to the requirements of the CAA, desire for rule approvability, and/or suggested changes resulted in undesirable effects and therefore the following comments did not result in changes to the final proposed rule set:

- Reformatting of Part 8 rules – the suggestion to move the definitions would have cascading effects not commensurate with the benefit.
- A request was made to add clarifying language regarding applicability of rules. The wording that was suggested to clarify applicability also modified the rules' intent in an unacceptable manner, therefore no changes were made.
- Several comments asked for justification of the limits selected in RACT rules and the exemption from RACT applicability. These comments will be addressed in future SIP submittal documentation not related to the rulemaking.
- A comment indicated that the NOx SIP Call rule recordkeeping was insufficient (emission rate vs total emissions). The comment indicated the commenter was not acknowledging the full text that was referenced and therefore no change was necessary.
- A request was made to expand rule language to include more guidance. This is not information customarily contained in Michigan's Air Pollution Control rules.
- A request was made to remove the necessity for department approval of some submitted plans. The AQD requires the ability to approve and disapprove plans that lead to compliance.

Attachments: List of Stakeholder Group Participants
List of Public Commenters

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James Clift, Deputy Director, EGLE
Travis Boeskool, Deputy Director, EGLE
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List of Stakeholder Group Participants

Name	Affiliation
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Alexandria Muench	Ajax Metal
Anthony Percha	GZA GeoEnvironmental, Inc.
Barry J Marietta	DTE Energy
Bob Byrnes	EGLE
Brandi Campbell	University of Michigan
Brandy Brown	EGLE
Brian Carley	EGLE
Brian Warner	Wolverine Power Cooperative
Caroline Liethen	Michigan Manufacturers Association
Carrie Brown	The Household & Commercial Products Association
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Charlie Anderson	Solutia Inc.
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Chris Occhipinti	NTH Consultants
Chris Waltman	TC Energy
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Chuck Mills	Asphalt Pavement Association of Michigan
Cindy Smith	EGLE
Claire Linkhart	The American Petroleum Institute
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Dana Oleniacz	Environmental Information Logistics
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Dave Krause	Ajax Metal
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Stephanie Jarrett	Fishbeck
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Steven Kohl	Warner Norcross + Judd LLP
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List of Public Commenters

Name	Affiliation
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Caroline Liethen	Michigan Manufacturers Association
Kathleen Mullen	United States Environmental Protection Agency
Kathryn Ross	Consumers Energy
Eric Svingen	United States Environmental Protection Agency