

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Environment, Great Lakes and Energy

2. Bureau:

Water Resources Division

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Sewerage Systems

5. Rule numbers or rule set range of numbers:

R 299.2901 - R 299.2974

6. Estimated time frame:

12 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The general purpose of these rules is to implement the provisions of Part 41, Sewerage Systems, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

Currently, wastewater collection systems that discharge to a wastewater treatment facility are operated by individuals that are not certified with a system-specific certification. The proposed rules will require facility classification and a certified operator for collection systems. EGLE is addressing longstanding operation and maintenance issues with collection systems such as breakdowns, blockages, capacity issues, infiltration and inflow, and structural integrity issues. The additional oversight, operation, and maintenance requirements for the collection systems will provide more protection for public health and the environment and assist the receiving wastewater treatment plants to better manage their systems to meet permit requirements.

The proposed retention treatment basin (RTB) facility classification and corresponding operator certification requirement will improve the quality of operation of RTB facilities by focusing operator knowledge on operational situations and processes unique to these types of facilities. Most RTB facilities require operator certification at the Class D level or with industrial wastewater treatment certifications that reflect the waste treatment at those systems. Neither of those certification processes accurately reflect the nature of an RTB facility. The proposed RTB certification will allow those operators to become properly certified with relevant information and continuing education requirements.

Construction permit requirements are being streamlined to better address continuity of service concerns for privately owned, publicly used sewer or sewerage systems. This is currently addressed with WRD Policy and Procedure No. WRD-010, Part 41 – Sewerage Systems Permit Approval, and the process has been somewhat cumbersome for both applicants and WRD staff who process construction permits. The proposed rules will include requirements for such systems and streamline the permit process by setting clear expectations in rule for privately owned, publicly used systems so that they may plan accordingly when submitting applications for Part 41 Wastewater Construction Permits (Part 41 Permit). Additionally, requirements for approval of plan revisions have been updated to be consistent with the statute.

EGLE is proposing to rescind R 299.2972, R 299.2973, and R 299.2974 due to duplicative language that exists in the Administrative Procedures Act, 1969 PA 306, as amended; the administrative rules pertaining to the Michigan Office of Administrative Hearings and Rules; and additional rules pertaining to contested cases and declaratory rulings.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Part 41 of the NREPA provides rulemaking authority to EGLE.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

The state statute authorizing the promulgation of these rules is MCL 324.4104(1). The state statute authorizing the promulgation of the wastewater construction permit rules is MCL 324.4105(1).

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

The proposed rules are not mandated by any applicable constitutional or statutory provision.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Part 41 Wastewater Construction Permits are not in conflict with nor duplicative of other rules, compliance requirements, or standards at the state, regional, or federal level. In fact, the Part 41 Permit Program complements the federal and state wastewater discharge permitting programs well, as Part 41 Permits ensure proper design and construction of public-serving wastewater facilities to achieve compliance with such discharge permits.

Michigan is the only state in the United States Environmental Protection Agency's (USEPA) Region 5 that does not have a required or optional collection system facility classification and certification requirement. Of the other Region 5 states, Wisconsin, Minnesota, and Ohio have collection system operator certification requirements; and Illinois and Indiana offer optional certification requirements for collection system operators. No states in Region 5 have an RTB facility classification or operator certification option or requirement. Wisconsin and Michigan have some certification and classification options that mirror the treatment taking place in those systems, but there is no definitive classification.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The proposed rules for collection system facility classification and certified operator requirements are not currently outlined in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

For the proposed rules regarding construction permit requirements, the following documents will be rescinded or revised with the proposed rule changes:

WRD Policy and Procedure No. WRD-010, Part 41 – Sewerage Systems Permit Approval, will be rescinded.

Part 41 Sewerage System Construction Permit Application will be revised.

Internal review guidance and materials will be revised.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

There are no federal or state mandates for collection system facility classifications and operator certification requirements. Michigan is the only state in USEPA's Region 5 that does not have a required or optional collection system facility classification and certification requirement. No states in Region 5 have an RTB facility classification or operator certification option or requirement. Wisconsin and Michigan have some certification and classification options that mirror the treatment taking place in those systems, but there is no definitive classification.

There are no similar regulations at the federal or regional level for wastewater construction permitting. The proposed rule revisions will update an existing state wastewater construction permitting program and will not result in requirements that exceed the existing state regulations.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes, the proposed rules incorporate recommendations received from a diverse stakeholder group. The proposed collection system and RTB facility classification and operator certification rules were developed over a series of 18 meetings, and the group recommended facility classification levels and requirements; proposed examination questions for future certification requirements; and commented on EGLE's recommendation to streamline the construction permit process.

15. If amending an existing rule set, please 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 the regulatory activity covered by the rules since the last evaluation.

The dates of previous evaluations of the rules occurred in 1979 and 2003.

EGLE is addressing longstanding operation and maintenance issues with collection systems by proposing a permit, facility classification, and corresponding operator certification. The additional oversight, operation, and maintenance requirements for the collection systems will provide more protection for public health and the environment and assist the receiving wastewater treatment plants to better manage their systems to meet permit requirements.

The proposed RTB facility classification and corresponding operator certification requirement will improve the quality of operation of RTB facilities by focusing operator knowledge on operational situations and processes unique to these types of facilities. Most RTB facilities require operator certification at the Class D level or with industrial wastewater treatment certifications that reflect the waste treatment at those systems. Neither of those certification processes accurately reflect the nature of an RTB facility. The proposed RTB certification will allow those operators to become properly certified with relevant information and continuing education requirements.

In 2003, a Michigan Court of Appeals ruling invalidated R 299.2933(4), 1954 ACS 85, as amended, promulgated pursuant to Part 41 [Subrule 33(4)]. Specifically, the court determined that EGLE (then the Department of Environmental Quality) could not require persons who are requesting a permit for constructing and operating a sewerage system designed for public use to first obtain a resolution from the local unit of government (LUG) as a guarantee that the LUG would assume responsibility for the operation and maintenance of the system in the event that the private owner fails to perform these functions. The court further found that EGLE does not have the statutory authority to force the LUG to pass the resolution. A guiding principle of Part 41 is intended to protect property owners that depend on another person for sewage disposal. After the court ruling, EGLE established an alternative process (WRD Policy and Procedure No. WRD-010) to ensure that sewerage systems governed under Part 41 are continually operated and maintained to avoid the unauthorized discharge of raw or untreated sewage into the waters of the state and ensure that sewage is not potentially prejudicial to public health. The proposed rule revisions include language for meeting these requirements and will streamline permitting for such systems by setting clear expectations in rule for privately owned, publicly used systems so that they may plan accordingly when submitting applications for Part 41 Permits.

Additionally, rule revisions for addressing revisions to approved plans so that the rule is consistent with the statute are proposed. There are discrepancies as to how minor revisions are handled; the statute requires approval for minor revisions to plans while the existing rules allow for minor revisions without EGLE approval.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

EGLE is proposing to rescind R 299.2972, R 299.2973, and R 299.2974 due to duplicative language that exists in the Administrative Procedures Act, 1969 PA 306, as amended; the administrative rules pertaining to the Michigan Office of Administrative Hearings and Rules; and additional rules pertaining to contested cases and declaratory rulings.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.