

Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	Department of Environmental Quality (DEQ)
Division/Bureau/Office:	Waste Management and Radiological Protection (WMRPD)
Name, title, phone number, and e-mail of person completing this form:	Ronda L. Blayer, Environmental Engineering Specialist, 517-284-6555, blayerr@michigan.gov
Name of Departmental Regulatory Affairs Officer reviewing this form:	David Fiedler

2. Rule Set Information

ORR assigned rule set number:	2018-012EQ
Title of proposed rule set:	Hazardous Waste Management, R 299.9101 et. seq.

PART 2: KEY SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

MCL 24.232 (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce

the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
 - (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
 - (a) 0-9 full-time employees.
 - (b) 10-49 full-time employees.
 - (c) 50-249 full-time employees.
 - (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
 - (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

On October 30, 1986, the state of Michigan received authorization from the United States Environmental Protection Agency (U.S. EPA) to administer the state Hazardous Waste Management Program (HWMP) in lieu of the federal HWMP under the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the 1984 Hazardous and Solid Waste Amendments (HSWA), and the regulations pursuant thereto (collectively “RCRA”). The DEQ is proposing the rule revisions under the authority of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). As an authorized state, Michigan is required to continually revise the state HWMP to ensure that it is consistent with, equivalent to, and at least as stringent as the federal HWMP. The DEQ strives to maintain a quality delegated HWMP, continually reviewing the rules to identify areas that warrant revision, improvement, or streamlining. The proposed rules contain revisions based on federal mandates under RCRA, as well as DEQ and public recommendations. The proposed revisions represent the 12th amendment to the Part 111 rules and would amend the existing rules, which were promulgated on April 5, 2017.

The proposed rules are consistent with, equivalent to, and not less restrictive than, the governing federal regulations. The proposed rules do not duplicate similar federal rules except to the extent required to maintain authorization. An area where the proposed rules are more restrictive than the federal regulations is the area of state-only listed wastes. The state has historically maintained a list of state-only hazardous wastes. These wastes are/were

generated or found to be a source of contamination in Michigan and were identified and regulated as hazardous waste based on a review of their characteristics, toxicity, and management practices. By identifying them as hazardous wastes, they are subject to specific management standards designed to ensure protection of human health and the environment if followed. However, as noted below, the DEQ is proposing to eliminate some of these codes based on consideration of potential harm to human health and the environment and presence in industry.

There are no standards set by a state or national licensing agency or accreditation association.

A. Are these rule(s) required by state law or federal mandate?

As noted in Item 1 above, the revisions based on the federal HWMP are required to maintain Michigan's delegation as an authorized state.

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

Existing state rules require hazardous waste containers to be labeled, in part, with the words "Hazardous Waste" and the hazardous waste number(s) associated with the contents when the waste is first placed in the container. The federal generator improvements rule requires all containers to have a description of the hazardous waste and a hazard indicator when the waste is first placed therein, and the words "Hazardous Waste" and the hazardous waste number only prior to the waste being shipped offsite. Federal hazardous waste numbers are unique to a given waste stream or characteristic and are consistent from generator to generator, industry to industry, state to state and thus, provide regulatory staff that conduct inspections with vital information for determining compliance with the applicable rules, and safety purposes. The proposed rules contain a blend of the existing state and new federal labelling requirements. Satellite accumulation area containers must have the words "Hazardous Waste", either the hazardous waste name (i.e., description) or number, and the hazard indicator when waste is first placed in the container. Very small quantity generators (VSQGs) sending waste to large quantity generators (LQGs), small quantity generators, and LQGs must label the containers with the words "Hazardous Waste", the hazardous waste number, and the hazard indicator when the waste is first introduced into the container rather than just prior to shipment offsite.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The U.S. EPA has authorized all of the Region 5 states, which include Minnesota, Wisconsin, Illinois, Indiana, Ohio, and Michigan. All of these states must administer a general HWMP that is consistent with, equivalent to, and no less stringent than, the federal HWMP. However, it is recognized that each state program may have areas where it is more stringent than the federal program due to that state's unique factors, including, in part, geology, hydrology, habitats, population densities, industry, available hazardous waste management facilities, and other environmental factors.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

Given the scope and complexity of the RCRA program, the number of states in Region 5, and a given state's ability to be more stringent than the program, it is not feasible to compare all aspects of the Michigan's rules with those of the other Region 5 states. The program is preventative in nature and regulates the management of 1,000s of types of hazardous waste (both characteristic and listed) from "cradle to grave program." Regulated parties include hazardous waste generators (e.g., industry, businesses, academia, etc.), transporters (independent and commercial), and treatment, storage, and disposal facilities (TSDFs)

(captive and commercial). Taking into account the span and intricacies of the base program and state-specific considerations as noted above, it is safe to say that no two state HWMPs are identical. Michigan is likely more stringent than some states in some areas (e.g., state-specific waste codes, labelling) while other state's may be more stringent than Michigan in other areas (e.g., transporter licensing, fees for review of various required plans, etc.).

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

The proposed revisions do not duplicate, overlap, or conflict with any other rules or legal requirements.

- A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

As part of the DEQ's ongoing review process, staff reviews other programs that may have an impact on the state's HWMP to ensure there are no conflicts.

4. If MCL 24.232(8) applies and the proposed rule(s) is more stringent than the applicable federally mandated standard, **a statement of specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

Similar to the federal HWMP, the state's HWMP program is very complex. Under the federal HWMP, states wishing to become authorized states, like Michigan is, must have requirements that are consistent with and at least as stringent as its federal counterpart. In establishing program requirements, states take into account their unique setting, including, in part, such areas as geology, hydrology, hydrogeology, habitats, population densities and sensitivities, natural resources, land use, types of industry, available hazardous waste management facilities, fees, and other environmental factors. These factors often result in slight differences in state HWMPs. Michigan's HWMP has historically had a few areas where it is more stringent or broader in scope than the federal HWMP. However, Michigan continually reviews its program to ensure that such requirements are necessary for protection of human health and the environment. In conducting this review, the above referenced factors are considered along with the associated compliance histories, updated scientific information upon which the requirements are based, and how are similarly industrialized states regulating these specific areas of their HWMPs.

As noted in Item 1 above, including A and B, the proposed rules contain two areas that are more stringent than the federal HWMP: 1) additional listings of state-only waste numbers and 2) labelling of containers. The state-only listings, which went through the mandated formal listing process and have been part of the state HWMP for many years, are based on the characteristics and toxicity exhibited by wastes that have been or continue to be generated in Michigan, and if no longer generated, continue to be managed in Michigan. Recognizing that the waste landscape is different than it was when the state was originally authorized back in 1986, the state-only listings have been the subject of review over the last few rule amendment packages. As a result of this review, the DEQ has eliminated many of them. It is also proposing to delete more of them as part of this rules package. That being said, the basis for listing many of them remains unchanged. In such cases, the listings will remain. However, we will continue to review these listings as part of all future rulemaking to ensure that the basis for listing is still relevant.

The requirements regarding container labelling are explained in Item 1.B. above. While the proposed revisions are more stringent than the federal requirements, they are not more stringent than the current requirements under the existing state HWMP. The DEQ firmly believes that the blended requirements in this rules package are vital to determining

compliance with applicable requirements in that the uniform hazardous waste numbers convey consistent, specific information regarding the waste to both the inspectors and regulated parties. HWMP compliance is evaluated from cradle to grave. As such, the necessary information should be on the containers from when waste is first introduced as opposed to not until it is ready to be sent to the onsite accumulation area or shipped offsite at some future time. This requirement is also vital to ensuring the safety of our inspectors.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

MCL 24.232(9) does not apply as the federal government has mandated that the state promulgate rules.

Purpose and Objectives of the Rule(s):

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

The goals of the proposed rules are to maintain federal authorization; improve the overall quality of the rules, both in terms of clarification of existing requirements and areas of program coverage; address the remaining state-only hazardous wastes in accordance with the Environmental Advisory Rules Committee's (EARC) recommendation; and reduce some of the regulatory burdens on the regulated community. The revisions provide the clarity necessary to alleviate confusion and inconsistent regulatory interpretations. Moreover, they are designed to reduce regulatory barriers and resource demands, both monetary and nonmonetary, and provide the regulated community with flexibility and streamlined requirements, where appropriate.

The proposed rules address federal revisions that are required for the DEQ to maintain its authorization, as well as those federal revisions that authorized states have the option of incorporating into their rules for consistency purposes. The federal revisions relate to generator improvement requirements, electronic manifesting, 2018 court vacatur of some of the definition of solid waste provisions, and hazardous waste import/export documents confidentiality and submittal.

The proposed rules also address revisions based on DEQ and public recommendations. These revisions relate to the following subject areas: hazardous waste identification and listing, adding aerosol cans as a universal waste, updates to information associated with items adopted by reference in the rules, and typographical corrections.

In general, all of the revisions are aimed at reducing the rate of noncompliance with existing HWMP requirements and maintaining protection of human health, safety, welfare, and the environment.

- A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

The restructuring of the generator requirements, the state's inclusion of the optional provision regarding VSQGs sending waste to LQGs and episodic events, the removal of state-only listings, expansion of the universal waste, and alternate management options under the definition of solid waste provisions will provide generators more options for managing their wastes without necessarily incurring more stringent management requirements. A change in frequency of compliance cannot be estimated as it not known which generators may be able to avail themselves of the new options.

- B. Describe the difference between current behavior/practice and desired behavior/practice.

The new structure of the generator requirements makes it easier to identify applicable standards as opposed to having to check multiple rules and cross-references which can lead to requirements being missed and result in non-compliance.

C. What is the desired outcome?

The revisions are designed to reduce the rate of noncompliance with HWMP requirements while providing for proper management of wastes and maintaining protection of human health, safety, welfare, and the environment.

7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

As stated above, the proposed rules contain a number of revisions addressing a variety of subject areas. Increasing the rate of compliance with state requirements and providing for an appropriate level of hazardous waste management will help to ensure that hazardous waste is not mismanaged, thereby reducing the threats and risks to human health, safety, welfare, and the environment.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

As an authorized state, Michigan is required to continually revise the state program to ensure that it is consistent with, equivalent to, and at least as stringent as the federal HWMP. The majority of the proposed rules are necessary to maintain the federal authorization. Failure to maintain such authorization by incorporating federal revisions will jeopardize the state's authorization and may result in the withdrawal of authorization and the loss of approximately \$4 million in annual federal funding. Loss of authorization would also result in the dual regulation of the regulated community by the U.S. EPA and the DEQ.

8. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The state HWMP and its federal counterpart are designed to ensure proper characterization, identification, and management of hazardous waste from cradle-to-grave in order to ensure protection of human health, safety, welfare, and the environment and to encourage waste minimization. Where feasible (i.e., authorization, resources, and legal requirements allow), the DEQ has made, and continues to explore opportunities to make, improvements to the state HWMP. These improvements are designed to make the requirements clear to the regulated community, thereby minimizing incorrect interpretations and the need for outside assistance, and increasing a party's ability to comply, and to reduce burdens on the regulated community and the DEQ. These benefits should result in cost savings to both of the regulated entities while maintaining environmental and human health, safety, and welfare protection.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Based on a review of the state-only hazardous wastes in terms of basis for listing, industry generation, and management thereof, over 40 duplicative or out-of-date numbers are proposed for deletion.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

The majority of the proposed revisions are either enhancements to existing rules or provide further options for how certain materials may be managed under the rules. Some of the management options may result in less waste being required to be managed as hazardous which will, in turn, reduce the state's revenue from hazardous waste handler fees. The federally-mandated electronic manifest program will result in an annual loss of about \$80,000 in manifest processing fees. The proposed rules will be implemented using existing resources.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

As with the implementation of the existing rules, the agency receives funding from both the U.S. EPA and the state. The U.S. EPA provides the DEQ with an annual grant based on Michigan's RCRA Grant Work Plan for a given fiscal year. The federal grant is in the neighborhood of \$3,500,000 to 4,000,000. State funding is derived from a mix of legislative appropriations, hazardous waste user charges (HWUC), licensing fees, and corrective action cost recovery. The current HWUC system, established in statute, has a sunset provision. As such and as discussed in the EARC's findings, the DEQ is evaluating options for a new HWUC system that will generate the state funding necessary to continue to administer the state HWMP. Meanwhile, the DEQ continues to explore long-term funding sources for the state HWMP.

12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The majority of the proposed rules are necessary to conform to the federal program, to maintain our state authorization, and to avoid the potential dual regulation of Michigan's regulated community under the state and federal HWMPs. As discussed elsewhere in this document, the proposed rules contain a variety of regulations that offer some level of regulatory relief to the regulated community.

- A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The majority of the proposed rules are necessary to conform to the federal program, to maintain our state authorization, and to avoid the potential dual regulation of Michigan's regulated community under the state and federal HWMPs. Overall, the proposed rules contain a variety of regulations that offer some level of regulatory relief to the regulated community as opposed to placing additional burdens on them.

Impact on Other State or Local Governmental Units:

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules will not have any significant impact on revenues to other state or local governmental units.

- A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules will not have any significant impact on revenues to other cities, counties, or school districts.

14. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

The proposed rules do not impose any new programs, services, duties, or responsibilities upon any city, county, town, village, or school district.

- A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not impose any new requirements on governmental units.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

The proposed rules do not impose any new requirements upon any governmental units.

Rural Impact:

16. In general, what impact will the rule(s) have on rural areas?

The proposed rules do not have a specific impact on rural areas.

- A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The imposition of the proposed rules will not result in additional costs to public or private interests simply due to their rural location.

Environmental Impact:

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

Yes, the proposed rules have an impact on the environment in that the entire HWMP is designed to ensure proper characterization, identification, and management of hazardous waste so as to ensure protection of human health, safety, welfare, and the environment.

Small Business Impact Statement:

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The DEQ did not consider exempting small businesses from the proposed rules. The ability to provide for any exemption from regulation is tied to the federal HWMP and the state's authorization. The state HWMP cannot be less stringent than the governing federal HWMP.

19. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

The state HWMP follows the federal HWMP in that it establishes a stratified system of management requirements based on the waste type, monthly generation quantities, length of time waste remains onsite, and how the facility handles the waste from a recycling, storage, treatment, and/or disposal perspective. Those that generate smaller amounts of a given waste are generally subject to less restrictive standards. While there is not necessarily a direct relationship between the size of a business and the type and quantity of waste generated, it is not unreasonable to conclude that most small businesses generate smaller quantities of waste. So, while not specifically exempted by size alone, smaller businesses will likely be able to take advantage of less restrictive management requirements.

- A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

Aside from licensed TSDFs, entities regulated under the state HWMP are not required to provide information regarding their number of employees or annual sales. With respect to TSDFs, the agency requires information regarding key positions directly responsible for

hazardous waste operations, not information regarding all employees. The type of data submitted to the DEQ is related to the type and quantity of waste generated monthly and annually, the duration of accumulation or storage, and subsequent waste management methods and companies involved in that management (transporter, TSDF, etc.). Some VSQGs may have only a handful of employees while some generators may have hundreds of employees throughout its various sites (e.g., General Motors). For these reasons, the DEQ is not able to identify and estimate the number of small business affected by the proposed rules.

- B.** Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The DEQ did not establish differing compliance or reporting requirements or timetables specific to small businesses in and of themselves. Rather, all requirements are based on the waste type and generation rate and method of management as noted above. The proposed rules do not impose new requirements on the smallest generators based on quantity.

- C.** Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The DEQ did not consolidate or simplify the compliance and reporting requirements specific to small businesses in and of themselves. Rather, all requirements are based on the waste type and generation rate and method of management as noted above. The proposed rules do not impose new reporting requirements on VSQGs. VSQGs need to be able to properly characterize their waste and track the level of generation on a monthly basis and the duration of accumulation on-site.

- D.** Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

As previously stated, those that generate smaller amounts of a given waste are generally subject to less restrictive standards, some of which are more like performance standards than detailed design or operations standards.

- 20.** Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rules will not have a disproportionate impact on small businesses because of their size or geographic location. Impact is based primarily on waste type, generation rate, and level of management required.

- 21.** Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The proposed rules do not impose any new reporting requirements on small businesses.

- 22.** Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The cost of compliance, including costs of equipment, supplies, labor, and administration with respect to implementation of the proposed rules is highly dependent upon the specific rule, the waste type at issue, the level of generation, the level of management, the regulatory option selected, where applicable, and the level of in-house expertise available and necessary to ensure proper management. These variables are not necessarily directly related to the size of the businesses. That being said and given all of the variables referenced herein, the DEQ is not able to quantify the exact costs to the small businesses of securing any of the referenced services.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The need to obtain any legal, consulting, accounting, or accounting services with respect to implementation of the proposed rules is highly dependent upon the specific rule, the waste type at issue, the level of generation, the level of management, the regulatory option selected, where applicable, and the level of in-house expertise available and necessary to ensure proper management. These variables are not necessarily directly related to the size of the businesses. That being said and given all of the variables referenced herein, the DEQ is not able to quantify the exact costs to the small businesses of securing any of the referenced services.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Many of the revisions are already in effect in Michigan and/or are designed to lessen the stringency of the state HWMP without adversely impacting the protection of human health, safety, welfare, and the environment. That being said, the DEQ does not anticipate that small businesses will suffer economic harm or competition in the marketplace as result of these revisions. Many small businesses may elect to handle more wastes under exemptions or as universal wastes instead of hazardous wastes, thereby allowing said businesses to reduce their hazardous waste generation level, and possibly their level of regulation.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The DEQ will not incur any additional costs since the proposed revisions do not specifically exempt or set lesser standards for compliance for small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The public will not feel any adverse impact from the proposed rules as they do not specifically exempt or set lesser standards for compliance for small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

The DEQ has involved members of the regulated community, special interest groups, government officials, U.S. EPA, and DEQ in the review of the proposed rules. A notice of availability of the proposed rules was sent to approximately 30 persons as part of the DEQ, WMRPD's HWMP Short List (Short List) distribution and review process. The Short List is composed of select organizations (i.e., trade associations, councils, legal firms, environmental groups, and consulting firms) and industry representatives that represent a variety of interested parties potentially affected by the HWMP. These individuals were notified of the availability of the proposed rules in mid-March 2018 and were invited to provide comments. The deadline for submission of comments was April 15, 2018. The DEQ received comments from three external parties, one business and two association/councils. The DEQ reviewed the comments, followed up with the Short List members who provided comments, as needed, in order to seek clarification on, and discuss, some of the comments. The proposed rules were revised accordingly.

- A. If small businesses were involved in the development of the rule(s), please identify the business(es).

The Short List includes various councils, associations, and groups that may represent small businesses, however, any comments there from, were not specifically identified. Rather, comments were provided through the councils, associations, etc.

Cost-Benefit Analysis of Rules (independent of statutory impact):

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

Federal HWMP revisions are generally proposed under either RCRA or HSWA authorities. Such revisions may be more or less stringent than the existing HWMP. States are not required to make revisions to their state HWMPs to comply with less stringent provisions. RCRA authority-based revisions only take effect in Michigan when the state rules are revised, regardless of stringency. HSWA authority-based revisions, however, take effect immediately regardless of when the state rules are revised, unless the revisions are less stringent and are, therefore, optional. These optional revisions only take effect in Michigan if, and when, the state rules are revised. The proposed rules contain federal revisions based on both authorities, as well as the e-Manifest Act, as noted below. Compliance costs/savings for these revisions are provided based on information included in the respective Federal Register (FR):

- . Hazardous waste import/export (HSWA authority, not optional, RCRA Revision Checklist 236). In 81 FR 85696, dated November 28, 2016, the U.S. EPA indicated that the initial annualized business costs associated with the implementation of the overall rule were approximately \$1.5 million nationally. The U.S. EPA noted that while the benefits and costs of this rule are difficult to quantify, it foresees the annualized cost savings to businesses nationally to be about of \$0.5 million. Since these revisions were promulgated under HSWA authority and are already in effect in Michigan, businesses will not incur additional costs as a result of the inclusion of these revisions in the state rules.
- . Generator improvement rule (RCRA authority, portions optional, RCRA Revision Checklist 237). The U.S. EPA estimates in 81 FR 85732, dated November 28, 2016, that the future annualized cost to industry to comply with the revisions to be between \$5.9 to \$13.3 million on a national basis. It projects that the annualized cost savings or benefits for businesses that opt to take advantage of the two optional provisions the state has elected to include in the proposed rules (VSQGs sending wastes to certain LQGs and episodic events) to be between \$8.3 and \$14.4 million nationally, with a net annualized benefit of \$2.4 million for the low-end estimate and \$1.1 million for the high-end estimate.
- . Hazardous waste import/export documents confidentiality (HSWA authority, not optional, RCRA Revision Checklist 238). As noted in 82 FR 60894, dated December 26, 2017, these revisions were promulgated under HSWA authority. As such they are already in effect in Michigan and businesses will not incur additional costs as a result of the inclusion of these revisions in the state rules.
- . Electronic manifesting (e-Manifest Act authority, not optional, RCRA Revision Checklist 239). The U.S. EPA explains in 83 FR 420, dated January 3, 2018, that the e-Manifest Act contains similar authority to HSWA-based authority with respect to effectiveness and implementation responsibilities. Section 2(g)(2) of the e-Manifest Act provides that the subject revisions shall take effect in each state on the same effective date that the U.S. EPA specifies in its promulgation regulation. Since these provisions are already in effect in Michigan, businesses will not incur additional costs as a result of the inclusion of these revisions in state rules.
- . 2018 court vacatur of some of the definition of solid waste provisions (RCRA authority, portions optional, Revision Checklists 233). In 83 FR 24664, dated May 30, 2018, the U.S. EPA indicates that this rule is not a significant regulatory action under Executive Order 12866, and, therefore, is not subject to Executive Order 13771, entitled Reducing Regulations and Controlling Regulatory Costs. Additional information quantifying costs/savings are not available.
- . Hazardous waste import/export documents submittal (HSWA authority, not optional, RCRA

Revision Checklist 240). In 83 FR 38262, dated August 6, 2018, the U.S. EPA states that this rule is not a “significant regulatory action” under the terms of the federal Executive Order (58 FR 51735, dated October 4, 1993). This revision reflects the internal reorganization of the U.S. EPA and identifies a new address for document submittal. Since these revisions were promulgated under HSWA authority and are already in effect in Michigan, businesses will not incur additional costs as a result of the inclusion of these revisions in the state rules.

The state-initiated proposed revisions relating to the removal of some of the state-only listings (which are not high-volume wastes) and the addition of aerosol cans as universal wastes are less stringent than the current state program and will actually decrease the cost of compliance by lessening the stringency of the HWMP while maintaining the protection of human health, safety, welfare, and the environment.

All costs/benefit analyses of the proposed revisions are complicated by the fact that the requirements with which a regulated party must comply are highly dependent upon the waste type, level of generation, whether the waste is accumulated or stored on-site, and how the waste is subsequently managed (recycled onsite or offsite; storage, treated, or disposed of onsite or offsite). Decisions regarding these items are often dependent on the level of in-house expertise available and necessary to ensure proper statutory and regulatory interpretations and implementation of the applicable requirements. Given these variables, the DEQ is not able to more fully quantify the associated costs/benefits.

- A.** Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

The proposed revisions pertain to hazardous waste generators, transporters, and TSDFs. As explained in Item 28 above, the costs and/or benefits are dependent upon a variety of factors.

- B.** What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed revisions pertain to hazardous waste generators, transporters, and TSDFs. As explained in Item 28 above, any additional costs are dependent upon a variety of factors. That being said, since the majority of the revisions provide flexibility or less restrictive management standards and many are already in effect in Michigan, significant additional costs are not likely.

- 29.** Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rules are generally not applicable to individuals (i.e., the general public). As such, the imposition of the proposed rules will not require individuals to incur compliance costs, including education, training, fees, new equipment, supplies, labor, accounting, or recordkeeping.

- A.** How many and what category of individuals will be affected by the rules?

The proposed rules are generally not applicable to individuals.

- B.** What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The proposed rules do not directly impact individuals.

- 30.** Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

As enumerated in various portions of this document, the proposed rules contain many revisions that will likely result in cost reductions to businesses. Such cost reductions result from a combination of lesser regulation of certain waste streams, increased flexibility with respect to management options, and elimination of dual regulation to the extent possible. However, actual quantification is not feasible as the savings realized is dependent on the type and quantity of waste generated and subsequent management decisions made by the regulated parties.

- 31.** Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

Many persons will directly benefit from the proposed revisions, including generators, transporters, TSDFs, recyclers, environmental consultants, legal firms, and persons who manufacture and market various goods associated with compliance with the state HWMP requirements. The proposed rules contain many direct benefits. However, given the scope of the rules package, it is not feasible to address all of the benefits herein. Some of the more significant benefits and secondary or indirect benefits are outlined below:

- . The proposed rules will allow Michigan to maintain its authorization for the state HWMP. This authorization limits the amount of dual federal and state regulation of the regulated community to the extent possible.
- . The clarification and consistency provided for in the proposed rules serve to improve the overall quality of the rules and provide the regulated community with a more readable set of rules. In addition, these revisions ensure consistency with other state programs, where applicable, and alleviate confusion and inconsistent regulatory interpretations.
- . The proposed rules will remove many regulatory barriers and reduce resource demands, both monetary and nonmonetary, on the regulated community and on the agency. This is particularly true of the removal of certain hazardous waste listings and the addition of exclusions and alternative options from management as hazardous wastes.

- 32.** Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

As a whole, the proposed rules have the potential to impact approximately 21,275 VSQGs, 1,921 SQGs, 598 LQGs, 478 hazardous waste transporters, and 255 facilities located, or doing business, in Michigan. These figures are based on a November 27, 2018, query from of the DEQ's Waste System Database (WDS) and may fluctuate.

It is not feasible to determine the number of environmental consultants, attorneys, or other professionals that will be impacted by the proposed revisions as the need to secure these people is dependent upon the nature of the regulated activity and the level of expertise within a given business.

It is not feasible to determine the number of businesses that may manufacture various goods used in complying with the state HWMP requirements and choose to market their products and services to the regulated community in Michigan. These figures are largely market-driven and are highly dependent upon the regulated activity, the nature of the waste, the regulated community's existing equipment, and the level of expertise within a given business.

The majority of the revisions will yield cost savings which may translate to business growth and job creation.

- 33.** Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rules will not have a disproportionate effect on any individuals or businesses as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

With respect to revisions based on the federal regulations, the agency relied primarily on information in the FRs in compiling this statement. The agency used information provided by stakeholders, the U.S. EPA, staff, and the DEQ's WDS to compile information for the revisions recommended by the state and the public

- A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

As noted above in Item 34, estimates were made using information provided as part of discussions with stakeholders, the U.S. EPA, and staff, and data from the DEQ's WDS.

Alternatives to Regulation:

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

In conjunction with the development of each rules package, the DEQ evaluates the scope of the proposed revisions and alternatives to administrative rule revision. Alternatives for the federally-required revisions, and those federal revisions that were optional but strongly encouraged to be incorporated, were not considered due to the implications to the state's authorization that were addressed above.

Alternatives considered with respect to the state-initiated revisions included not pursuing the proposed revisions and relying solely on the statute where applicable or on guidance. Since many of the revisions are aimed at improving the overall clarity of the rules and reducing burdens to the regulated community and were requested by the regulated community or recommended by the EARC, not pursuing the revisions would result in the lack of clarity that often leads to confusion, inconsistent interpretations, non-compliance, and unnecessary burdens, and low risk, low hazard wastes continuing to be fully regulated as hazardous waste.

- A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are necessary.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

The state HWMP is a delegated federal program requiring specific standards at the state government level. The same is true of other states that have delegated programs, most of which do. However, it warrants pointing out that within the parameters of Michigan's HWMP, hazardous waste management currently functions in a market-based manner. The level of regulation is dependent on the type and amount of hazardous waste generated and the type of hazardous waste management conducted. The proposed rules are consistent with the state's hazardous waste planning policies and the market-based approach thereof. As discussed in other parts of this document, flexibility has been incorporated in the proposed rules.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The DEQ completed a review of the remaining state-only listed hazardous wastes as committed to the regulated community in conjunction with Amendments 10 and 11 to the Part 111 rules,

including an evaluation of waste characteristics, risks, scientific basis for listings, generation rates and methods of management, and manifest history associated with the wastes. The DEQ is proposing to delete a significant number of the wastes. The DEQ did not consider any significant alternatives to continued regulation of the remaining wastes.

Additional Information:

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

This provision is not applicable to the proposed revisions.

 ↓ **To be completed by the ORR** ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received:	2-14-2019 / 3-26-2019
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Date RISCBA approved:	3/29/19
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Date of disapproval:	
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Explanation:	
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