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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



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DIRECTOR

VIA E-MAIL

TO: Senator Peter Lucido, Chair, JCAR
Representative Matt Maddock, Alternate Chairperson, JCAR
Evan Keimach, Senate Majority Policy Office
Jimmy Biehl, House Republican Policy Office
Tim Reeves, Counsel, JCAR
Elizabeth Edberg, Counsel, JCAR

FROM: Travis S. Boeskool, Legislative Analyst, Office of Legislative Affairs

DATE: April 2, 2020

SUBJECT: Joint Committee on Administrative Rules (JCAR) Briefing Memo for Rule Set No. 2019-35 EG

Rules Primer

The Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), and the associated administrative rules protect public health by regulating Michigan's public drinking water supplies. The rules establish drinking water standards for many natural and man-made contaminants. They also establish requirements for monitoring, treatment, operator oversight, public notification, laboratory certification, and more.

The current rules do not include drinking water standards and related requirements for per- and polyfluoroalkyl substances (PFAS). The U.S. Environmental Protection Agency (USEPA) has health advisory levels for two PFAS, but these are non-enforceable and not included in Act 399 or the rules.

PFAS are a group of chemicals used during the past century in the manufacturing of water proofing materials, firefighting foam and thousands of other consumer products. According to the Michigan Department of Health and Human Services (DHHS) and the federal Agency for Toxic Substances and Disease Registry (ATSDR), some studies in people have shown that exposure to certain PFAS may cause health issues. Releases of these chemicals to the environment have occurred in locations around Michigan and pose a threat to public health, safety, or the welfare of its citizens and the environment.

Summary of the Final Proposed Rule

As already stated, the current Act 399 and rules do not address PFAS. The proposed rule revisions would establish enforceable sampling requirements and drinking water standards for seven PFAS compounds under the authority of Act 399 and the administrative rules as follows.

- The proposed rules would apply to all community and nontransient noncommunity public water supplies in Michigan (approximately 2,700 water supplies). Community water supplies are those that provide year-round service to 25 or more people (municipalities, apartments, condominiums, manufactured housing communities, etc.). Nontransient noncommunity water supplies serve 25 or more people at least six months per year (schools, industries, places of employment).
- The rules would require quarterly or annual sampling (frequency dependent on initial results) of seven PFAS at all community and nontransient noncommunity water supplies and require reporting of results to EGLE.
- The rules would establish enforceable drinking water standards, or maximum contaminant levels, for seven PFAS compounds, at the levels listed in the table below, and prescribe the method by which compliance with the standards is calculated.

Contaminant	Maximum Contaminant Level
Hexafluoropropylene oxide dimer acid (HFPO-DA) (ppt)	370 ppt (ng/l)
Perfluorobutane sulfonic acid (PFBS) (ppt)	420 ppt (ng/l)
Perfluorohexane sulfonic acid (PFHxS) (ppt)	51 ppt (ng/l)
Perfluorohexanoic acid (PFHxA) (ppt)	400,000 ppt (ng/l)
Perfluorononanoic acid (PFNA) (ppt)	6 ppt (ng/l)
Perfluorooctane sulfonic acid (PFOS) (ppt)	16 ppt (ng/l)
Perfluorooctanoic acid (PFOA) (ppt)	8 ppt (ng/l)

- The rules would require mandatory notification of the public if a water supply exceeds a drinking water standard or fails to sample as required. The rules also establish mandatory content of public notices, including health effect language, as well as timing and delivery requirements.
- The rules identify best available treatment technologies for removal of PFAS.
- The rules also establish criteria for the certification and decertification of laboratories approved to analyze PFAS samples and specify acceptable analytical methods.

Stakeholder Engagement

The Department engaged with numerous stakeholders to seek input on draft rule language. Stakeholder listening sessions were held before and during drafting of proposed rule language. The following broad stakeholder categories were engaged: Industrial Group, Health Group, Environmental Group, Municipal Group, and Citizen Group. See attached for a list of entities included in each group.

In addition, the Science Advisory Workgroup, established under the Michigan PFAS Action Response Team (MPART), provided EGLE with a formal report recommending health-based values for EGLE's consideration when drafting the proposed rules.

Public Engagement and Public Hearing/Comment/Information

Three public hearings were held as follows:

- January 8, 2020, Grand Rapids, MI
One Hundred and one (101) attendees signed in and 26 spoke on the record. The event was also livestreamed.
- January 14, 2020, Ann Arbor, MI
One hundred and twenty-five (125) attendees signed in and 29 spoke on the record. The event was also livestreamed.
- January 16, 2020, Roscommon, MI
Eighty-one (81) attendees signed in and 21 attendees spoke on the record. Livestreaming was not available at this location.

Written Comment:

The written public comment period was open from December 19, 2019, through January 31, 2020. Three thousand, three hundred, and thirty-four (3,334) written comments were received. See attached list of individuals speaking at the public hearings.

Modifications Made Due to Public Comment

Modifications due to public comment were minimal. Two commenters identified incorrect Chemical Abstract Service Registry Numbers for two compounds. These corrections were made in the final draft.

Significant Issues Not Incorporated in the Final Proposed Rules

The following concepts were suggested and discussed but did not have consensus among stakeholders or were found not to be feasible at this time, and therefore were not included within this rule set:

April 2, 2020

The seven PFAS Health Based Values established by the MPART Science Advisory Workgroup were called into question during public comment. Concerns were raised related to which compounds were being regulated, the appropriateness of the levels proposed to address public health, and whether those compounds should be regulated separately or as a group, as well as others. In response, a group of reviewers within EGLE Drinking Water and Environmental Health Division were convened, in addition to the MPART Human Health Work Group and the members of the original Science Advisory Workgroup. After careful consideration, these reviewers reaffirmed support for the use of the original Health Based Values as proposed.

Additionally, concerns were raised about whether the impact of drinking water rule promulgation would be too severely felt by those in the water supply, public health, manufacturing, agricultural, and property development communities, among others. These concerns were considered and, after careful review, were determined not to outweigh the benefit of rule promulgation for protecting the quality of Michigan's drinking water resources, and therefore, protecting public health, safety, and the welfare of its citizens.

Environmental Rules Review Committee

This was EGLE's first rulemaking that went through the full oversight of the Environmental Rules Review Committee (ERRC). On November 14, 2019, the ERRC approved the draft rules to go to public hearing. On March 27, 2020, the ERRC approved the changes to the rules following public hearing. The ERRC did express some concerns and questions regarding implementation in a letter addressed to JCAR on March 27, 2020.

Attachments: List of Stakeholder Group Participants
List of Individuals Speaking at Public Hearings

cc/att: Liesl Eichler Clark, Director, EGLE
Aaron B. Keatley, Chief Deputy Director, EGLE
Amy Epkey, Senior Deputy Director, EGLE
James Clift, Deputy Director, EGLE
Sarah M. Howes, Legislative Liaison, EGLE
Eric Oswald, DWEHD Director, EGLE
David Fiedler, Regulatory Affairs Officer, EGLE

Attachment A

Stakeholder Group Participants

Industrial Group

Michigan Manufactured Housing Association
Michigan Chamber of Commerce
Michigan Chemistry Council
Michigan Groundwater Association
Michigan Manufacturers Association
Michigan Waste and Recycling Association

Health Group

District Health Departments 2 and 4
Ionia County Health Department
Kent County Health Department
Michigan Department of Health and Human Services
Michigan Association for Local Public Health
Michigan Association of Local Environmental Health Administrators

Environmental Group

Clean Water Action
Environment Michigan
Great Lakes Environmental Law Center
Huron River Watershed Council
League of Conservation Voters
Michigan Environmental Council
National Resource Defense Council
Nature Conservancy
Sierra Club

Municipalities Group

American Water Works Association
Consultant – Prein and Newhoff
Contractor Operations/Consultant - Fleis & VandenBrink Engineering, Inc.
MELA (Michigan Environmental Laboratory Association)
Michigan Chapter of American of Public Works Administration
Michigan Municipal League
Michigan Rural Water Association
Michigan Townships Association
Michigan Water Environment Association
Safe Water Engineering
Southeast Michigan Council of Governments
Water Utility – Plainfield Township
Water Utility – City of Ann Arbor

Citizens Group

Held Two Webinars with Citizens in Affected Communities
Utilized MPART Citizens Advisory Council List

Attachment B

List of Individuals Speaking at Public Hearings

Grand Rapids, January 8, 2020

A.J Birkbeck	Rockford Concerned Citizens for Responsible Remediation
Andrew Blok	Citizen
Andrew Fishbeck	West Michigan Environmental Action Council
Anne Marie Hertl	Michigan League of Conservation Voters
Corinne Carey	Citizen
Cyndi Roper	Natural Resources Defense Council
Dan Buyze	MPART's Citizen Advisory Workgroup
Deb Havens	Greater Grand Rapids Sierra Club Committee
Eric Piehl	Resident of Ada Township
Gail Mancewicz	Concerned Citizens for Responsible Remediation
Jamie Fleming	Wyoming Laboratory Manager Utilities Department
Jennifer McKay	Tip of the Mitt Watershed Council
Kim Conner	Resident of Rockford
Larry Campbell	U.S. Army Veteran and GVSU alumni
Lynn McIntosh	Citizen
Mike Mcintosh	Neighbors for Neighborhood
Rena Mata	Citizen
Richard Rediske	Wolverine Community Advisory Group
Robert Allen	Adjunct at Grand Valley State University
Sandy Wynn-Stelt,	Resident of Belmont
Scott Harvey	Resident of Plainfield Township
Senator Winnie Brinks	29 th District Grand Rapids
Shannon Donley	Environmental Caucus of the Michigan Democratic Party
Sue Popma	Resident of Rockford
Theresa Chaplin	Parent of child that has suffered with an autoimmune disease
Theresa Emshwille	Her family

Ann Arbor, January 14, 2020

Aaron Pelo	Aide for State Representative Yousef Rabhi of Ann Arbor
Andrew Wotan	Citizen
Anthony Spaniola	Need our Water
Bently Johnson	Michigan League of Conservation Voters
Charles Carpenter	Sierra Club volunteer
Charlotte Jameson	Michigan Environmental Council
Christy McGillivray	Legislative Director for the Michigan Chapter of the Sierra Club
Denise Cantu	Citizen
Denise Kirchoff	Michigan Environmental Caucus, Waterkeepers United
Diana Wright	Retired engineer
Dr. Elaine Chottiner	Health Leaders Fellow with the Ecology Center
Dr. Steven Brown	Sierra Club
Fred Iles	Citizen
Jeff Hayner	Member of Ann Arbor City Council

Jennifer Davis	Resident of Ann Arbor
Jim Egged	Firefighter
John Buhl	Citizen
John Machowicz	Livingston PFAS Awareness
Kathy Smith	Resident of Ann Arbor
Keith Lee	Citizen
Kevin Fisher	Resident of Hazel Park
Lisa Capozza	Resident of Ann Arbor
Lisa Patrell	Washtenaw 350
Lisa Wozniak	Resident of Ypsilanti
Meredith Gillies	Clean Water Action
Monica Ross-Williams	Trustee in Ypsilanti Township
Nathan Murphy	State Director for Environment Michigan
Pdiesha Myles	Resident of Ypsilanti Township
Rebecca Meuninck	Deputy Director of Ecology Center
Renee Gregory	Citizen of Southeast Michigan
Rita Loch-Caruso	Citizen
Robert Kerr	Wolf Pack
Roger Rayle	Resident of Scio Township
Senator Jeff Irwin	18 th District
Sue Shink	Washtenaw County Commissioner, District 2
Stacy Taylor	Resident of Holly
Vince Caruso	Coalition for Actual Remediation of Dioxane
William Creal	Citizen

Roscommon, January 16, 2020

Aaron Weed	Oscoda Township Supervisor
Aiden Backstrom	Student from Oscoda High School
Alexis Ruemenapp	Resident of Oscoda
Cathy Wusterbarth	Need our Water community action group
Chuck Leady	Citizen
Cyndi Roper	Natural Resources Defense Council
Dave Greco	Michigan Manufacturers Association
David Winn	Need our Water, Oscoda
Elyssa Steward	Need our Water, Oscoda
Greg Cole	Need our Water, Oscoda
Hank Bailey	Tribal Elder
Jason Trautz	Resident of Roscommon
Jesse Osmer	Legislative director for State Representative Sue Allor
John Delistle	Business owner
John Hines	Superintendent, Houghton Lake Wastewater Treatment Plant
John Morris	Citizen
Lillian Schell	Resident of Oscoda
Liz DeLisle	Representing all wildlife, any unborn baby and any ill person
Mark Janeczko	Resident of Harrison
Rachel Cara	We Are the Evidence
Sean Overheul	Pure Water Works