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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: Sarah M. Howes, Legislative Liaison, Office of Legislative Affairs

DATE: March 23, 2020

SUBJECT: Joint Committee on Administrative Rules (JCAR) Briefing Memo for Rule Set No. 2018-12 EG

Rules Primer

On October 30, 1986, the United States Environmental Protection Agency (EPA) authorized the state of Michigan to administer its Hazardous Waste Management Program (Program) under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, in lieu of the federal Program under the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA). As an authorized state, Michigan is required to continually revise the Program to ensure that it is consistent with, equivalent to, and at least as stringent as the federal program. The Michigan Department of Environment, Great Lakes, and Energy (EGLE) strives to maintain a quality delegated Program, continually reviewing the rules to identify areas that warrant revision, improvement, or streamlining.

Summary of Draft Proposed Rule Changes

The proposed rules contain revisions based on federal mandates under RCRA, as well as EGLE and public recommendations. The federal revisions address the generator improvement requirements, the electronic manifesting, the 2018 court vacatur of some of the definitions of solid waste provisions, hazardous waste import/export document confidentiality and submittal, and aerosol cans as universal wastes.

The proposed revisions based on EGLE and public recommendations relate to hazardous waste identification and listing expanded options for conducting verification

sampling when there has been a statistically significant increase greater than or equal to one in secondary groundwater monitoring parameters, updates to materials adopted by reference in the rules, and typographical corrections.

Stakeholder Engagement

The Program has a long-established informal review process designed to seek input well in advance of the formally required public participation process. As part of this process, an internal review is conducted by staff designated as experts in the various aspects of the Program. The draft rules are then revised accordingly. A notice of availability of the draft rules and the opportunity to comment is then provided to members of the Hazardous Waste Management Program Short List (Short List). The Short List is composed of select organizations such as trade associations, councils, legal firms, environmental groups, consulting firms, the EPA, and industry representatives that represent a variety of interested parties potentially affected by the proposed rules. This is a high-level review. Short List comments are reviewed, and the draft rules are revised in preparation for the public hearing. To augment the public hearing process, the Program maintains a Hazardous Waste Management Long List (Long List). The Long List is comprised of the Short List members and anyone interested in the Program. It currently includes about 1,400 members. Notices of the public hearing and opportunity to comment were sent to the Long List members in conjunction with the notices provided via the Michigan Register, newspapers, and EGLE's calendar and website. Throughout this process, EGLE provided presentations to various interest groups in an effort to educate those interested in the draft rules.

A list of the current Short List members is included in Attachment A. A list of the current Long List members is not included due to its length but is available upon request.

Public Engagement and Public Hearing/Comment/Information

EGLE conducted a public hearing on the proposed rules on October 16, 2019, at Constitution Hall, in Lansing, Michigan. Four EGLE staff attended all or part of the hearing. There was one non-EGLE person at the hearing. No one provided any formal comment at the hearing.

The public comment period on the proposed rules began on September 11, 2019, and ended on October 24, 2019. EGLE received four letters providing comment on the proposed rules. A list of the persons providing comment is included in Attachment B.

Modifications Made Due to Public Comment

The comments received during the public comment period were reviewed and a few minor changes were made to the draft rules. These revisions included:

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- Incorporation of federal provisions regarding electric lamps and aerosol cans as universal wastes, which were promulgated since the last set of Part 111 rules, instead of maintaining or pursuing independent state provisions.
- Correction of a few definitions and terminology to be consistent with the federal import/export provisions.

Significant Issues Not Incorporated in the Final Proposed Rules

Some of the comments requested changes to items that had not been included in the draft rules to date and, therefore, could not be included in the rules post-public hearing. They can be considered during subsequent rules packages. These changes included:

- Addition of paint and paint-related materials as universal wastes
- Incorporating the federal airbag recall provisions
- Expansion of existing waste exemptions

Comments were also made that would have resulting in verbiage that could be interpreted differently (less stringent) than the federal regulations. The revisions were could not be implemented as they were not consistent with federal authorization requirements.

It merits noting that on December 10, 2019, EGLE staff attended an Michigan Manufacturers Association meeting at their request. Staff provided an update on the rules package and related promulgation process, including the type of comments received, the rationale behind not making certain changes, and the basis for the revisions that were being made. No objections or concerns were raised at the meeting.

Attachments: List of Stakeholder Group Members
List of Public Commenters

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
Jack Schinderle, EGLE
David Fiedler, Regulatory Affairs Officer, EGLE

Attachment A

List of Short List Stakeholder Group Members

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Attachment B

List of Public Commenters

1. Michael Carlson, MEC Environmental Consulting
2. Bill Lievense, on behalf of Michigan Manufacturers Association
3. Rick Powals, Environmental GEO-Technologies, LLC
4. Phil Tannian, U.S. Ecology