



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

**PROPOSED AMENDMENTS TO AIR POLLUTION CONTROL RULES
SOAHR 2004-006EQ, 2004-007EQ, and 2004-054EQ EQ**

SUBJECT

A public hearing will be held on December 20, 2006, on proposed amendments to Parts 1 and 2 of the Air Pollution Control Rules and the addition of Part 19, New Source Review for Major Sources in Nonattainment Areas, pursuant to Sections 5503 and 5512, of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

PURPOSE FOR THE PROPOSED RULES AND BACKGROUND

Rule packages SOAHR 2004-006EQ, 2004-007EQ, and 2004-054EQ contain the rules necessary to implement a complete, modern New Source Review (NSR) program that meets all federal requirements for permitting major sources in nonattainment areas. These rules were developed, together with SOAHR 2004-008EQ (which consists of rules for NSR permitting in attainment areas), for the purpose of achieving a complete NSR permitting State Implementation Plan (SIP) for Michigan. Currently, the Air Quality Division (AQD) permits major sources of air pollution located in nonattainment areas through R 336.1220. R 336.1220 has been approved by the U.S. Environmental Protection Agency (EPA) into Michigan's SIP; however, it reflects federal requirements from the mid-1980's.

These rules packages adopt the most recent federal permitting requirements (40 C.F.R. §51.165). These changes are necessary to satisfy a federal mandate, because the EPA required that all states adopt these rules (that is, 40 C.F.R. §51.165) by January 2, 2006. This mandate, which is called a "SIP Call," was published in the *Federal Register* on December 31, 2002, at 67 F.R. 80186, 80240-41. The EPA could sanction Michigan for not meeting the federal mandate. Sanctions could include a moratorium on new construction in the state, a loss of federal grant funds, and a loss of federal highway funds.

These rules are the product of extensive stakeholder input. The stakeholder group consisted mainly of members of the industrial sector and representatives of the environmental community. The first stakeholder meeting was held on March 19, 2004, and the final meeting was held on March 14, 2006. All of the proposed rules are supported by the stakeholder workgroup. Additionally, the Department of

Environmental Quality's (DEQ's) Environmental Advisory Council was briefed on the rule development on June 17, 2004.

In addition to the NSR program for permitting major sources located in nonattainment areas contained in the summary for 2004-054EQ, a summary of each of the other two rule packages follows.

SUMMARY OF THE PROPOSED RULES

2004-006EQ

This rule package contains revisions to nine rules. Eight rules contain definitions that are being revised or deleted to be consistent and avoid conflict with terms used in rules packages 2004-007EQ and 2004-054EQ.

- R 336.1102 (Rule 102), Definitions B: the definition for “breakthrough” is being deleted.
- R 336.1103 (Rule 103), Definitions C: the definitions for “commence,” “contemporaneous,” and “creditable” are being deleted.
- R 336.1104 (Rule 104), Definitions D: the definition for “dampered off coke oven” is being deleted.
- R 336.1105 (Rule 105), Definitions E: the definition for “equipment utilized in the manufacturing of synthesized pharmaceutical products” is being revised.
- R 336.1109 (Rule 109), Definitions I: the definitions for “Indian governing body” and “internal floating roof stationary vessel” are being deleted.
- R 336.1112 (Rule 112), Definitions L: the definition for “linearized multistage computer model” is being corrected, and the definition for “lowest achievable emission rate” is being deleted.
- R 336.1113 (Rule 113), Definitions M: the definitions for “major nonattainment air contaminant,” “major offset modification,” “major offset source,” and “manufacturing location,” are being deleted.
- R 336.1114 (Rule 114), Definitions N: the definitions for “net emissions increase” and “nonattainment air contaminant” are being deleted.
- R 336.1122 (Rule 122), Definitions V: This rule contains the definition for volatile organic compound (VOC), which is being revised to conform to the EPA definition for VOC published in the *Federal Register* on November 29, 2004, (69 FR 69298) by delisting five materials from the definition:
 - 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃, HFE-7000).
 - 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500).
 - 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea).
 - Methyl formate (HCOOCH₃).
 - T-butyl acetate (for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements)

2004-007EQ

This rule package contains the addition of 1 rule, the revision of 16 rules, and the rescission of 1 rule. The proposed new rule is R 336.1277 (Rule 277). Revisions are to R 336.1201, R 336.1202, R 336.1205, R 336.1207, R 336.1211, R 336.1214, R 336.1214a, R 336.1219, R 336.1240, R 336.1241, R 336.1278, R 336.1281, R 336.1284, R 336.1285, R 336.1288, and R 336.1299 (Rules 201, 202, 205, 207, 211, 214, 214a, 219, 240, 241, 278, 281, 284, 285, 288, and 299). The proposed rescission is R 336.1220 (Rule 220).

Rule 220 contains the AQD's current permitting rule for major sources of air pollution located in nonattainment areas. Rule 220 reflects federal permitting requirements as they existed during the early 1980's. Rule 220 is being rescinded and replaced with 2004-054EQ (hereafter "Part 19") which contains rules reflecting current federal permitting requirements for major sources of air pollution located in nonattainment areas. The new rules reflect all recent changes to 40 C.F.R. §51.165. These changes were promulgated by the EPA in an effort to clarify applicability and to encourage efficiency improvements at existing permitted sources. Additionally, citations in Rules 201, 202, 205, 207, 214a, 240, and 278 have been updated to refer to Part 19.

Rules 281, 284, 285, and 288 contain new exemptions from minor source permitting requirements for facilities with very small sources of air pollution. The changes to these exemptions are as follows:

- R 336.1281 (Rule 281); Permit to install exemptions; cleaning, washing and drying equipment.
Rule 281(e) was changed to require that, if volatile organic compounds (VOC) are used in the process for washing or drying the material, then the VOC's vapor pressure must be less than 0.1 millimeter of mercury at standard conditions. Previously, no VOCs could be used in the process.
- R 336.1284 (Rule 284); Permit to install exemptions; containers.
An exemption was added under Rule 284(n) which allows the storage of methanol in a vessel that has a capacity of not more than 30,000 gallons.
- R 336.1285 (Rule 285); Miscellaneous Exemptions
Under Rule 285(l)(vi), graphite was added to the list of materials. Also under Rule 285(t), soil was added as a material that can be mined and screened. Additionally, a new exemption was added under Rule 285(mm) that allows for the routine and emergency venting of natural gas from transmission and distribution systems or field gas from gathering lines.
- R 336.1288 (Rule 288); Permit to install exemptions; oil and gas processing equipment.
Under Rule 288(b), some clarifications were made regarding the exemption for glycol dehydrators, mainly where it is located and the minimum control equipment required to meet the exemption. The clarifications were made to reflect the exemption memo requirements as they appeared in the May 27, 1997, memo as written by Dennis M. Drake, Air Quality Division Chief, at that time.

Rules 211 and 214 contain updated citations to federal requirements for the state's renewable operating permit (ROP) program.

Rule 219 is being changed back to a discretionary "requirement," because the rule was inadvertently changed in July 2003 to a mandatory requirement. This happened because a sentence was removed from the beginning of the rule that previously made it clear that, at the discretion of the owner, a notice could be submitted to the department when a change in ownership or name occurred at the facility. At the request of the regulated community and also AQD district staff, it was decided to change the rule back to how it was originally intended to be.

Rules 240 and 241 adopt by reference federal modeling requirements. Rule 240 pertains to modeling required for prevention of significant deterioration and new source review for major sources in nonattainment areas. Rule 241 pertains to air quality modeling demonstrations that are required by the department which are not subject to Rule 240. Modeling that falls under the requirements of Rule 241 shall follow the procedures and methods referenced in Rule 240, except for the demonstration may be based on the maximum ambient predicted concentration using the most recent calendar year of meteorological data from a representative national weather service, federal aviation administration station, or site specific measurement station.

Rule 277 is a new rule that allows some activities at sources covered by a Plantwide Applicability Limit (PAL) to be exempt from minor source permitting requirements. Rule 277 contains provisions synchronizing the AQD's Rule 201 minor permit to install program with the new PAL provisions allowed by the federal rules and reflected in Rule 1907. Rule 277 will apply to sources with PALs regardless of whether the source is located in an attainment or a nonattainment area.

Rule 299 adopts by reference a number of documents. Several new documents are being adopted by reference in the rules and these adoptions have been added to Rule 299.

2004-054EQ

This rule package creates a new Part 19 and adds seven new rules. The package adds R 336.2901 through R 336.2903, R 336.2907, R 336.2908, and R 336.2910 (Rules 1901 through 1903, Rule 1907, Rule 1908, and Rule 1910).

The new rules reflect all requirements of the Clean Air Act, 42 U.S.C. 7501 – 7509a, and also reflect recent changes to 40 C.F.R. §51.165. These changes were promulgated by the EPA in an effort to make applicability more flexible by encouraging efficient, emission-reducing improvements at existing permitted sources. The new rules mirror the federal requirements. However, the format has been changed to reflect Michigan administrative rule promulgation requirements.

Rule 1910 allows the administrative appeal of permit application decisions. It does not mirror the requirements of 40 C.F.R. 51.165. However, this rule was added to ensure that the administrative procedures for processing permits to install in a state-administered permitting program would be as similar as possible to the federal administrative appeal process that is currently in place for the PSD permitting program.

Two portions of the Part 19 rules contain language that is intended to apply in attainment areas (i.e. the Part 18 rules) as well as in nonattainment areas. This language addresses issues that arose after the public hearing was held for the Part 18 rules. Including this language in the Part 19 rules will ensure that interested members of the public have adequate opportunity to review and comment. The two changes are described as follows:

- Rule 1902(6)(f) states that a major stationary source that uses the projected actual emissions method to determine that its modification is insignificant must verify the projection on an annual basis for five years after the change whenever there is a reasonable possibility that the modification could be significant. The rule then defines the term “reasonable possibility” to mean any modification that is subject to the AQD minor permitting program. This change addresses recent concerns expressed by the D.C. Circuit Court regarding the federal rules. The change is also consistent with the way the AQD is already implementing the federal PSD permitting rules.
- Rule 1910(c) explicitly states that a permit is valid upon issuance, and it is not subsequently stayed if a contested case hearing is requested. This rule reflects the DEQ’s position/understanding that, absent a rule or law that requires a stay upon appeal, a permit is valid upon issuance. Due to this position, the AQD did not feel it necessary to include this language in the PSD rules package (Rule 1830). However, the lack of this language has caused uncertainty and unease among the stakeholders and the regulated community. Consequently, language explicitly stating the DEQ’s position has been included in Part 19. Rule 1910 applies to both PSD and nonattainment NSR in nonattainment areas. The AQD anticipates that, under a future rulemaking, the language in Rule 1910 will be moved to Part 17 of the Air Pollution Control Rules, which is entitled Hearings. At the same time, Rule 1910 and Rule 1830 will be rescinded. Each of the new Part 19 rules are summarized as follows:

R336.2901 Definitions

This new rule will replace Rule 220 which contains the nonattainment requirements that is currently effective in Michigan. This rule contains definitions for terms used in Part 19’s nonattainment permitting program. These definitions apply to terms used in Part 19 only. If a term used in Part 19 is not defined in Rule 1901, then the definition from Part 1 applies. If the term is also not defined in Part 1, then the common understanding should be used.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165 — the federal minimum requirements for state nonattainment permitting programs. The definitions were moved to the beginning of Part 19 and placed in alphabetical order to meet state rule promulgation requirements. Several other minor wording changes were made for the same reason. No substantive changes were made from the federal requirements.

R336.2901a Adoption by Reference

This new rule adopts a number of documents by reference for the sole purpose of clarifying the definitions in these rules.

R336.2902 Applicability

This new rule will replace Rule 220, which contains the applicability requirements for the federal nonattainment rule that is currently effective in Michigan. This rule defines the applicability of the Part 19 nonattainment permitting program. The rule applies to the construction of any new major stationary source or major modification that is major for the pollutant for which the area in which the proposed major stationary source or major modification is designated as a nonattainment area. The rule states that major modifications occur when a project causes a significant increase in an air pollutant.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(a)(2), (a)(4), (a)(5), (a)(6), (a)(7) and (a)(8) — the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements.

R336.12903 Additional permit requirements for sources impacting nonattainment areas

This new rule defines the permitting requirements for new major stationary sources or major modifications to sources that are located in any area designated as attainment or unclassifiable for any National Ambient Air Quality Standard.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(b) — the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements. .

R336.12907 Actuals plantwide applicability limits or PALs

This new rule defines plantwide applicability limits (PALs) and contains the applicability requirements for new or existing major stationary sources that choose to accept a federally enforceable PAL.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(f) — the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements.

R336.2908 Conditions for approval of a major new source review permit in a nonattainment area.

This new rule consolidates the requirements an applicant must meet to obtain a new source review permit for a source located in a nonattainment area. The requirements consolidated under this rule include lowest achievable emission rate (LAER), offsets and an analysis of alternative sites, sizes, production processes and environmental control techniques.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(a)(3), (a)(9) and (a)(10) — the federal minimum requirements for state nonattainment permitting programs. These rules are also identical to the Clean Air Act (CAA), Title I, Part D, Section 173 (a)(1), (a)(2), (a)(3) and (a)(5). No substantive changes were made from the federal requirements.

R336.12910 Administrative hearings

This new rule is intended to provide a parallel appeal procedure to the one that is currently in place for the federal nonattainment program that is effective in Michigan 40 C.F.R. §124.

The rule creates a right to an administrative hearing before a state administrative law judge that is similar to the current appeal rights under the federal PSD permitting program. Rule 1910 is not intended to be submitted as part of Michigan's federal CAA SIP.

ACTIONS FOLLOWING THE PUBLIC HEARING

Following the public hearing, the Air Quality Division staff will review the comments received and make appropriate changes to the proposed rules. The proposed rule package will then be submitted to the State Office of Administrative Hearings and Rules, the Legislative Service Bureau, and the Joint Committee on Administrative Rules as prescribed by the Administrative Procedures Act, 1969 PA 306, as amended. The rules will go into effect immediately after filing with the Secretary of State's office.

The final rules will be submitted to the EPA as a revision to the SIP.

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