

Agency Report to the
JOINT COMMITTEE ON ADMINISTRATIVE RULES

This form must be completed by the department/agency that has the statutory authority for promulgating the rules. Please send an electronic copy of this form to the State Office of Administrative Hearings and Rules (SOAHR) at soahr_rules@michigan.gov. The SOAHR will review the document, the newspaper advertisements, and the corresponding rules prior to completing the legal certification of the rules. Please be sure to send to the SOAHR proofs of publication for the three newspaper advertisements required by MCL 24.242(1). You may mail them or send them as a scanned attachment.

Department

Environmental Quality

Division/agency/bureau:

Air Quality Division (AQD)

Rule set number (as assigned by SOAHR)

2004-007EQ

Title of rules:

Michigan Air Pollution Control Rules, Part 2 – Air Use Approval

1. Name, address, fax and phone numbers of agency contact person:

Mary Ann Halbeisen, Constitution Hall; Phone 517-373-7045; Fax 517-241-7499

2. 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 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.

3. Summary of proposed rules:

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 1980s. Rule 220 is being rescinded and replaced with 2004-054EQ (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; Permit to install exemptions; cleaning, washing and drying equipment.
Rule 281(e) was changed to require that, if volatile organic compounds (VOCs) are used in the process for washing or drying the material, then the VOC 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; 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; 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; 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 DEQ 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 DEQ 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 of Part 19. 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.

4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):

The notice was published November 16, 2006, in the following newspapers:

Lansing State Journal
Grand Rapids Press
Pontiac Oakland Press
Marquette Mining Journal

5. Time, date, location and duration of public hearing:

December 20, 2006; 10:00-10:35 a.m.; Constitution Hall, 525 West Allegan Street, Lansing

6. Date of publication of rules and public hearing notice in *Michigan Register*:

November 15, 2006

7. Agency representative(s) attending hearing (include agency name and title of representative[s]):

The following attended from the Michigan Department of Environmental Quality:

Bryce Feighner, Supervisor, Chemical Process Unit, Permit Section, AQD
Lynn Fiedler, Supervisor, Permit Section, AQD
Mary Ann Halbeisen, Administrative Rules Coordinator, AQD
Marion Hart, Supervisor, Administration Section, AQD
Jeffrey Rathbun, Engineer, Permit Section, AQD
Holly Gohlke, Environmental Quality Analyst, Water Bureau
James Ostrowski, Environmental Quality Analyst, Environmental Science and Services

8. Names, organizations and (complete) addresses of persons attending the hearing:

Kent Evans, Director, Air Quality Services, Consumers Energy, 1945 West Parnell Road, Jackson, MI 49201
Mike Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association, 620 Capitol Avenue, Lansing, MI 48933
Angela Riess, Michigan Department of Agriculture, 525 West Allegan Street, Lansing, MI 48933

9. Persons submitting letters, comments and testimony of support:

Julie C. Becker, Alliance of Automobile Manufacturers, 1401 Eye Street, NW, Suite 900, Washington, DC 20005-6562
Kent Evans, Director, Air Quality Services, Consumers Energy
Kathryn R. Ross, Consumer Energy
Mike Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association
Kent Evans on behalf of Michigan Natural Gas Coalition

10. Persons submitting letters, comments and testimony of opposition:

Patricia A. Perry
Jaime Long
Nancy Chrivia

11. Summary of suggestions to modify proposed rules:

General

Comment: Five comments were received generally supportive of the proposed rule changes with a few exceptions noted below.

AQD Response: The AQD has revised the rules in response to comments received, and the revised rules are dated January 18, 2007.

R 336.1277 (Rule 277)

Comment: The Alliance of Automobile Manufacturers and Michigan Manufacturers Association commented that Rule 277 goes beyond the federal standard, and they appreciate the agency's intent to make this a state only enforceable provision and not including it in the SIP.

AQD Response: Rule 277 is intended to be a state only rule and it will not be submitted to the EPA as a SIP revision.

R 336.1285(t) (Rule 285)

Comment: Rule 285(t) is a permit to install exemption for equipment for the mining and screening of uncrushed sand and gravel. Consumers Energy suggested that the language in Rule 285(t) be amended, because the company routinely uses bottom-ash material in the construction of ash disposal landfills and roadways. The proposed permit to install language would ensure that Consumers could continue to utilize the bottom-ash material for construction purposes and affords consideration of the beneficial re-use of the material, which would otherwise be a waste product.

AQD Response: The AQD agrees with this suggestion, and the language in Rule 285(t) has been changed to read as follows:

“Equipment for the mining and screening of uncrushed ~~native~~ sand, gravel, ~~and~~ soil, **and other inorganic soil-like materials.**”

R 336.1285(mm) (Rule 285)

Comment: Rule 285(mm) is a new exemption for the venting of field gas or natural gas. The Michigan Natural Gas Coalition (MNGC) suggested that the AQD change the language in Rule 285(mm) to allow the reporting of routine (scheduled) gas venting just after such an event occurs.

AQD Response: The AQD's intention has always been that notifications for routine gas venting must be prior to the venting of gas in amounts greater than 1,000,000 standard cubic feet. The initial language proposed said the owner or operator had to notify the AQD district supervisor **at least 72 hours prior to a scheduled pipeline venting.** The MNGC requested that the language be changed to read that the owner or operator had to notify the AQD district supervisor **within 72 hours** of a scheduled pipeline venting.

It was stressed that AQD must be informed about a scheduled event **prior** to the event so that district staff would be prepared in case calls about the venting were received from the public. Ultimately, the language ended up being changed to "...the owner or operator notifies the department prior to a scheduled pipeline venting" (dropped the 72 hours), because the main concern was that the AQD be notified **prior to** the scheduled venting.

AQD does not agree with the requested changes to the Rule 285(mm) exemption.

Comment: Patricia Perry of Lewiston commented that she was opposed to venting of gas wells and lines.

AQD Response: The Air Pollution Control Rules dictate that the release of any air contaminant requires a permit to install. Natural gas and field gas meet the definition of an air contaminant

under the rules. Currently, there is no existing Air Pollution Control Rule that exempts the venting of natural gas or field gas from the requirement to obtain a permit to install.

Venting of natural gas is regulated by the Michigan Public Service Commission, the United States Department of Transportation, and the Federal Energy Regulatory Commission. Venting of field gas is regulated by the Michigan Department of Environmental Quality, Office of Geological Services, and the Michigan Public Service Commission. The industry also has owner or operator's construction and maintenance practices in place to ensure safety and minimize emissions.

The AQD has determined that existing government regulations adequately deal with safety and minimize air quality impacts from these venting activities.

Comment: Jaime Long and Nancy Chrivia were opposed to Rule 285(mm) and requested that the AQD move the hearing to Gaylord or at least somewhere closer to Gaylord.

AQD Response: The AQD had advertised the public hearing on 35 rules in four newspapers on November 16, 2006. A majority of the rules affected the southeastern part of Michigan, so holding the hearing in Lansing was a more central location. Moving the hearing just eight days before the hearing would have been very costly and most likely would have delayed the hearing and the rules process. Therefore, the AQD proceeded with holding the hearing in Lansing as scheduled. Every effort was made to accommodate the citizens in providing them with the hearing documentation and taking their written comments.

Name of person completing this report:

Mary Ann Halbeisen

Date report completed:

January 31, 2007