



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

**PROPOSED AMENDMENTS TO AIR POLLUTION CONTROL RULES
SOAHR 2004-054EQ**

SUBJECT

A public hearing will be held on July 19, 2007, on proposed amendments to Part 19, New Source Review for Major Sources in Nonattainment Areas, pursuant to Sections 5503, 5505, 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

A public hearing was originally held on this rule package on December 20, 2006. Additional information pertinent to the draft rules was received after the public comment was closed. The draft rules were revised and a second public hearing has been scheduled to take public comment on two changes to proposed Rule 1901.

Rule packages SOAHR 2004-006EQ, 2004-007EQ, and 2005-054EQ 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 State Implementation Plan (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, known as 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. As noted previously, a public hearing on the draft rules was held on December 20, 2006. Changes have been made to the draft rules due to comments received during the comment period and at the December public hearing.

SUMMARY OF THE PROPOSED RULES

Original Proposal

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 provisions 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 addresses recent concerns expressed by the D.C. Circuit Court regarding the federal rules and is consistent with the way the AQD is currently 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. Since absent a rule or law that requires a stay upon appeal a permit is valid upon issuance, the AQD did not include this language in the Part 18 PSD rules package. However, the lack of this language has caused uncertainty among the stakeholders so clarifying language has been included in Part 19. 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, entitled Hearings, and Rules 1910 and 1830 will be rescinded.

Additional Information Received and Associated Proposed Changes

Two significant changes have been made to the Part 19 rules since the December 20, 2006, public hearing. The first of these changes is the addition of the definition “replacement unit” under the definition for “emissions unit” in Rule 1901(o). This change is proposed because the definition was inadvertently omitted in the original proposal because it was the DEQ's understanding that all federal requirements relating to routine maintenance, repair and replacement were stayed by a court decision. The DEQ has since learned that this was not the case.

The second change affects Rule 1901(v), which is the definition for “net emissions increase.” While working with the new Part 18 PSD rules, the DEQ identified that this definition was not identical to the federal requirements. The definition for “net emissions increase” found in both the Part 18 PSD rules and draft Part 19 rules is more restrictive. This was not the DEQ's intent. While the definition for “net emissions increase” will be changed in the Part 18 PSD rules during a future rulemaking, the Part 19 definition for “net emissions increase” is proposed to be amended at this time so that it also mirrors the federal requirements.

Each of the draft Part 19 rules are summarized as follows:

R336.2901 Definitions

This new rule will replace Rule 220, which contains the nonattainment requirements that are 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. Several other minor wording changes were made to meet state rule promulgation requirements. 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 also replace Rule 220, which contains the applicability requirements for the federal nonattainment rule 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.

R336.2903 Additional permit requirements for 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 but impacting a nonattainment area.

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.

R336.2907 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, Title I, Part D, Section 173 (a)(1), (a)(2), (a)(3) and (a)(5). No substantive changes were made from the federal requirements.

R336.2910 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 AQD 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.

Prepared by: Jeffrey Rathbun
June 1, 2007