



Department of Environmental Quality
Annual Regulatory Plan

July 1, 2018 through June 30, 2019

Assembled by:

Dave Fiedler
Regulatory Affairs Officer
Created June 29, 2018

TABLE OF CONTENTS

Division or Office	Page Numbers
Air Quality Division (AQD)	1-3
Drinking Water and Municipal Assistance Division (DWMAD)	4-6
Oil, Gas, and Minerals Division (OGMD)	7-9
Waste Management and Radiological Protection Division (WMRPD)	10-11
Remediation and Redevelopment Division (RRD)	12-14
Water Resources Division (WRD)	15-17

The following Department of Environmental of Quality (DEQ) staff contributed to the creation of the plan:

- Cari DeBruler (AQD)
- Kris Phillip (DWMAD)
- Adam Wygant (OGMD)
- Ronda Blayer (WMRPD)
- Dan Yordanich (RRD)
- Susi Greiner (WRD)

**Department of Environmental Quality
Air Quality Division**

1. Rules to be **processed** between July 1, 2018 and June 30, 2019.

ORR # 2017-068 EQ, Part 2. Air Use Approval (R 335.1212 – R 336.1285) Update rules to correct a typographical error, modify air toxics exemptions for natural gas burning equipment, and develop an exemption for vapor intrusion mitigation systems.

Part 2. Air Use Approval Potential updates necessary to remove PFAS from exemption in toxics and permitting rules, a small change to add flexibility to Rule 205, and minor updates to ROP rules.

ORR # 2017-062 EQ, Part 4. Emission Limitations and Prohibitions – Sulfur Bearing Compounds (R 336.1401, R 336.1402, R 336.1404 and R 336.1420)
Updating rules adopted by reference and rescinding a rule.

Part 6. Emission Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions Considering update of Reasonable Available Control Technology (RACT) requirements/emission limits in pertinent Part 6 rules for inclusion in 2015 Ozone NAAQS attainment SIP. Also update adoption by reference, if necessary.

Part 7. Emission Limitations and Prohibitions – New Sources of Volatile Organic Compound Emissions Rule 706 will be modified to allow new large loading facilities to use emission reduction technologies not considered when the rule was originally promulgated. Currently, the AQD renews a variance annually to allow facilities to use these technologies.

ORR # 2017-069 EQ, Part 8. Emission Limitations and Prohibitions – Oxides of Nitrogen (R 336.1801 - R 336.1834) Address federal rulemaking on pollutant transport requirements and update adoptions by reference.

ORR # 2017-006 EQ, Part 9. Miscellaneous Provisions (R 336.1901 – R 336.1974) Add new commercial and industrial solid waste incinerator rule as required by federal regulations and update adoptions by reference.

Part 9. Miscellaneous Provisions Add landfill emission rule as required by federal regulations and update adoptions by reference.

ORR # 2017-070 EQ - Part 18. Prevention of Significant Deterioration of Air Quality (R 336.2801 – R 336.2823) Revise to address federal rulemaking on significant monitoring concentrations, add applicability clarification in R 336.2802, and update adoptions by reference.

ORR # 2017-071 EQ, Part 19. New Source Review for Major Sources Impacting Nonattainment Areas (R 336.2901 – R 336.2908) Revise to make consistent with a revamped Part 18 and correct typographical errors in multiple rules.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2018 and June 30, 2019. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

ORR # 2017-078 EQ, Part 16. Organization, Operation, and Procedures (R 336.2601 – 336.2608) Rescinding unnecessary rules addressing declaratory rulings since the provisions of the rules are currently covered by Part 8. Declaratory Rulings of the Contested Case and Declaratory Ruling Procedures (R 324.81)

ORR # 2017-079 EQ, Part 17. Hearings (R 336.2701 – 336.2706) Rescinding unnecessary rules addressing hearings since the provisions of the rules are currently covered by Part 3. Department of Environmental Quality and Department of Natural Resources of the Administrative Hearing Rules (R 792.10301 – 792.10306)

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The AQD has exercised its statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

The Part 6 rule changes being considered.

(a) Whether there is a continued need for the rules.

Yes

(b) A summary of any complaints or comments received from the public concerning the rules.

None

(c) The complexity of complying with the rules.

If pursued, these changes are not expected to be complex. They will likely revise (downward) emission limits already in existing rules. These lower emission rates have been previously implemented in many other states, meaning many entities will already be meeting them and if not, methods and options will have already been developed. They are and would continue to be state-wide rules.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

N/A

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The rules in Part 6 to be considered for revision were first promulgated in 1993. Since then, federal guidelines addressing these activities have been updated, but due to its attainment status with respect to the 2008 ozone National Ambient Air Quality Standard (NAAQS), Michigan has not needed to implement these more stringent updates. Other states facing nonattainment planning have utilized these federal guidelines. As a result, industry has had to adapt and develop solutions to these more stringent restrictions. These solutions are expected to be available to the portion of Michigan's regulated community that has not already implemented these changes voluntarily. The need to address the 2015 NAAQS Ozone standard has now made it necessary for Michigan to consider updating its rules.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The Office of Regulatory Reinvention maintains the Web site that lists all the AQD rules currently under review. To view revisions, go to <http://dmbinternet.state.mi.us/DMB/DTMBORR/Rules.aspx?type=dept&id=EQ>

To view all of the AQD rules, go to http://dmbinternet.state.mi.us/DMB/DTMBORR/AdminCode.aspx?AdminCode=Department&Dpt=EQ&Level_1=Air+Quality+Division

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

No rule sets were completed in the past 12 months. All outstanding rulemakings are listed in Item 1.

**Department of Environmental Quality
Drinking Water and Municipal Assistance Division**

1. Rules to be processed between July 1, 2018, and June 30, 2019. [Give brief description]

Onsite Wastewater. Legislation (HB 5752 and 5753) introduced in March 2018 may require the Drinking Water and Municipal Assistance Division (DWMAD) to work on a rules package to establish a statewide code containing performance-based standards for conventional and alternative onsite wastewater treatment systems. The legislation would require the rules to be promulgated within three years after the effective date of the amendatory act and consultation with a to-be-established Technical Advisory Committee. There is no indication as to whether the bills will be passed as currently written, if at all, but the introducing legislator is working with all interested stakeholders on amendments to the bills to gain consensus support. Due to the broad scope of any statewide rules and the great number of interested stakeholders, rulemaking would need to commence immediately after the effective date of legislation in order to meet the statutory deadlines.

Septage. HB 4438 was passed, enrolled, and sent to the Governor for consideration in late June 2018. This bill amends Part 117, Septage Waste Servicers, of the Natural Resources and Environmental Protection Act, as amended (NREPA) to add Section 11721 - allowing for an exemption to farm operations using portable toilets and related equipment from the need to comply with Part 117, given certain other requirements are met. This bill also adds Section 11718(3) requiring rulemaking: "The department of environmental quality and the department of agriculture and rural development shall jointly promulgate rules establishing field sanitation and food safety standards for the purposes of section 11721." There is potential for rulemaking under this provision during the period covered by this report.

Supplying Water to the Public (R 325.10101 – 325.12820) The DWMAD will likely pursue rule revisions in the near future, including, but not limited to operator certification provisions. It is uncertain whether this will commence during the period covered by this report or the following year.

Groundwater Quality Control (R 325.1601 – 325.1781) promulgated under Part 127, Water Supply and Sewer Systems, of Act 368 of 1978 (Public Health Code) The DWMAD may work on a rules package to help further protect public health and the environment by updating well construction requirements. The last rules revision was completed in 1994.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2018, and June 30, 2019. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

None at this time.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

Part 117, Septage Waste Servicers, of the NREPA (specifically MCL 324.11701 – R 324.11720) Part 117 was amended in 2004 to require the DEQ to promulgate rules for septage waste receiving facilities and for continuing education requirements. The DEQ has successfully implemented the

receiving facility and education provisions using the statutory authorities and has not had resources to promulgate rules for this program. The following sections require the promulgation of rules:

324.11715b Rules; requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

324.11718 Rules.

Sec. 11718. (1) The department shall promulgate rules that establish both of the following: (a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Supplying Water to the Public (R 325.10101 – 325.12820) Specifically the lead and copper requirements. Current emphasis on the complexity and shortcomings of existing lead and copper regulations provide a challenge to regulated entities.

- (a) Whether there is a continued need for the rules.

Yes, lead and copper regulations are critical to protecting public health.

- (b) A summary of any complaints or comments received from the public concerning the rules.

There have been extensive complaints/comments on the effectiveness of existing lead and copper regulations and a call for regulatory revision. Most public comments express a need for more stringent regulation of lead and copper in drinking water than current regulations provide.

- (c) The complexity of complying with the rules.

Lead and copper regulations are extremely complex, including extensive sampling, reporting, treatment, and education requirements.

- (d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

- (e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The U.S. Environmental Protection Agency's (U.S. EPA) most recent revision to lead and copper requirements came with the 2009 Lead and Copper Short Term Revisions that were adopted by the state. The U.S. EPA has been working towards long term rule revisions for several years and anticipated a proposal in 2017, but ultimately further delayed the revisions. However, Michigan

proceeded with regulatory revisions during FY18, in advance of the federal timeline, and enacted updated rules in June 2018.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

Act 399 and Supplying Water to the Public Rules are located under the Laws and Rules category of the Community Water Supply Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3691---,00.html, the Noncommunity Water Supply Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3692---,00.html and the Water Well Construction Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3694---,00.html. Note that the cover of this document provides links to the statute on the Michigan Legislature Web site and the administrative rules on the Web site of the Office of Regulatory Reinvention.

The DEQ has a Web page titled “Laws and Rules.” To access this page, go to www.michigan.gov/deq and select “Laws & Rules” at the bottom of the page under the title “Regulations.” On this page are links to ORR’s Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED:

ORR # 2017-008 EQ, Supplying Water to the Public (R 325.10101 – R 325.12820), promulgated under the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399) Updated the rules to create a citizen centric oversight body within large publicly-owned water supplies; enhanced public education distribution requirements; reduced lead action level; allow for greater transparency on water supply system conditions; clarified sampling protocols; ban partial lead service line replacement; and require lead service line replacement over time, regardless of lead action level.

OUTSTANDING:

Campgrounds (R 325.1551 – 325.1599) Revisions to the Campgrounds statute (Michigan Public Health Code) began in late 2014 through a stakeholder process. The stakeholder process concluded in September 2015 with a final document containing suggested revisions to the Campgrounds statute. The DEQ has not pursued legislative action on the stakeholder group’s proposal. If this process is completed, work on updating the Campgrounds rules will begin.

Part 117, Septage Waste Servicers of the NREPA As mentioned in Item 3, above, the current lack of resources prevents the DEQ from promulgating rules, as required by statute.

**Department of Environmental Quality
Oil, Gas, and Minerals Division**

1. Rule(s) to be **processed** between July 1, 2018 and June 30, 2019. [Give brief description.]

Rules pertaining to mineral wells and mineral well confidentiality in the Mineral Well Rules (R 299.2301 – 299.2531) Part 625, Mineral Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) requires the DEQ to hold all information and records on applications and permits for mineral wells as confidential for 10 years or more. The administrative rules require permit applicants to provide a copy of the first page of the permit application to the clerk of the township and the landowner. That rule may be viewed as in conflict with the statute and requires release of some information that may be proprietary and is probably not essential for the public to know. Mineral well industry representatives did not object to the rule when it was proposed; however, a problem arises when staff must tell a citizen that we cannot release any information about an application or permit. The Oil, Gas and Minerals Division (OGMD) proposes to amend the rules to require release of basic information to local government and to any person who inquires, and to post the information on the weekly permit list on the department website. The proposed rule revisions would also correct several errors in the current rules. The OGMD proposes to convene the Mineral Wells Advisory Committee as a stakeholder engagement group to explore these proposed rule changes and to submit a request for rules to being rule making process.

Rules pertaining to gas storage in the Oil and Gas Operations Rules (R 324.101 – 324.1406) The OGMD, with support of the DEQ Director initiated a review of existing gas storage regulations to evaluate potential changes in order to strengthen and clarify the rules. The OGMD has convened a workgroup of gas storage operators which met four times in 2016 to consider potential rule revisions. In the meantime, the Pipeline and Hazardous Materials Safety Administration (PHMSA) promulgated new federal rules on gas storage. Michigan must adopt the federal rules by reference to retain the state's regulatory oversight. The OGMD is continuing to work with the Michigan Public Service Commission to determine jurisdiction and PHMSA partnering framework direction

Rules update pertaining to injection wells in the Oil and Gas Operations Rules (R 324.804 and R 324.815) As part of Michigan's anticipated request for Primacy of the federal Class II Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act, the OGMD may initiate request for rulemaking and initiate stakeholder engagement through the standing Oil and Gas Advisory Committee to update two administrative rules for injection and disposal wells (R 324.802 and R 324.815). R 324.802 may be updated to reflect operational approvals to alternate between an injection well status and a producing well, since it is not the OGMDs intent to require a new permit for this situation each time the well converts back to injection status which occasionally happens during enhanced oil recovery. R 324.815 may be updated to clarify that when a major modification occurs, a revised permit will be issued if approved. The rule was meant to mean that for major modifications all information needed for a new permit pursuant to R 324.802 would be required, and that the proposed modification would receive same public engagement pursuant to R 324.815. It was not meant that if approved a new permit and permit number would be issued, modifications are handled through an

application to change well status pursuant to R 324.511. Major modifications should be handled as approved application to change well status or a revised permit, not a new permit and number which would not be appropriate in the database or records management system.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2017 and June 30, 2018. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The OGMD has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Changes to Mineral Well rules regarding confidentiality may be viewed as problematic to industry, engagement of the Mineral Well Advisory Committee will be essential in determining if the request for rules will include clarification in R 299.2311 of what can be shared with the public, in addition to the proposed error corrections which need to be corrected.

- (a) Whether there is a continued need for the rules.

There is a continued need for each rule set being processed for revision in this regulatory plan, and the OGMD has not identified any unnecessary rules or rule sets currently administered by the OGMD.

- (b) A summary of any complaints or comments received from the public concerning the rules.

Some public complaints have been received regarding confidentiality in Part 625. The statute addresses confidentiality and what can be shared with the public, however proposed clarification of R 299.2311 would allow the OGMD to share additional items which are already shared with the public via the township supervisor receiving the first page of a permit application. The proposed changes would also convey whether hydrogen sulfide gas is expected.

- (c) The complexity of complying with the rules.

Modification of R 299.2311 will create additional administrative work for the OGMD and can cause additional confusion with the public.

- (d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

No proposed rule revisions conflict with or duplicate similar rules or regulations.

- (e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

For Mineral Wells, R 299.2311 was last reviewed in 2004, since then there have been a few projects in recent years where the department has reviewed controversial permit applications and tried to engage the public, but without the ability to share very basic information that the township already has.

For Oil and Gas Operations, R 324.802 and R 324.815 were recently updated June 7, 2018. However, in anticipation of how these rules would work for unique situations of alternating injection and production status and how major modifications would need to be handled in a modern relational database, the OGMD is proposing some update to work with technology and keep process lean.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deg and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deg/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

No rule sets were updated in the past 12 months. The outstanding rule sets are listed in Item 1 above.

**Department of Environmental Quality
Waste Management and Radiological Protection Division**

1. Rule(s) to be **processed** between July 1, 2018 and June 30, 2019. [Give brief description.]

ORR # 2018-012 EQ, Hazardous Waste Management (R 299.9101 – 299.11007) The U.S. Environmental Protection Agency (U.S. EPA) has authorized Michigan to administer its state Hazardous Waste Management Program in lieu of the federal program. The Waste Management and Radiological Protection Division (WMRPD) has initiated rule revisions to address, in part, the federal generator improvements, e-manifest, and definition of solid waste provisions. These major rules include both structural and scope changes to the standards for hazardous waste generators, the rollout of the e-manifest system, and revisions related to the March 2018 federal court decision on the 2015 definition of solid waste provisions.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2018 and June 30, 2019. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

Part 135, Radiation Control, of the Michigan Public Health Code, 1978 PA 368, as amended (Act 368) Part 137 was enacted to enable the state to regulate a low-level radioactive waste disposal facility. Since the state is not actively seeking a site for such a facility, no rules regulating the disposal facility and those who would use the facility have been promulgated. Sections 8, 20, and 37 of Part 137 authorize the promulgation of rules.

Part 173, Electronics, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) Enacted in 2008, Part 173 establishes a registration program for manufacturers and recyclers of televisions and computers and requires the manufacturers to maintain a take-back program for these devices. Part 173 provides the DEQ with authority to promulgate rules to implement certain requirements. The WMRPD does not intend to pursue these rules because they are not needed to implement the current program given the minimal resources the DEQ has to administer it.

4. Rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Medical Waste Producing Facilities (R 325.1541 – R 325.1549) Environmental Advisory Rules Committee (ARC) Recommendation RM-8 states, "Amend Part 138, Medical Waste, of Act 368 or rules governing the disposal of medical waste to require the disposal of sharps that are used strictly for non-medical procedures (a) when the storage container is full, or (b) annually, whatever comes first." Legislation is needed to implement this recommendation.

- (a) Whether there is a continued need for the rules.

The medical waste rules are critical to ensure public health protection.

(b) A summary of any complaints or comments received from the public concerning the rules.

The Environmental ARC identified the medical waste rules as those needing updating to address concerns from businesses, manufacturers, and local government.

(c) The complexity of complying with the rules.

The medical waste rules are basic and add clarity to the statutory provisions.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the medical waste rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The medical waste rules were evaluated in 2005 and stakeholders recommended statutory amendments to add clarity to the program. However, the draft legislation did not make it out of committee.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deg and select "Laws & Rules" at the bottom of the page under the title "DEQ Regulations." On this page are links to the ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deg/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED:

No rule sets were completed in the past 12 months.

OUTSTANDING:

Medical Waste Producing Facilities (R 325.1541 – R 325.1549) The WMRPD convened a new stakeholder work group in 2017 to evaluate the current act and rules, the recommendations of the previous 2005 work group, and the outcome of a 3-year pilot project that used local health departments to conduct inspections at medical waste producing facilities. As noted in Box 4, some enabling legislation is also required.

**Department of Environmental Quality
Remediation and Redevelopment Division**

1. Rule(s) to be **processed** between July 1, 2018 and June 30, 2019. [Give brief description.]

ORR # 2015-094 EQ, Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50) The current rules, which were updated in December 2013, reflect the December 2010 amendments of Part 201, Environmental Response, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The Department of Environmental Quality (DEQ) has completed a comprehensive update of the cleanup criteria based upon the recommendations of the Criteria Stakeholders Advisory Group (CSA). The rules were submitted to the ORR on April 15, 2016 to commence the rulemaking process. A second revised draft was submitted to ORR on October 1, 2016 and received additional comments, and after revisions incorporating the concerns in the comments. The third draft rule set was submitted to the ORR on December 1, 2017, and the public hearing was held on January 18, 2018. The DEQ is continuing to review its' response to public comment on the proposed amendments to the Part 201 rules.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2018 and June 30, 2019. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None at this time.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The RRD has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

ORR # 2015-094 EQ, Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50) In 2014, the DEQ convened the Criteria Stakeholders Advisory Group (CSA) specifically to advise the agency on these rules. The DEQ is maintaining contact and working with regulated community members of the CSA through the rule promulgation process. While there is broad consensus on many of the proposed amendments to these rules, there are several important issues which may require further evaluation and resolution. The regulated community has identified its most problematic issues with the proposed rules. These issues include: 1) the tiered approach for evaluating the volatilization to indoor air pathway; 2) the use of an IRIS toxicity value if one is available; 3) the developmental or reproductive exposure scenario; 4) nonresidential exposure time; 5) dioxin leachability and volatility; and 6) implementation provisions.

Property Owner or Operator Obligations Under Section 20107a of the Act (R 299.51001 – 299.51021) Specific rules have not been identified as problematic; rather the implementation and lack of common understanding on how to comply has been problematic.

- (a) Whether there is a continued need for the rules.

There have been no developments since the implementation of these rules that would demonstrate a need to discontinue them.

- (b) A summary of any complaints or comments received from the public concerning the rules.

(R 299.1 – 299.50) Notwithstanding the regulated community’s concerns, the general public has expressed concerns regarding the following issues: 1) the existing and proposed criteria are not protective of the child receptor; 2) the criteria for PFOS/PFOA are not stringent enough; and 3) the need to retain rule provisions that allow the DEQ to publish criteria for hazardous substances that are not promulgated with the criteria tables. In addition, both the regulated community and general public have expressed concerns that the existing rules do not have criteria for soil gas; therefore, site-specific criteria must be developed and approved by the DEQ, which is not nimble for property transactions.

(R 299.51001 – 299.51021) The general public has not expressed interest; stakeholders have been instrumental in the suggested changes, which primarily update the rules to align with current statute.

(c) The complexity of complying with the rules.

(R 299.1 – R 299.50) The Cleanup Criteria Requirements for Response Activity rules are complex in nature. The CSA Group was comprised of representatives from the regulated community as well as environmental, academia and public health interests who have experience working with DEQ’s remediation and redevelopment programs. The complexity of complying with the rules was an integral component of the stakeholder evaluation.

(R 299.51001 – R 299.51021) The rules are intended to clarify how to comply with the statute. In addition, educational material is available to the public and will continue to be updated.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules in Box 4 are state rules and do not duplicate federal regulations.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

(R 299.1 – R 299.50) The entire rule sets pertaining to the DEQ’s cleanup and redevelopment programs have been through a comprehensive review by the Environmental ARC (January, 2012), the Collaborative Stakeholder Initiative (February, 2012 through December, 2013), and the Criteria Stakeholders Advisory Group, (March 2014 through November 2014). The criteria included in the current rules have not been substantially updated since 2001. Additional physical, chemical and toxicological data may be available for some of the over 300 hazardous substances addressed by the criteria. These data have been evaluated and incorporated pursuant to the recommendations of the CSA to update the cleanup criteria.

(R 299.51001 – R 299.51021) The Part 10 rules were last evaluated by the Collaborative Stakeholders Initiative (2012 - 2013) and the Due Care Stakeholders Workgroup (2013 - 2014). There have been no significant technological or economic changes that would affect compliance or recommendations.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The DEQ has a Web page titled “Laws and Rules.” To access this page, go to www.michigan.gov/deq and select “Laws & Rules” at the bottom of the page under the title

“Regulations.” On this page are links to ORR’s Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following:
http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED:

ORR # 2017-021 EQ (Emergency Rules) established the 1,4-dioxane cleanup criterion for the drinking water ingestion pathway at 7.2 parts per billion. Expired 10/27/2017

ORR # 2017-041 EQ established the 1,4-dioxane cleanup criterion for the drinking water ingestion pathway at 7.2 parts per billion. Effective 10/20/17.

OUTSTANDING:

ORR # 2015-094 EQ, Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50)

**Department of Environmental Quality
Water Resources Division**

1. Rule(s) to be **processed** between July 1, 2018 and June 30, 2019. [Give brief description]

Part 5. Spillage of Oil and Polluting Materials Rules (R 324.2001 – 324.2009)

Recommendations W-1 and W-10 of the Environmental Advisory Rules Committee (ARC) contain specific changes to the Part 5 rules that would make compliance less onerous. Stakeholder process was completed. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).*

Part 13. Floodplains and Floodways (R 323.1311 – 323.1329) Stakeholder process was completed. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

Part 23. Pretreatment Rules (R 323.2302 – 323.2303 and R 323.2305 – 323.2317)

The Request for Rulemaking (RFR) for this rule set was withdrawn in February 2007 due to loss of rulemaking authority. An RFR will be resubmitted when rulemaking authority is restored. The proposed rules will incorporate the majority of the changes made to the General Pretreatment Regulations for Existing and New Sources of Pollution (Title 40 of the Code of Federal Regulations, Part 403) in 1995, 1997, and 2005. For the most part, the changes will offer streamlining and regulatory relief for municipalities and industries compared to the existing requirements. There also are a few minor additional requirements and clarifications that will be included. In addition, references will be updated. Stakeholder process was completed. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2018 and June 30, 2019. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The Water Resources Division (WRD) has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Wetland Mitigation Banking Rules (R 281.951 – 281.961) Recommendation W-12 of the Environmental ARC proposes changes to the program to facilitate more economically efficient wetlands mitigation projects.

Part 5. Spillage of Oil and Polluting Materials Rules (R 324.2001 – 324.2009). Recommendations W-1 and W-10 of the Environmental ARC contain specific changes to the Part 5 rules that would make compliance less onerous. *Note:*

The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.

Part 22. Groundwater Quality Rules (R 323.2201 – 323.2240).

Recommendation W-4 of the Environmental ARC proposes clarification of the types of discharges that do not require groundwater permits – similar to what is done in the storm water regulations. Recommendation W-9 proposes expanding the permit-by-rule categories and eliminating categories requiring groundwater discharge permits for projects with minimal or no impact on groundwater. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

(a) Whether there is a continued need for the rules.

There is a continued need for all of the rule sets identified in Box 4 above.

(b) A summary of any complaints or comments received from the public concerning the rules.

The Wetland Mitigation Banking, Groundwater Quality, and Spillage of Oil and Polluting Materials Rules will be thoroughly reviewed and amended as appropriate to address the Environmental ARC recommendations W-12, W-4 and W-9, and W-1 and W-10, respectively. The Environmental ARC voiced concerns about these three rule sets.

(c) The complexity of complying with the rules.

The DEQ can add additional general permits for types of **groundwater discharges** that can streamline the permit issuance process and provide additional exemptions from the groundwater permit requirement.

The DEQ can modify the **Part 5 Rules** in an effort to make them more understandable and technically feasible to achieve the intended result, which is to prevent spills from occurring and responding quickly when they do occur.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

Some areas of the Part 5 Rules do contain more stringent requirements than the federal Spill Prevention, Control, and Countermeasures (SPCC) Plan; the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA); and the Superfund Amendments and Reauthorization Act (SARA) Title III reporting requirements but functions to be more protective of Michigan's water resources and to fill the gaps left by the federal regulations.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The Wetland Mitigation Bank Rules were promulgated in 1997.

The Groundwater Quality Rules were promulgated in August 1999, and have not been modified subsequent to that date.

The Part 5 Rules were last revised and became effective August 31, 2001.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deq and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2017 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED:

No rule sets were completed in the past 12 months.

OUTSTANDING:

Part 5. Spillage of Oil and Polluting Materials Rules (R 324.2001 – 324.2009) An RFR will be submitted when rulemaking authority is restored.

Part 13. Floodplains and Floodways (R 323.1311 – 323.1329) An RFR will be submitted when rulemaking authority is restored.

Part 22. Groundwater Quality Rules (R 323.2201 – 323.2217) An RFR will be submitted when rulemaking authority is restored.

Part 23. Pretreatment Rules (R 323.2302 – 323.2303 and R 323.2305 – 323.2317) An RFR will be submitted when rulemaking authority is restored.