STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

July 10, 2014

Dr. Susan Hedman, Regional Administrator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604

Dear Dr. Hedman:

SUBJECT: Michigan Infrastructure State Implementation Plan (SIP) Components Confirmation

Through this letter, the Michigan Department of Environmental Quality (MDEQ) is confirming that the State of Michigan retains the authorities necessary to evaluate air ambient quality, develop plans to attain and maintain the National Ambient Air Quality Standards (NAAQS), meet the requirements of the New Source Review program, and effectively enforce all applicable requirements. Specifically, the MDEQ resources and authority to implement and satisfactorily complete the requirements set forth in Section 110 of the federal Clean Air Act are provided for in the Michigan SIP.

A letter dated March 24, 2011, from Governor Rick Snyder to the United States Environmental Protection Agency (USEPA), Region 5, delegates authority to the MDEQ Director to make any submittal, request, or application under the federal Clean Air Act, including this SIP submittal. The letter is available upon request.

Through this submission, the MDEQ is requesting the addition of Civil Service Rule 2-8.3(a)(1) to the SIP for the purposes of meeting requirements of the Clean Air Act. Civil Service Rule 2-8.3(a)(1) requires certain employees to disclose potential conflicts of interest on an annual basis, and we are requesting that the USEPA approve the rule into the SIP as satisfying the general state board requirements under Section 128, as well as the applicable requirements of Section 110(a)(2)(E)(ii).

The MDEQ has reviewed Michigan's air quality management program authorities as they pertain to the Nitrogen Dioxide NAAQS and the Sulfur Dioxide NAAQS, promulgated in 2010, the Ozone NAAQS promulgated in 2008, and the Particulate Matter 2.5 NAAQS promulgated in 2012. The SIP elements required under Section 110 are addressed in the enclosed certification that describes the state authorities that constitute the infrastructure of Michigan's air program. As stated above, the MDEQ has determined that the existing Michigan SIP, with the addition of Civil Service Rule 2-8.3(a)(1), is adequate. Opportunity for public comment and hearing has been provided on this certification.

The public notice addressing this revision of the SIP was published in the April 21, 2014, and May 5, 2014, *MDEQ Environmental Calendar* located on the MDEQ Web site at http://www.michigan.gov/envcalendar and excerpts are included as Attachment C. The Opening Statement for the June 4, 2014, public hearing includes information on the notice of public hearing. The staff report is also included with the opening statement in Attachment D. Copies of the comments received concerning this SIP submittal and responses are in Attachment E.

Questions on this submittal may be directed to Ms. Mary Maupin, SIP Unit Supervisor, AQD, MDEQ, at 517-284-6755 or maupinm@michigan.gov; Ms. Lynn Fiedler, Acting Division Chief, AQD, MDEQ, at 517-284-6773; or MDEQ, AQD, P.O. Box 30260, Lansing, Michigan 48909-7760.

Sincerely,

Dan Wyant (Acting)
Director
517-284-6700

Enclosure
cc/enc: Mr. Andrew Chang, USEPA, Region 5
Mr. Jim Sygo, Deputy Director, MDEQ
Ms. Lynn Fiedler, MDEQ
Ms. Mary Maupin, MDEQ

PROPOSED REVISIONS TO

STATE OF MICHIGAN

STATE IMPLEMENTATION PLAN

for

Infrastructure Requirements for the 2008 Ozone NAAQS, 2010 Nitrogen Dioxide NAAQS, 2010 Sulfur Dioxide NAAQS, and the 2012 Particulate Matter NAAQS

July 10, 2014

Prepared by:

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Michigan State Implementation Plan Infrastructure
Applicable to the 2008 Ozone National Ambient Air Quality Standard,
2010 Nitrogen Dioxide National Ambient Air Quality Standard,
2010 Sulfur Dioxide National Ambient Air Quality Standard,
and the 2012 Particulate Matter 2.5 National Ambient Air Quality Standard

Prepared by the
Michigan Department of Environmental Quality
Air Quality Division

July 10, 2014

Introduction

The Michigan Department of Environmental Quality (MDEQ) is confirming that the State of Michigan retains the authorities necessary to evaluate ambient air quality, develop plans to attain and maintain new and existing air quality standards, meet the requirements of the New Source Review (NSR) Program, and effectively enforce all applicable requirements. Specifically, with the addition of Federal Implementation Plans in effect to correct alleged SIP deficiencies related to Best Available Retrofit Technology (BART) for four facilities in the state, the current Michigan State Implementation Plan (SIP) contains the resources and authority to implement and satisfactorily complete the requirements set forth in Section 110 of the federal Clean Air Act (CAA) commonly referred to as the "Infrastructure SIP" for the 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standard (NAAQS), the 2010 Sulfur Dioxide (SO_2) NAAQS, the 2008 Ozone NAAQS, and the 2012 Particular Matter 2.5 ($PM_{2.5}$) NAAQS. This document describes Michigan's Infrastructure SIP for the above pollutants.

The MDEQ is also requesting approval to add in Civil Service Rule 2-8.3(a)(1) to the Michigan SIP. This Rule requires certain employees to disclose potential conflicts of interest on an annual basis. We are requesting that the United States Environmental Protection Agency (USEPA) approve the rule as satisfying the general state board requirements under Section 128, as well as the applicable requirements of Section 110(a)(2)(E)(ii).

The SIP elements addressed in this document are required under Sections 110(a)(1) and (2). Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) specifies the basic elements and sub-elements that all SIPs must contain. An opportunity for public comment and hearing was provided for this certification of SIP authority, in accordance with 40 CFR Part 51, Appendix V2.1(g), and 40 CFR Section 51.102.

Required Section 110 SIP Elements

The SIP elements indented below are excerpted from the USEPA guidance on Infrastructure SIPs. The MDEQ response follows each requirement.

> **Section 110(a)(2)(A): Emission limits and other control measures**
> *Each such plan shall […] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be*

necessary or appropriate to meet the applicable requirements of this chapter.

In Part 55, Air Pollution Control, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), MCL 324.5503 and 324.5512 provide the MDEQ Director the authority to regulate the discharge of air pollutants and to promulgate rules to establish standards for ambient air quality and emissions. R 336.1801 through R 336.1834 contain emission limits for oxides of nitrogen (NO_x) sources, R 336.1401 through R 336.1420 contain emission limits for SO_2 sources, and R 336.1301 through R 336.1374 contain emission limits for Particulate Matter (PM) sources. In addition, R 336.1601 through R 336.1661 contain emission limits for Volatile Organic Compounds (VOCs) existing sources and R 336.1701 through R 336.1710 contain emission limits for VOC new sources, thus addressing Ozone precursor emissions.

The MDEQ continues to monitor, update, and implement necessary and required revisions to the Michigan SIP in the form of emissions limits and other control measures in order to meet federal ambient air quality standards, including the 2010 NO_2 and SO_2 standards, the 2008 Ozone standards, and the 2012 $PM_{2.5}$ standards. Consistent with the USEPA's guidance, this infrastructure SIP submittal does not identify nonattainment area emissions controls.

Section 110(a)(2)(B): Ambient air quality monitoring/data system

Each such plan shall […] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator.

MCL 324.5503 and MCL 324.5512 of Act 451 provide the MDEQ with the authority to promulgate rules to establish ambient air quality standards. Specifically, R 336.1101(j) defines "air quality standard" as used in MDEQ's rules as the more restrictive of the NAAQS or an air contaminant level specified by the MDEQ.

In accordance with the Michigan SIP, the MDEQ maintains a comprehensive network of state and tribal air quality monitors at USEPA-approved locations throughout Michigan, with the primary objective being to determine compliance with the NAAQS. The MDEQ monitoring network is capable of monitoring SO_2, NO_2, $PM_{2.5}$, and Ozone at the revised NAAQS levels.

The quality assured ambient air monitoring data is submitted to the USEPA Air Quality Subsystem as required by 40 CFR Section 51.320. The MDEQ submits network reviews to the USEPA annually to ensure that its air monitoring operations comply with applicable federal requirements. The MDEQ most recently submitted a network review to the USEPA on July 1, 2014. In addition, the MDEQ coordinates with the USEPA to address any planned changes to monitoring sites.

Section 110(a)(2)(C): Programs for enforcement of control measures and for construction/modification of stationary sources

Each such plan shall […] include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.

Part 55, of Act 451, MCL 324.5501 through MCL 324.5542, gives the MDEQ the authority to enforce emission limitation and other control measures in air quality rules, permits, and orders. For example, MCL 324.5526 gives the MDEQ authority to inspect facilities at

reasonable times upon the presentation of proper credentials. In addition, MCL 324.5530 authorizes the Michigan Attorney General to commence a civil action against a person for appropriate relief, including injunctive relief and a civil fine, for, among other things, any violation of Part 55, its rules, or a permit issued under Part 55. Other enforcement provisions are set forth in MCL 324.5515, MCL 324.5518, and MCL 324.5526 through MCL 324.5532.

Public Act 554 of 2012 added Part 14 (MCL 324.1401 through 324.1429) to Act 451, establishing the Clean Corporate Citizen (C3) Program. A copy of Part 14 is available on the State of Michigan Web site, http://www.legislature.mi.gov/doc.aspx?2012-SB-0939. Part 14 includes criteria and procedures for becoming a C3 facility and identifies benefits to which C3 facilities are entitled upon request. The benefits listed in MCL 324.1421 and include the following:

1. The MDEQ shall give C3 facility operators at least 72 hours' advance notice of any routine inspection.
2. The MDEQ shall conduct routine inspections of C3 facilities half as frequently as the inspections would be conducted for non-C3 facilities; and
3. Unless it has been established by clear and convincing evidence that either the C3 facility's actions posed a significant endangerment to public health, safety, or welfare or the C3 facility's violation was intentional or occurred as a result of the operator's gross negligence, the C3 facility is not subject to a civil fine or violation of state environmental requirements if the facility acted promptly to correct the violation after discovery and reported the violation to the MDEQ within 24 hours of discovery or within any shorter time period otherwise required by law.

MCL 324.1427, however, provides that Part 14 "shall not be construed in a manner that conflicts with or authorizes any violation of state or federal law or regulation." Therefore, Part 14 does not restrict the MDEQs enforcement authority under Part 55.

R 336.1201 through R 336.1209 subject emissions of NO_x, SO_2, $PM_{2.5}$, and Ozone precursors from minor sources and minor modifications at major sources (known as the minor source NSR program) to permit to install regulations. All of the above sources, unless exempt under R 336.1278 through R 336.1290, are subject to the minor source NSR program. To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, the USEPA approved Michigan's minor source NSR program on May 6, 1980 (45 FR 29790). The MDEQ is awaiting action by the USEPA on six sets of revisions to our minor NSR program SIP that were submitted to the USEPA from 1993 to 2009. The MDEQ has ensured that new and modified sources not captured by the major source NSR permitting programs do not interfere with attainment and maintenance of the NAAQS through the application evaluation process.

Michigan's prevention of significant deterioration (PSD) program regulations, authorized in MCL 324.5512, can be found at R 336.2801 through R 336.2823. The MDEQ submitted rule revisions on August 9, 2013, and September 19, 2013, for incorporation into the SIP to meet the applicable structural PSD requirements for infrastructure SIPs. The applicable revisions include:

1. The explicit identification of NO_x as a precursor to Ozone per the Phase 2 Ozone Implementation Rule;
2. The explicit identification of NO_x and SO_2 as precursors to $PM_{2.5}$ per the 2008 NSR Rule;
3. The identification and regulation of $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limits per the 2008 Rule; and
4. The identification of the new $PM_{2.5}$ increments, the revised major source baseline date, trigger date, and baseline area level of significance for $PM_{2.5}$ per the 2010 NSR Rule.

We affirm that the MDEQ has both the legal and regulatory authority, as well as the resources, to permit Greenhouse Gas (GHG) emitting sources, as confirmed in correspondence to the USEPA dated July 27, 2010. All of the above provisions demonstrate that the MDEQ has met the applicable infrastructure SIP requirements related to PSD for Section 110(a)(2)(C), i.e., these regulations contain provisions that appropriately regulate construction of new or modified stationary sources consistent with Part C.

Section 110(a)(2)(D)(i): Interstate pollution transport

Each such plan shall […] contain adequate provisions prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

With respect to Section 110(a)(2)(D)(i)(I) of the CAA, which requires plans to have provisions prohibiting sources to emit air pollutants in amounts that would contribute significantly to nonattainment in, or interfere with maintenance by any other state, Michigan notes that Michigan is not subject to any finding of significant contribution to any other state's attainment or maintenance at this time. Also, on January 20, 2012, the USEPA determined that no area in the country is in violation of the 2010 NO_2 NAAQS, thus Michigan's NO_2 emissions cannot be significantly contributing to nonattainment of these NAAQS in any other state.

As described in the section addressing the requirements of Section 110(a)(2)(C), the MDEQ has met all of the applicable infrastructure SIP requirements as they relate to PSD; i.e., the provisions that satisfy the requirements in Section 110(a)(2)(C) also satisfy any applicable requirements contained in Section 110(a)(2)(D)(i)(I). In addition, the MDEQ's nonattainment NSR regulations adequately address the obligation to ensure that sources in nonattainment areas do not interfere with a neighboring state's PSD program. These rules can be found in R 336.2901 through R 336.2908 and were approved as part of Michigan's SIP on June 20, 2008.

Also, to protect visibility, effective October 30, 2013, the MDEQ has an approved regional haze SIP, with the exception of the BART requirements for four facilities. There are Federal Implementation Plans in affect to correct alleged SIP deficiencies related to BART for these four facilities.

Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution

Each such plan shall […] contain adequate provisions insuring compliance with the applicable requirements of sections 126 and 115 of this title (relating to interstate and international pollution abatement).

The MDEQ's approved PSD program, particularly at R 336.2817, contains provisions required under Section 126(a) to notify neighboring states (and tribal nations) of potential impacts from a new or modified major source. Michigan has no other obligations under any other part of Section 126, i.e., no source(s) within the state of Michigan are subject to an active finding under Section 126 with respect to any of the NAAQS referenced in this rulemaking. Section 115 of the federal CAA relates to international pollution abatement. There are no

findings under Section 115 of the CAA for the State of Michigan with respect to the particular NAAQS at issue.

Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies

Each such plan shall […] provide:

(i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),

(ii) requirements that the State comply with the requirements respecting State boards under section 128 of this title, and

(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.

The MDEQ SIP air program is funded through Section 105 and 103 grants and matching funds via the State's General Fund. These funding sources are expected to remain stable for the next five years and projected into the future. Act 451 and Executive Reorganization Order 2011-1 provide the MDEQ with the legal authority under state law to carry out the Michigan SIP. The MDEQ retains the authority to adequately enforce the Michigan SIP. As discussed in the section addressing Section 110(a)(2)(C), Michigan's PSD regulations provide the state with adequate resources to permit GHG sources. A copy of Executive Reorganization Order 2011-1 can be found in Attachment A.

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of Section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

The authority to approve air permits and enforcement orders rests with the MDEQ Director and his designee under MCL 324.5503, MCL 324.301(b), Executive Order No. 1995-18, and Delegation Letters from the MDEQ Director to the AQD Chief and various AQD supervisors. A copy of the Delegation Letters from the MDEQ Director to the AQD Chief and AQD supervisors can be found in Attachment A.

To clarify, Michigan does not have a state board that approves permits or enforcement orders, so only the second requirement of Section 128 applies; i.e., the adequate disclosure of potential conflicts of interest. Civil Service Rule 2-8.3(a)(1) specifies that at least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee. By definition, in Civil Service Rule 1-9.1, the above-named individuals at the MDEQ are subject to this rule. The MDEQ requests that Civil Service Rule 2-8.3(a)(1) be incorporated into the SIP

as meeting the general requirements of Section 128 of the CAA. As the state board requirements of Section 128 are not NAAQS specific, we also request that this rule meets the applicable infrastructure SIP requirements found in Section 110(a)(2)(E)(ii) for the NAAQS referenced in this rulemaking as well as any other infrastructure SIP submittals for which USEPA has yet to take final action, e.g., the 2006 $PM_{2.5}$ NAAQS and the 2008 Lead NAAQS. A copy of Civil Service Rule 2-8.3(a)(1) can be found in Attachment B.

Section 110(a)(2)(F): **Stationary source monitoring and reporting**
Each such plan shall […] require, as may be prescribed by the Administrator:

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.

Under the authority of MCL 324.5512 and MCL 324.5503 of Act 451, the MDEQ implements a stationary source monitoring and reporting program. The MDEQ requires stationary source performance testing, sampling, and reporting as provided in R 336.2001 through R 336.2199 and as conditions of NSR permits. R 336.2101 through R 336.2199 provides requirements for continuous emissions monitoring (CEM), and R 336.201 through R 336.202 requires annual reporting of emissions, as required in 40 CFR Section 51.211, 40 CFR Sections 51.321 through 51.323, and 40 CFR Part 51, Subpart A. In addition, MDEQ compliance and enforcement personnel provide follow up on stack tests and CEMs that indicate violations.

The emissions data is compiled and submitted to the USEPA National Emissions Inventory system in accordance with USEPA regulations at 40 CFR Part 51, Subparts A and Q. There is no provision in the Michigan SIP preventing the use of credible data in these submissions to the USEPA. State air permits and reported emissions are available to the public by request and online at www.michigan.gov/deqair.

Section 110(a)(2)(G): Emergency episodes
Each such plan shall […] provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority.

MCL 324.5518 of Act 451 provides authority for the MDEQ to require the immediate discontinuation of air contaminant discharges that constitute an imminent and substantial endangerment to public health, safety, or welfare or to the environment. MCL 324.5530 provides for civil action by the Michigan Attorney General for a violation as described in MCL 324.5518. Where excess emissions have been identified, the MDEQ has taken immediate steps to curtail emissions, notify the public, and involve public health officials. Enforcement actions have also been pursued. The MDEQ has adequate authority and resources to immediately address any NO_2, SO_2, $PM_{2.5}$, or Ozone emergency episodes.

The MDEQ requests exemption from the contingency plan requirements, under 40 CFR Section 51.152(d), for all areas in the state because they are designated attainment, unclassifiable, or a Priority III region, with the exception of the Metropolitan Detroit-Port Huron

Area for SO_2. The MDEQ will submit contingency plans for this area in our SO_2 Attainment Demonstration SIP submittal in 2015.

Section 110(a)(2)(H): SIP revisions

Each such plan shall […] provide for revision of such plan:

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter.

MCL 324.5512 and MCL 324.5503 of Act 451 provide authority to the MDEQ to promulgate rules for controlling or prohibiting air pollution, complying with the federal CAA, and establishing suitable emission standards consistent with NAAQS established by the USEPA.

Further, under MCL 324.5503 of Act 451, the MDEQ is the agency in Michigan designated to cooperate with the USEPA, including by respond to the USEPA findings of inadequacy regarding the Michigan SIP and the air quality program.

Section 110(a)(2)(I): Plan revisions for nonattainment areas

Each such plan shall […] in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

The MDEQ will submit NO_2, SO_2, $PM_{2.5}$, and Ozone nonattainment SIP plans on the schedule set out in Part D of the CAA, as required.

Section 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection

Each such plan shall […] meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

The MDEQ consults with stakeholders from local governments, the business community, community groups, Federal Land Managers and Tribal Nations during rule development, SIP planning, and permit issuance. Federal Land Managers are provided with notification of permit applications that may impact air quality and visibility in Class I areas, as required by R 336.2816.

MCL 324.5503 designates the MDEQ as the Michigan agency to cooperate with appropriate agencies of the federal government, other states, or interstate and international agencies on air pollution control activities. The MDEQ is also an active member of the Lake Michigan Air Directors Consortium, which involves state and local governments, businesses, and community groups in the Lake Michigan area in air quality planning activities. Formal Memorandums of Understanding have been developed for processes involving transportation conformity and regional planning with state and local governments. Also, draft permits and consent orders are subjected to the public participation process specified in MCL 324.5511(3).

Under R 336.2817, the MDEQ seeks comments on PSD applications from the public in the area near the proposed source, other state and local air pollution control agencies, chief

executives of cities and counties, regional land use planning agencies, Federal Land Managers, and nearby states or tribal governing bodies whose land may be affected. The MDEQ has a USEPA-approved PSD program, which includes all regulated pollutants, and is previously addressed above. Insofar as those provisions satisfy the applicable requirements of those Sections, the MDEQ intends the same provisions to satisfy the applicable requirements of this Section.

The MDEQ notifies the public if NAAQSs are exceeded, of any public health hazards associated with those exceedances, and to enhance public awareness of air quality issues through CleanAirAction!, AirNow, and EnviroFlash programs. The MDEQ also posts current air quality concentrations on the MDEQ Web site to enhance public awareness of air quality. On an annual basis, the MDEQ publishes an air quality report that describes the air monitoring data collected the previous calendar year and compares it to the NAAQS.

The visibility sub-element of Element J is not being addressed in this SIP submittal, and in accordance with the USEPA's interpretation of the CAA, addressing this element is not required.

Section 110(a)(2)(K): Air quality modeling and submission of modeling data

Each such plan shall […] provide for:

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Through R 336.1240 and R 336.1241, the MDEQ conducts modeling to evaluate proposed sources under the PSD and minor NSR programs. The MDEQ also performs modeling to support SIP development and has the capability to perform source-oriented dispersion modeling with AERMOD to assess pollutant impacts. This modeling includes predicting the effect the source will have on ambient air quality for all NAAQS and is conducted in accordance with the USEPA modeling guidelines in 40 CFR Part 51, Appendix W.

The MDEQ, under MCL 324.5503 of Act 451, is the agency in Michigan designated to work with the USEPA and submit any requested modeling data to the USEPA. The MDEQ does submit, upon request, modeling data to the USEPA or other interested parties.

Section 110(a)(2)(L): Permitting fees

Each such plan shall […] require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover:

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter.

The MDEQ collects permitting fees under its USEPA-approved Title V program. Section 324.5522 of Act 451 confers upon MDEQ the authority to levy and collect an annual air quality fee from owners or operators of each fee-subject facility in Michigan as defined in MCL 324.5501.

Section 110(a)(2)(M): Consultation/participation by affected local entities
Each such plan shall […] provide for consultation and participation by local political subdivisions affected by the plan.

The MDEQ regularly involves local political subdivisions in attainment planning and decision-making as stated above in this Section. The MDEQ actively participates in planning forums with regional government planning organizations and establishes stakeholder workgroups in development of rules addressing air pollution. Public comment periods, and hearings if requested, are held for all proposed revisions to the Michigan SIP, as required by 40 CFR, Part 51. Promulgation of state administrative rules are also subject to the notice and hearing requirements of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, and are authorized in MCL 324.5512.

ATTACHMENT A

STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

EXECUTIVE ORDER
NO. 2011-1

EXECUTIVE REORGANIZATION
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

CREATING THE
DEPARTMENT OF NATURAL RESOURCES AND
DEPARTMENT OF ENVIRONMENTAL QUALITY

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration; and

WHEREAS, Section 8 of Article V of the Michigan Constitution of 1963 provides that each principal department of state government shall be under the supervision of the Governor, unless otherwise provided in the Constitution; and

WHEREAS, Section 52 of Article IV of the Michigan Constitution of 1963 declares the conservation and development of the natural resources of this state to be of paramount public concern in the interest of the health, safety, and general welfare of the people; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government by dividing the functions of the Department of Natural Resources and Environment between two newly created departments;

NOW THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

GEORGE W. ROMNEY BUILDING • 111 SOUTH CAPITOL AVENUE • LANSING, MICHIGAN 48909
WWW.MICHIGAN.GOV

I. DEFINITIONS

As used in this Order:

A. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Department of Environmental Quality" means the principal department of state government created under Section IV of this Order.

C. "Department of Technology Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121, as amended by Executive Order 2001-3 and Executive Order 2009-55.

D. "Department of Natural Resources" means the principal department of state government created under Section III of this Order.

E. "Department of Natural Resources and Environment" or "Department" means the principal department of state government created under Section II of Executive Order 2009-45.

F. "Department of Treasury" means the principal department of state government created under Section 75 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.175.

G. "Environmental Science Review Boards" means the boards provided for under Section II.C. of Executive Order 2009-45.

H. "Natural Resources Commission" means the commission provided for under Section II.B. of Executive Order 2009-45.

I. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

J. "Type I transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

K. "Type II transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

L. "Type III transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. ABOLISHMENT OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

A. The Department of Natural Resources and Environment created by Section II of Executive Order 2009-45 is abolished.

B. The powers, duties, functions, responsibilities, personnel, equipment, and unexpended appropriations of the Department of Natural Resources and Environment are transferred as provided in this Order.

III. CREATION OF THE DEPARTMENT OF NATURAL RESOURCES

A. Establishment of the Department of Natural Resources as a Principal Department in the Executive Branch

1. The Department of Natural Resources is created as a principal department in the executive branch. The Department shall protect, conserve and manage the natural resources of this state.

2. The Director of the Department of Natural Resources shall be the head of the Department.

B. Natural Resources Commission

1. The Natural Resources Commission is transferred by Type II transfer from the Department of Natural Resources and Environment to the Department of Natural Resources. This paragraph does not affect the continued service or terms of office of the current members of the Natural Resources Commission.

2. The Governor shall designate a member of the Natural Resources Commission to serve as its Chairperson at the pleasure of the Governor. The Commission may select a member of the Commission to serve as Vice-Chairperson of the Commission.

3. The Natural Resources Commission shall have and continue to exercise the authority, powers, duties, functions, and responsibilities previously vested in it under all of the following:

a. Part 435 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.43501 to 324.43561.

b. Section 40111a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40111a.

c. Section 40113a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40113a.

4. The Natural Resources Commission shall utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

5. The Natural Resources Commission shall advise the Director of the Department of Natural Resources on matters related to natural resources and conservation and may perform additional duties as provided by this Order, other law, or as requested by the Governor.

6. Members of the Natural Resources Commission shall serve without compensation. Members of the Commission may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Technology Management and Budget, subject to available funding.

C. Director of the Department of Natural Resources

1. The Director of the Department of Natural Resources shall be appointed by the Governor and shall serve at the pleasure of the Governor.

2. The Director of the Department of Natural Resources shall establish the internal organization of the Department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the Department. The Director of the Department of Natural Resources shall supervise the staff of the Department and shall be responsible for its day-to-day operations.

3. The Director of the Department of Natural Resources may promulgate rules as may be necessary to carry out functions vested in the Director under this Order or other law in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

4. The Director of the Department of Natural Resources shall utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

5. The position of the Director of the Department of Natural Resources and Environment as a member or chairperson of all of the following boards or commissions is transferred to the Director of the Department of Natural Resources:

a. Ex officio member of the Michigan Historical Commission under Section 1 of the Michigan Historical Commission Act, 1913 PA 271, MCL 399.1.

b. Member of the Michigan Freedom Trail Commission under Section 3 of the Michigan Freedom Trail Commission Act, 1998 PA 409, MCL 399.83.

c. Ex officio member of the Michigan Public Safety Communications System Advisory Board created under Executive Order 2005-8.

d. Member and Chairperson of the Michigan Commission on the Commemoration of the Bicentennial of the War of 1812 created by Executive Order 2007-51.

e. Non-voting member of the Complete Streets Advisory Council, 2010 PA 135, MCL 247.660p(6)(q).

D. Transfers from the Department of Natural Resources and Environment to the Department of Natural Resources

1. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, personnel, equipment, property, and unexpended appropriations of the Department of Natural Resources and Environment that were transferred to it from the former Department of Natural Resources by Executive Order 2009-45, are transferred by Type II transfer to the Department of Natural Resources, including, but not limited to, the authority, powers, duties, functions, and responsibilities under all of the following:

a. 1974 PA 359, MCL 3.901 to 3.910 ("Sleeping Bear Dunes National Lakeshore").

b. The Executive Organization Act of 1965, 1965 PA 380, MCL 16.350 to 16.360.

c. The Property Rights Preservation Act, 1996 PA 101, MCL 24.421 to 24.425.

d. Section 4c of 1913 PA 172, MCL 32.224c ("Crawford County land").

e. Section 48 of the State Employees' Retirement Act, 1943 PA 240, MCL 38.48.

f. Section 8b of the Township and Village Public Improvement and Public Service Act, 1923 PA 116, MCL 41.418b.

g. Section 26 of The Home Rule Village Act, 1909 PA 278, MCL 78.26.

h. Section 10 of 1957 PA 185, MCL 123.740 ("county department and board of public works").

i. 1990 PA 182, MCL 141.1301 to 141.1304 ("county redistribution of federal payments").

j. Sections 7g and 7jj of The General Property Tax Act, 1893 PA 206, MCL 211.7g and MCL 211.7jj.

k. 1943 PA 92, MCL 211.371 to 211.375 ("withholding lands from sale").

l. Section 18 of 1909 PA 283, MCL 224.18 ("public highways and private roads").

m. Sections 3 and 4 of 1927 PA 341, MCL 247.43 and 247.44 ("discontinuation of highway bordering lake or stream").

n. Section 4 of 1941 PA 359, MCL 247.64 ("noxious weeds").

o. Sections 602a and 660 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.602a and 257.660.

p. Section 4 of the Michigan Aquaculture Development Act, 1996 PA 199, MCL 286.874.

q. 1976 PA 308, MCL 287.251 to 287.258 ("disposal of livestock").

r. Section 14 of the Animal Industry Act, 1988 PA 466, MCL 287.714.

s. Privately Owned Cervidae Producers Marketing Act, 2000 PA 190, MCL 287.951 to 287.969.

t. 1986 PA 109, MCL 300.21 to 300.22 ("conservation officers").

u. The Right to Forest Act, 2002 PA 676, MCL 320.2031 to 320.2036.

v. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.

w. The Clean Michigan Initiative Act, 1998 PA 284, MCL 324.95101 to 324.95108.

x. 2008 PA 290, MCL 324.95151 to 324.95155 ("control of gray wolves").

y. 2008 PA 318, MCL 324.95161 to 324.95167 ("removal, capture, or lethal control of gray wolf").

z. The Michigan Civilian Conservation Corps Act, 1984 PA 22, MCL 409.301 to 409.314.

aa. Sections 167a and 167c of The Michigan Penal Code, 1931 PA 328, MCL 750.167a and 750.167c.

bb. Section 7 of the Hazardous Materials Transportation Act, 1998 PA 138, MCL 29.477.

cc. Executive Order 1973-2, MCL 299.11.

dd. Executive Order 1973-12, MCL 125.241.

ee. Executive Order 1988-4, MCL 299.12.

ff. Executive Order 1991-31, MCL 299.13.

gg. Executive Order 1995-7, MCL 324.99901.

hh. Executive Order 2004-3, MCL 287.981.

ii. Executive Order 2007-14, MCL 324.99910.

jj. Executive Order 2009-14, MCL 324.99916.

kk. Executive Order 2009-15, MCL 324.99917.

2. **Mackinac Island State Park Commission.** The Mackinac Island State Park Commission provided for under 1958 PA 201, MCL 318.201 to 318.208, transferred under Section 256 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.356, and created by Section 76503 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.76503, transferred to the Department of Natural Resources under Executive Order 2009-36, and transferred to the Department of Natural Resources and Environment by Executive Order 2009-45, is transferred by Type I transfer to the Department of Natural Resources. This transfer includes, but is not limited to, the authority, powers, duties, functions, and responsibilities of the Commission under all of the following:

a. Sections 76501 to 76509, 76701 to 76709, 76901 to 76903, 77101, 77301, 77302, 77701 to 77704, and 77901 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.76501 to 324.76509, 324.76701 to 324.76709, 324.76901 to 324.76903, 324.77101, 324.77301, 324.77302, 324.77701 to 324.77704, and 324.77901.

b. Section 511 of the Michigan Liquor Control Code of 1998, 58 PA 1998, MCL 436.1511.

3. **Michigan Forest Finance Authority.** The Michigan Forest Finance Authority created under Section 50503 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.50503, and transferred to the Department of Natural Resources and Environment by Executive Order 2009-45, is transferred by Type I transfer to the Department of Natural Resources. The position of the Director of the Department of Natural Resources and Environment or his or her designee from within that Department as a member of the Board of Directors of the Michigan Forest Finance Authority under Section 50504 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.50504, is transferred to the Director of the Department of Natural Resources or his or her designee from within that Department.

4. **Michigan Natural Resources Trust Fund Board.** The Michigan Natural Resources Trust Fund Board, created under Section 1905 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.1905, and transferred to the Department of Natural Resources and Environment by Executive Order 2009-45, is transferred by Type I transfer to the Department of Natural Resources. The position of the Director of the Department of Natural Resources and Environment as a member of the Michigan Natural Resources Trust Fund Board under Section 1905 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.1905, is transferred to the Director of the Department of Natural

Resources or his or her designee from within the Department, including, but not limited to, a member of the Natural Resources Commission.

IV. CREATION OF DEPARTMENT OF ENVIRONMENTAL QUALITY

A. Establishment of the Department of Environmental Quality as a Principal Department in the Executive Branch

1. The Department of Environmental Quality is created as a principal department in the executive branch. The Department shall protect the environment of this state.

2. The head of the Department of Environmental Quality shall be the director, who shall be appointed by the Governor with the advice and consent of the Senate, and shall serve at the pleasure of the Governor.

B. Director of the Department of Environmental Quality

1. The Director of the Department of Environmental Quality shall establish the internal organization of the Department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the Department. The Director of the Department of Environmental Quality shall supervise the staff of the Department and shall be responsible for its day-to-day operations.

2. The Director of the Department of Environmental Quality may promulgate rules as may be necessary to carry out functions vested in the Director under this Order or other law in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

3. The Director of the Department of Environmental Quality shall utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

4. The Director of the Department of Environmental Quality may from time to time create one or more environmental science review boards to advise the Department of Environmental Quality and the Governor on scientific issues affecting the protection and management of Michigan's environment and natural resources, or affecting a program administered by the Department of Environmental Quality.

5. The position of the Director of the Department of Natural Resources and Environment as a member or chairperson of all of the following boards or commissions is transferred to the Director of the Department of Environmental Quality:

a. Member of the Michigan Supply Chain Management Development Commission created within the Department of Treasury under Section 3 of 2008 PA 398, MCL 125.1893. Nothing in this paragraph shall be construed to authorize the use of

state funds for the operations of the Michigan Supply Chain Management Development Commission.

b. Member and Chairperson of the Brownfield Redevelopment Board created under Section 20104a of the Natural Resources and Protection Act, 1994 PA 451, MCL 324.20104a, as modified by Executive Order 2003-18, MCL 445.2011, and Executive Order 2006-13, MCL 125.1991.

c. Ex officio member of the State Plumbing Board created within the Department of Energy, Labor, and Economic Growth under Section 13 of the State Plumbing Act, 2002 PA 733, MCL 338.3523.

d. Member of the Michigan Homeland Protection Board created within the Department of State Police under Executive Order 2003-6.

e. Member of the Michigan Citizen-Community Emergency Response Coordinating Council created within the Department of State Police under Executive Order 2007-18.

f. Member of the Great Lakes Wind Council created within the Department of Energy, Labor, and Economic Growth under Executive Order 2009-1.

C. Transfers from the Department of Natural Resources and Environment to the Department of Environmental Quality

1. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, personnel, equipment, and unexpended appropriations of the Department of Natural Resources and Environment that were transferred to it from the former Department of Environmental Quality by Executive Order 2009-45, are transferred by Type II transfer to the Department of Environmental Quality, including, but not limited to, the authority, powers, duties, functions, and responsibilities under all of the following:

a. Sections 2b and 2d of 1855 PA 105, MCL 21.142b and 21.142d ("surplus funds in treasury").

b. The Property Rights Preservation Act, 1996 PA 101, MCL 24.421 to 24.425.

c. The Fire Prevention Code, 1941 PA 207, MCL 29.1 to 29.34.

d. The Hazardous Materials Transportation Act, 1998 PA 138, MCL 29.472 to 29.480.

e. Section 8a of the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.508a.

f. Sections 7, 9, and 10 of the Land Bank Fast Track Act, 2003 PA 258, MCL 124.757, 124.759, and 124.760.

g. Section 10 of the Water Resource Improvement Tax Increment Finance Authority Act, 2008 PA 94, MCL 125.1780.

h. The Mobile Home Commission Act, 1987 PA 96, MCL 125.2301 to 125.2349.

i. The Brownfield Redevelopment Financing Act, 1996 PA 381, MCL 125.2651 to 125.2672.

j. The Safe Drinking Water Financial Assistance Act, 2000 PA 147, MCL 141.1451 to 141.1455.

k. Section 437 of the Michigan Business Tax Act, 2007 PA 436, MCL 208.1437.

l. Sections 9, 24, 34c, 34d, 53, 78g, and 78m of The General Property Tax Act, 1893 PA 206, MCL 211.9, 211.24, 211.34c, 211.34d, 211.53, 211.78g, and 211.78m.

m. Section 4 of 1951 PA 77, MCL 211.624 ("tax on low grade iron ore").

n. Sections 5 to 8 of 1963 PA 68, MCL 207.275 to 207.278 ("iron ore tax").

o. Section 811i of the Michigan Vehicle Code, 1949 PA 300, MCL 257.811i.

p. Section 204 of the Aeronautics Code of the State of Michigan, 1945 PA 327, MCL 259.204.

q. Section 423 of The Drain Code of 1956, 1956 PA 40, MCL 280.423.

r. Section 3 of the Julian-Stille Value-Added Act, 2000 PA 322, MCL 285.303.

s. Section 3 of 2008 PA 330, MCL 285.343 ("publication of information establishing alternative fuels facilities").

t. Section 4 of the Michigan Right to Farm Act, 1981 PA 93, MCL 286.474.

u. Section 14 of the Animal Industry Act, 1988 PA 466, MCL 287.714.

v. Sections 3, 6, 7, and 14 of the Privately Owned Cervidae Producers Marketing Act, 2000 PA 190, MCL 287.953, 287.956, 287.957, and 287.964.

w. Section 20 of the Grade A Milk Law of 2001, 2001 PA 266, MCL 288.490.

x. Sections 2 and 4 of the Michigan Agricultural Processing Act, 1998 PA 381, MCL 289.822 and 289.824.

y. Section 7107 of the Food Law of 2000, 2000 PA 92, MCL 289.7107.

z. Sections 9j and 10d of the Motor Fuels Quality Act, 1984 PA 44, MCL 290.649j and 290.650d.

aa. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.

bb. The Safe Drinking Water Act, 1976 PA 399, MCL 325.1001 to 325.1023.

cc. Sections 9601, 12103, 12501 to 12563, 12701 to 12771, 13501 to 13536, 13716, 13801 to 13831, and 16631 of the Public Health Code, 1978 PA 368, MCL 333.9601, 333.12103, 333.12501 to 333.12563, 333.12701 to 333.12771, 333.13501 to 333.13536, 333.13716, 333.13801 to 333.13831, and 333.16631.

dd. The Low-Level Radioactive Waste Authority Act, 1987 PA 204, MCL 333.26201 to 333.26226.

ee. Section 3f of 1976 Initiated Law 1, MCL 445.573f ("beverage containers").

ff. Sections 27 and 77 of the Clean, Renewable, and Efficient Energy Act, 2008 PA 295, MCL 460.1027 and 460.1077.

gg. Sections 71 and 71a of the Condominium Act, 1978 PA 59, MCL 559.171 and 559.171a.

hh. Sections 105, 116 to 118, 194, and 254 of the Land Division Act, 1967 PA 288, MCL 560.105, 560.116 to 560.118, 560.194, and 560.254.

ii. Executive Order 1995-18, MCL 324.99903.

jj. Executive Order 1996-1, MCL 330.3101.

kk. Executive Order 1996-2, MCL 445.2001.

ll. Executive Order 1997-2, MCL 29.451.

mm. Executive Order 1997-3, MCL 324.99904.

nn. Executive Order 1998-2, MCL 29.461.

oo. Executive Order 2007-6, MCL 324.99905.

pp. Executive Order 2007-7, MCL 324.99906.

qq. Executive Order 2007-8, MCL 324.99907.

rr. Executive Order 2007-10, MCL 324.99908.

ss. Executive Order 2007-13, MCL 324.99909.

tt. Executive Order 2007-21, MCL 324.99911.

uu. Executive Order 2007-29, MCL 324.99912.

vv. Executive Order 2007-33, MCL 324.99913.

ww. Executive Order 2007-34, MCL 324.99914.

xx. Executive Order 2009-13, MCL 324.99915.

yy. Executive Order 2009-17, MCL 333.26365.

zz. Executive Order 2009-26, MCL 324.99918.

aaa. Executive Order 2009-28, MCL 333.26367.

bbb. Section 7 of the Hazardous Materials Transportation Act, 1998 PA 138, MCL 29.477.

ccc. The Great Lakes Water Quality Bond Authorization Act, 2002 PA 396, MCL 324.95201 to 324.95208, to the extent that functions under or related to that act are currently performed by the Department of Natural Resources and Environment.

2. **Office of the Great Lakes.** The Office of the Great Lakes created under Section 32903 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.32903, subsequently transferred to the Department of Environmental Quality by Executive Order 1995-18, MCL 324.99903, and transferred by Type I transfer to the Department of Natural Resources and Environment by Executive Order 2009-45, is transferred by Type I transfer to the Department of Environmental Quality. The Director of the Office of the Great Lakes shall continue to serve as a member of the Governor's Cabinet.

3. **Low-Level Radioactive Waste Authority.** The Low-Level Radioactive Waste Authority, created within the Department of Management and Budget under Section 3 of the Low-Level Radioactive Waste Authority Act, 1987 PA 204, MCL 333.26203, transferred to the Department of Commerce under Executive Order 1991-23, MCL 333.26251, and to the Department of Environmental Quality under Executive Order 1996-2, MCL 445.2001, and

transferred to the Department of Natural Resources and Environment by Executive Order 2009-45, is transferred by Type I transfer to the Department of Environmental Quality.

V. MISCELLANEOUS TRANSFERS

A. References to the Department of Natural Resources and Environment in the following public acts adopted since Executive Order 2009-45 became effective shall be to the Department of Natural Resources created by this Order:

1. 2010 PA 35

2. 2010 PA 46

3. 2010 PA 70

B. References to the Department of Natural Resources and Environment in the following public acts adopted since Executive Order 2009-45 became effective shall be to the Department of Environmental Quality created by this Order:

1. 2010 PA 229

2. 2010 PA 231

3. 2010 PA 232

VI. IMPLEMENTATION OF TRANSFERS TO THE DEPARTMENT OF NATURAL RESOURCES AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A. The Director of the Department of Natural Resources and Environment shall immediately initiate coordination with departments and agencies within the executive branch of state government to facilitate the transfers made under this Order. State departments and agencies shall actively cooperate with the Director of the Department of Natural Resources and Environment as the Director performs duties and functions relating to the implementation of this Order. Except as otherwise provided in this Order, the Director of the Department of Natural Resources and Environment shall provide executive direction and supervision for the implementation of the transfers made by this Order.

B. The Director of the Department of Natural Resources shall administer the assigned functions transferred to that Department under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

C. The Director of the Department of Environmental Quality shall administer the assigned functions transferred to that Department under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

D. Any records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred by this Order are transferred to the Department of Natural Resources and the Department of Environmental Quality along with the transferred functions.

E. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

F. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

G. All rules, regulations, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

H. This Order shall not abate any criminal action commenced by this state prior to the effective date of this Order.

I. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

This Executive Order shall become effective on March 13, 2011, consistent with Section 2 of Article V of the Michigan Constitution of 1963.

Given under my hand and the Great Seal of the state of Michigan this 4th day of January in the year of our Lord, two thousand eleven.

RICHARD D. SNYDER
GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

FILED WITH SECRETARY OF STATE
ON 01-04-11 AT 2:34 pm

EXECUTIVE ORDER
No. 2009 — 45

DEPARTMENT OF AGRICULTURE
DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH
DEPARTMENT OF ENVIRONMENTAL QUALITY
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF TREASURY

CREATING THE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 8 of Article V of the Michigan Constitution of 1963 provides that each principal department of state government shall be under the supervision of the Governor, unless otherwise provided in the Constitution;

WHEREAS, Section 52 of Article IV of the Michigan Constitution of 1963 declares the conservation and development of the natural resources of this state to be of paramount public concern in the interest of the health, safety, and general welfare of the people;

WHEREAS, the people of the State of Michigan have consistently demonstrated the importance of both natural resource management and protection of Michigan's unique environmental qualities; and

WHEREAS, the conservation and development of the natural resources of this state can best be achieved through efficient and coordinated management of state policies, programs, and functions, including, but not limited to, the

implementation of an ecosystem-based strategy for resource management aimed at protecting and enhancing the sustainability, diversity, and productivity of the natural resources of this state;

WHEREAS, the consolidation of state government functions related to the natural resources and environment of this state will eliminate unnecessary duplication and facilitate more effective and efficient coordination of policies, programs, and functions related to natural resources and protecting the environment;

WHEREAS, the consolidation of state government functions related to the natural resources of this state and protection of the environment will better enable this state to conserve, manage, protect, and promote Michigan's environmental, natural resource, and related economic interests for current and future generations;

WHEREAS, the consolidation of state government functions related to the natural resources of the state will facilitate the effective use of our natural resources in a sustainable manner, preserve Michigan's rich outdoor heritage, provide quality and accessible public outdoor recreation, restore the Great Lakes and other degraded natural systems to ensure resiliency and sustainability, and promote stewardship of Michigan's natural resources through education, awareness, and action;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government and to reduce the number of principal state departments;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Commission of Agriculture" means the commission created under Section 1 of 1921 PA 13, MCL 285.1 and continued under Section 179 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.279.

C. "Commission of Natural Resources" means the commission created under Section 1 of 1921 PA 17, MCL 299.1, continued under Section 254 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.354, transferred to the Department of Natural Resources under Executive Order 1991-22, MCL 299.13, and

continued under Section 501 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501.

D. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 330, MCL 16.275.

E. "Department of Energy, Labor, and Economic Growth" means the principal department of state government created by Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed by Executive Order 1996-2, MCL 445.2001, by Executive Order 2003-18, MCL 445.2011, and by Executive Order 2008-20, MCL 445.2025.

F. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

G. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

H. "Department of Natural Resources" means the principal department of state government provided for by Section 250 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.350, Executive Order 1991-22, MCL 299.13, and Section 501 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501, as modified by Executive Order 1995-18, MCL 324.99903.

I. "Department of Natural Resources and Environment" or "Department" means the principal department of state government created under Section II of this Order.

J. "Department of Treasury" means the principal department of state government created under Section 75 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.175.

K. "Environmental Science Review Boards" means the boards provided for under Section II.C. of this Order.

L. "Executive Director of the Michigan Gaming Control Board" or "Executive Director" means the position created under Section 4 of the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.204.

M. "Michigan Gaming Control Board" means the board created under Section 4 of the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.204.

N. "Michigan Trails Advisory Council" or "Council" means the council created under Section II.D. of this Order.

O. "Natural Resources Commission" or "Commission" means the commission provided for by Section II.B. of this Order.

P. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

Q. "Type I transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

R. "Type II transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

S. "Type III transfer" means that phrase as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

A. Establishing the Department of Natural Resources and Environment as a Principal Department of State Government

1. The Department of Natural Resources and Environment is created as a principal department of state government. The Department shall protect and conserve the air, water, and other natural resources of this state.

2. The Director of the Department of Natural Resources and Environment shall be the head of the Department. Consistent with Section 3 of Article V of the Michigan Constitution of 1963, the Director of the Department shall be appointed by the Governor, subject to disapproval under Section 6 of Article V of the Michigan Constitution of 1963, and shall serve at the pleasure of the Governor.

3. The Director of the Department of Natural Resources and Environment shall establish the internal organization of the Department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the Department.

4. The Director of the Department of Natural Resources and Environment may promulgate rules and regulations as may be necessary to carry out functions vested in the Director under this Order or other law in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

5. The Director of the Department of Natural Resources and Environment may perform a duty or exercise a power conferred by law or executive order upon the Director of the Department at the time and to the extent the duty or power is delegated to the Director of the Department by law or order.

6. The Director of the Department of Natural Resources and Environment may appoint 1 or more deputy directors and other assistants and employees as are necessary to implement and effectuate the powers, duties, and functions vested in the Department under this Order or other law of this state. Deputies may perform the duties and exercise the duties as prescribed by the Director. The Director may delegate within the Department a duty or power conferred on the Director of the Department by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Director of the Department.

7. Decisions made by the Director of the Department of Natural Resources and Environment or persons to whom the Director has lawfully delegated decision-making authority shall be subject to judicial review as provided by law and in accordance with applicable court rules.

8. The Director of the Department of Natural Resources and Environment may utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

9. The position of the Director of the Department of Natural Resources as a member or chairperson of all of the following boards or commissions is transferred to the Director of the Department of Natural Resources and Environment:

a. *Ex officio* member of the Michigan Historical Commission under Section 1 of the Michigan Historical Commission Act, 1913 PA 271, MCL 399.1.

b. Member of the Michigan Freedom Trail Commission under Section 3 of the Michigan Freedom Trail Commission Act, 1998 PA 409, MCL 399.83.

c. *Ex officio* member of the Michigan Public Safety Communications System Advisory Board created under Executive Order 2005-8.

d. Member and Chairperson of the Michigan Commission on the Commemoration of the Bicentennial of the War of 1812 created by Executive Order 2007-51.

e. Member and Chairperson of the Michigan Center for Innovation and Reinvention Board created under Section IV of Executive Order 2009-36.

10. The position of the Director of the Department of Environmental Quality as a member or chairperson of all of the following boards or commissions is transferred to the Director of the Department of Natural Resources and Environment:

a. Member of the Michigan Supply Chain Management Development Commission created within the Department of Treasury under Section 3 of 2008 PA 398, MCL 125.1893. Nothing in this paragraph shall be construed to authorize the use of state funds for the operations of the Michigan Supply Chain Management Development Commission.

b. Member and Chairperson of the Brownfield Redevelopment Board created under Section 20104a of the Natural Resources and Protection Act, 1994 PA 451, MCL 324.20104a, as modified by Executive Order 2003-18, MCL 445.2011, and Executive Order 2006-13, MCL 125.1991.

c. *Ex officio* member of the State Plumbing Board created within the Department of Energy, Labor, and Economic Growth under Section 13 of the State Plumbing Act, 2002 PA 733, MCL 338.3523.

d. Member of the Michigan Homeland Protection Board created within the Department of State Police under Executive Order 2003-6.

e. Member of the Michigan Citizen-Community Emergency Response Coordinating Council created within the Department of State Police under Executive Order 2007-18.

f. Member of the Great Lakes Wind Council created within the Department of Energy, Labor, and Economic Growth under Executive Order 2009-1.

11. The position as an *ex officio* member of the State Plumbing Board held by an employee of the Department of Environmental Quality designated by the Director of the Department of Environmental Quality under Section 13 of the State Plumbing Act, 2002 PA 733, MCL 338.3523, is transferred to a qualified employee of the Department of Natural Resources and Environment designated by the Director of the Department of Natural Resources and Environment.

12. Subject to available funding, the Director of the Department of Natural Resources and Environment shall continue efforts to reduce the time for the processing and issuance of environmental permits and related customer service practices with the objective of achieving best-in-class permit processing time and improved customer service. As used in this paragraph, "environmental permits" means all permits and operating licenses issued by the Department. Environmental permits do not include hunting, fur harvester, or fishing licenses or other licenses or permits issued under any of the following:

a. Part 401 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40101 to 324.40120.

b. Part 413 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.41301 to 324.41325.

c. Part 421 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.42101 to 324.42106.

d. Part 427 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.42701 to 324.42714.

e. Part 435 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.43501 to 324.43561.

f. Part 441 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.44101 to 324.44106.

g. Part 445 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.44501 to 324.44526.

h. Part 457 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.45701 to 324.45711.

i. Part 459 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.45901 to 324.45908.

j. Part 473 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.47301 to 324.47362.

k. Part 515 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.51501 to 324.51514.

l. Part 741 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.74101 to 324.74126.

m. Part 761 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.76101 to 324.76118.

n. Part 801 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80101 to 324.80199.

o. Part 811 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81101 to 324.81150.

p. Part 821 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.82101 to 324.82160.

q. Section 509 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.509.

13. The Director of the Department of Natural Resources and Environment may establish advisory workgroups, advisory councils, or other ad hoc committees to provide citizen and other public input and to advise the Director or the Department on the exercise of the authority, powers, duties, functions, responsibilities vested in the Department of Natural Resources and Environment.

B. Natural Resources Commission

1. Except as otherwise provided in this Order, the Commission of Natural Resources is transferred by Type II transfer from the Department of Natural Resources to the Department of Natural Resources and Environment. The Commission of Natural Resources is renamed the Natural Resources Commission. Members of the Commission shall be knowledgeable about conservation and committed to the scientific management of natural resources. This paragraph does not affect the continued service or terms of office of the Commission of Natural Resources.

2. The Governor shall designate a member of the Natural Resources Commission to serve as its Chairperson at the pleasure of the Governor. The Commission may select a member of the Commission to serve as Vice-Chairperson of the Commission.

3. The Natural Resources Commission shall have and continue to exercise the authority, powers, duties, functions, and responsibilities previously vested in the Commission on Natural Resources under all of the following:

a. Part 435 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.43501 to 324.43561.

b. Section 40111a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40111a.

c. Section 40113a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40113a.

4. Except as otherwise provided in this Order, the final decision of the Natural Resources Commission in any of the matters assigned to it under Section II.B.3. of this Order shall be made by the Natural Resources Commission or a person to whom the Commission has lawfully delegated such authority. Decisions by the Natural Resources Commission shall be subject to judicial review as provided by law and in accordance with applicable court rules.

5. Except as otherwise provided in this Order, the Natural Resources Commission may utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

6. The Natural Resources Commission shall provide advice to the Director of the Department of Natural Resources and Environment on matters related to natural resources and conservation and may perform additional duties as provided by this Order, other law, or as requested by the Director or the Governor.

7. The Natural Resources Commission shall be staffed and assisted by personnel from the Department of Natural Resources and Environment, subject to available funding. Any budgeting, procurement, or related management functions of the Commission shall be performed under the direction and supervision of the Director of the Department.

8. The Natural Resources Commission shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.

9. A majority of the members of the Natural Resources Commission serving constitutes a quorum for the transaction of the Commission's business. The Commission shall act by a majority vote of its serving members.

10. The Natural Resources Commission shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Commission.

11. The Natural Resources Commission may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public. Subject to available funding, the Commission may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

12. Members of the Natural Resources Commission shall serve without compensation. Members of the Commission may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

13. The Natural Resources Commission may accept donations of labor, services, or other things of value from any public or private agency or person.

14. Members of the Natural Resources Commission shall refer all legal, legislative, and media contacts to the Department.

C. Environmental Science Review Boards

1. The Director of the Department of Natural Resources and Environment may from time to time create one or more environmental science review boards to advise the Department of Natural Resources and Environment and the Governor on scientific issues affecting the protection and management of Michigan's environment and natural resources, or affecting a program administered by the Department of Natural Resources and Environment.

2. A board created under Section II.C.1. of this Order shall consist of 7 members appointed by the Director, each of whom shall have expertise in one or more of the following areas: biological sciences; chemistry; ecological science; engineering; geology; physics; risk assessment; and other related disciplines.

3. A board created under Section II.C.1. of this Order shall assess the scientific issue before the board and shall determine whether the board has sufficient expertise to fully review the issue. Should that board determine that additional expertise would aid the board in its review, the board may request assistance from 1 or more persons with knowledge and expertise related to the subject of the specific scientific inquiry.

4. The Director of the Department of Natural Resources and Environment shall designate a member of a board created under Section II.C.1. of this Order to serve as the chairperson of that board at the pleasure of the Director. The board may select a member of the board to serve as Vice-Chairperson of the board.

5. A board created under Section II.C.1. of this Order shall be staffed and assisted by personnel from the Department of Natural Resources and Environment, subject to available funding. Any budgeting, procurement, or related management functions of the board shall be performed under the direction and supervision of the Director of the Department.

6. A board created under Section II.C.1. of this Order shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.

7. A majority of the members serving on a board created under Section II.C.1. of this Order constitutes a quorum for the transaction of the board's business, and such a board shall act by a majority vote of its serving members.

8. A board created under Section II.C.1. of this Order shall meet at the call of its chairperson and as may be provided in procedures adopted by the board.

9. A board created under Section II.C.1. of this Order may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive

comments from the public. The board may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, government agencies, and at institutions of higher education.

10. Members of a board created under Section II.C.1. of this Order shall serve without compensation. Members of a board created under Section II.C.1. of this Order may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

11. A board created under Section II.C.1. of this Order may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Board and the performance of its duties as the Director of the Department of Natural Resources and Environment deems advisable and necessary, in accordance with this Order, the relevant statutes, the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

12. A board created under Section II.C.1. of this Order may accept donations of labor, services, or other things of value from any public or private agency or person.

D. Michigan Trails Advisory Council

1. The Michigan Trails Advisory Council is created as an advisory body within the Department of Natural Resources and Environment.

2. The Council shall advise the Director of the Department of Natural Resources and Environment and the Governor on the creation, development, operation, and maintenance of motorized and non-motorized trails in this state, including, but not limited to, snowmobile, biking, equestrian, hiking, off-road vehicle, and skiing trails. In advising the Director and the Governor on the creation and development of motorized and non-motorized trails in this state, the Council shall seek to have the trails linked where ever possible. The Council may perform additional related duties as provided by this Order, other law, or as requested by the Director or the Governor.

3. The Council shall consist of 7 members appointed by the Governor. Members of the Council shall be appointed for a term of 4 years. A vacancy on the Council occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment for the balance of the unexpired term. A vacancy shall not affect the power of the remaining members to exercise the duties of the Council.

4. The Governor shall designate a member of the Council to serve as the Chairperson of the Council at the pleasure of the Governor. The Council may select a member of the Council to serve as Vice-Chairperson of the Council.

5. The Council shall be staffed and assisted by personnel from the Department of Natural Resources and Environment, subject to available funding. Any budgeting, procurement, or related management functions of the Council shall be performed under the direction and supervision of the Director of the Department.

6. The Council shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.

7. A majority of the members of the Council serving constitutes a quorum for the transaction of the Council's business. The Council shall act by a majority vote of its serving members.

8. The Council shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Council.

9. The Council may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive comments from the public. The Council may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, government agencies, and at institutions of higher education.

10. The Council may establish advisory workgroups, including, but not limited to, an advisory workgroup on snowmobiles, as deemed necessary by the Council to assist the Council in performing the duties and responsibilities of the Council.

11. Members of the Council shall serve without compensation. Members of the Council may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

12. The Council may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Council and the performance of its duties as the Director of the Department of Natural Resources and Environment deems advisable and necessary, in accordance with this Order, the relevant statutes, the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

13. The Council may accept donations of labor, services, or other things of value from any public or private agency or person.

14. Members of the Council shall refer all legal, legislative, and media contacts to the Department of Natural Resources and Environment.

III. DEPARTMENT OF NATURAL RESOURCES

A. Transfers from the Department of Natural Resources

1. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, personnel, equipment, property, and budgetary resources of the Department of Natural Resources are transferred by Type II transfer to the Department of Natural Resources and Environment, including, but not limited to, the authority, powers, duties, functions, and responsibilities of the Department of Natural Resources under all of the following:

a. 1974 PA 359, MCL 3.901 to 3.910 ("Sleeping Bear Dunes National Lakeshore").

b. The Executive Organization Act of 1965, 1965 PA 380, MCL 16.350 to 16.360.

c. The Property Rights Preservation Act, 1996 PA 101, MCL 24.421 to 24.425.

d. Section 2 of the Methamphetamine Reporting Act, 2006 PA 262, MCL 28.192.

e. Section 7 of the Hazardous Materials Transportation Act, 1998 PA 138, MCL 29.477.

f. Section 4c of 1913 PA 172, MCL 32.224c ("Crawford County land").

g. Section 48 of State Employees' Retirement Act, 1943 PA 240, MCL 38.48.

h. Section 8b of the Township and Village Public Improvement and Public Service Act, 1923 PA 116, MCL 41.418b.

i. Section 26 of The Home Rule Village Act, 1909 PA 278, MCL 78.26.

j. Section 10 of 1957 PA 185, MCL 123.740 ("county department and board of public works").

k. 1990 PA 182, MCL 141.1301 to 141.1304 ("county redistribution of federal payments").

l. Sections 7g and 7jj of The General Property Tax Act, 1893 PA 206, MCL 211.7g and MCL 211.7jj.

m. 1943 PA 92, MCL 211.371 to 211.375 ("withholding lands from sale").

n. Section 18 of 1909 PA 283, MCL 224.18 ("public highways and private roads").

o. Sections 3 and 4 of 1927 PA 341, MCL 247.43 and 247.44 ("discontinuation of highway bordering lake or stream").

p. Section 4 of 1941 PA 359, MCL 247.64 ("noxious weeds").

q. Sections 602a and 660 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.602a and 257.660.

r. Section 4 of the Michigan Aquaculture Development Act, 1996 PA 199, MCL 286.874.

s. 1976 PA 308, MCL 287.251 to 287.258 ("disposal of livestock").

t. Section 14 of the Animal Industry Act, 1988 PA 466, MCL 287.714.

u. Privately Owned Cervidae Producers Marketing Act, 2000 PA 190, MCL 287.951 to 287.969.

v. 1986 PA 109, MCL 300.21 to 300.22 ("conservation officers").

w. The Right to Forest Act, 2002 PA 676, MCL 320.2031 to 320.2036.

x. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.

y. The Clean Michigan Initiative Act, 1998 PA 284, MCL 324.95101 to 324.95108.

z. 2008 PA 290, MCL 324.95151 to 324.95155 ("control of gray wolves").

aa. 2008 PA 318, MCL 324.95161 to 324.95167 ("removal, capture, or lethal control of gray wolf").

bb. The Great Lakes Water Quality Bond Authorization Act, 2002 PA 396, MCL 324.95201 to 324.95208.

cc. The Michigan Civilian Conservation Corps Act, 1984 PA 22, MCL 409.301 to 409.314.

dd. Sections 167a and 167c of The Michigan Penal Code, 1931 PA 328, MCL 750.167a and 750.167c.

ee. Executive Order 1973-2, MCL 299.11.

ff. Executive Order 1973-12, MCL 125.241.

gg. Executive Order 1988-4, MCL 299.12.

hh. Executive Order 1991-31, MCL 299.13.

ii. Executive Order 1995-7, MCL 324.99901.

jj. Executive Order 2004-3, MCL 287.981.

kk. Executive Order 2007-14, MCL 324.99910.

ll. Executive Order 2009-14, MCL 324.99916.

mm. Executive Order 2009-15, MCL 324.99917.

2. The powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Department of Natural Resources transferred to the Department of Natural Resources and Environment under Section III of this Order shall include, without limitation, the powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Department of Natural Resources relating to invasive species management.

3. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Director of the Department of Natural Resources are transferred to the Director of the Department of Natural Resources and Environment.

4. The Department of Natural Resources is abolished.

5. After the effective date of this Order, statutory and other legal references to the Department of Natural Resources shall be deemed references to the Department of Natural Resources and Environment.

B. Citizens Committee for Michigan State Parks

1. The powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Citizens Committee for Michigan State Parks created under Section 74102a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.74102a, are transferred from the Department of Natural Resources to the Natural Resources Commission provided for under Section II of this Order.

2. The Citizens Committee for Michigan State Parks is abolished.

C. Mackinac Island State Park Commission

1. The Mackinac Island State Park Commission provided for under 1958 PA 201, MCL 318.201 to 318.208, transferred under Section 256 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.356, and created by Section 76503 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.76503, and transferred to the Department of Natural Resources under Executive Order 2009-36, is transferred by Type I transfer from the Department of Natural Resources to the Department of Natural Resources and Environment, including, but not limited to, the authority, powers, duties, functions, and responsibilities of the Commission under all of the following:

a. Sections 76501 to 76509, 76701 to 76709, 76901 to 76903, 77101, 77301, 77302, 77701 to 77704, and 77901 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.76501 to 324.76509, 324.76701 to 324.76709, 324.76901 to 324.76903, 324.77101, 324.77301, 324.77302, 324.77701 to 324.77704, and 324.77901.

b. Section 511 of the Michigan Liquor Control Code of 1998, 58 PA 1998, MCL 436.1511.

D. Michigan Forest Finance Authority

1. The Michigan Forest Finance Authority created under Section 50503 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.50503, is transferred by Type I transfer from the Department of Natural Resources to the Department of Natural Resources and Environment.

2. The position of the Director of the Department of Natural Resources or his or her designee from within that Department as a member of the Board of Directors of the Michigan Forest Finance Authority under Section 50504 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.50504, is transferred to the Director of the Department of Natural Resources and Environment or his or her designee from within that Department.

E. Michigan Natural Resources Trust Fund Board

1. The Michigan Natural Resources Trust Fund Board, created under Section 1905 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.1905, is transferred by Type I transfer from the Department of Natural Resources to the Department of Natural Resources and Environment.

2. The position of the Director of the Department of Natural Resources or a member of the Commission on Natural Resources as a member of the Michigan Natural Resources Trust Fund Board under Section 1905 of the Natural Resources

and Environmental Protection Act, 1994 PA 451, MCL 324.1905, is transferred to the Director of the Department of Natural Resources and Environment or his or her designee from within the Department, including, but not limited to, a member of the Natural Resources Commission.

F. Michigan Snowmobile Advisory Committee

1. The powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Michigan Snowmobile Advisory Committee created within the Department of Natural Resources under Section 82102a of the Natural Resources and Environmental Protection Act of 1994, 1994 PA 324.82102a, are transferred to the Michigan Trails Advisory Council created under Section II.D. of this Order.

2. The Michigan Snowmobile Advisory Committee is abolished.

G. Michigan Trailways Advisory Council

1. The powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Michigan Trailways Advisory Council created within the Department of Natural Resources under Section 72110 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.72110, are transferred are transferred to the Michigan Trails Advisory Council created under Section II.D. of this Order.

2. The Michigan Trailways Advisory Council is abolished.

H. Water Resources Conservation Advisory Council

1. The Water Resources Conservation Advisory Council created within the Department of Natural Resources under Section 32803 of the Natural Resources and Environmental Protection Act of 1994, 1994 PA 324.32803, which was required to complete its final report by August 8, 2009, is transferred by Type III transfer from the Department of Natural Resources to the Natural Resources Commission provided for under Section II of this Order.

2. The Water Resources Conservation Advisory Council is abolished.

IV. DEPARTMENT OF ENVIRONMENTAL QUALITY

A. Transfers from the Department of Environmental Quality

1. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Department of Environmental Quality are transferred by Type II transfer to the Department of Natural Resources and Environment, including, but

not limited to, the authority, powers, duties, functions, and responsibilities of the Department of Environmental Quality under all of the following:

a. Sections 2b and 2d of 1855 PA 105, MCL 21.142b and 21.142d ("surplus funds in treasury").

b. The Property Rights Preservation Act, 1996 PA 101, MCL 24.421 to 24.425.

c. Fire Prevention Code, 1941 PA 207, MCL 29.1 to 29.34.

d. The Hazardous Materials Transportation Act, 1998 PA 138, MCL 29.472 to 29.480.

e. Section 8a of the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.508a.

f. Sections 7, 9, and 10 of the Land Bank Fast Track Act, 2003 PA 258, MCL 124.757, 124.759, and 124.760.

g. Section 10 of the Water Resource Improvement Tax Increment Finance Authority Act, 2008 PA 94, MCL 125.1780.

h. The Mobile Home Commission Act, 1987 PA 96, MCL 125.2301 to 125.2349.

i. The Brownfield Redevelopment Financing Act, 1996 PA 381, MCL 125.2651 to 125.2672.

j. The Safe Drinking Water Financial Assistance Act, 2000 PA 147, MCL 141.1451 to 141.1455.

k. Section 437 of the Michigan Business Tax Act, 2007 PA 436, MCL 208.1437.

l. Sections 9, 24, 34c, 34d, 53, 78g, and 78m of The General Property Tax Act, 1893 PA 206, MCL 211.9, 211.24, 211.34c, 211.34d, 211.53, 211.78g, and 211.78m.

m. Section 4 of 1951 PA 77, MCL 211.624 ("tax on low grade iron ore").

n. Sections 5 to 8 of 1963 PA 68, MCL 207.275 to 207.278 ("iron ore tax").

o. Section 811i of the Michigan Vehicle Code, 1949 PA 300, MCL 257.811i.

p. Section 204 of the Aeronautics Code of the State of Michigan, 1945 PA 327, MCL 259.204.

q. Section 423 of The Drain Code of 1956, 1956 PA 40, MCL 280.423.

r. Section 3 of the Julian-Stille Value-Added Act, 2000 PA 322, MCL 285.303.

s. Section 3 of 2008 PA 330, MCL 285.343 ("publication of information establishing alternative fuels facilities").

t. Section 4 of the Michigan Right to Farm Act, 1981 PA 93, MCL 286.474.

u. Section 14 of the Animal Industry Act, 1988 PA 466, MCL 287.714.

v. Sections 3, 6, 7, and 14 of the Privately Owned Cervidae Producers Marketing Act, 2000 PA 190, MCL 287.953, 287.956, 287.957, and 287.964.

w. Section 20 of the Grade A Milk Law of 2001, 2001 PA 266, MCL 288.490.

x. Sections 2 and 4 of the Michigan Agricultural Processing Act, 1998 PA 381, MCL 289.822 and 289.824

y. Section 7107 of the Food Law of 2000, 2000 PA 92, MCL 289.7107.

z. Sections 9j and 10d of the Motor Fuels Quality Act, 1984 PA 44, MCL 290.649j and 290.650d.

aa. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.

bb. The Safe Drinking Water Act, 1976 PA 399, MCL 325.1001 to 325.1023.

cc. Sections 9601, 12103, 12501 to 12563, 12701 to 12771, 13501 to 13536, 13716, 13801 to 13831, and 16631 of the Public Health Code, 1978 PA 368, MCL 333.9601, 333.12103, 333.12501 to 333.12563, 333.12701 to 333.12771, 333.13501 to 333.13536, 333.13716, 333.13801 to 333.13831, and 333.16631.

dd. Low-Level Radioactive Waste Authority, 1987 PA 204, MCL 333.26201 to 333.26226.

ee. Section 3f of 1976 Initiated Law 1, MCL 445.573f ("beverage containers").

ff. Sections 27 and 77 of the Clean, Renewable, and Efficient Energy Act, 2008 PA 295, MCL 460.1027 and 460.1077.

gg. Sections 71 and 71a of the Condominium Act, 1978 PA 59, MCL 559.171 and 559.171a.

hh. Sections 105, 116 to 118, 194, and 254 of the Land Division Act, 1967 PA 288, MCL 560.105, 560.116 to 560.118, 560.194, and 560.254.

ii. Executive Order 1995-18, MCL 324.99903.

jj. Executive Order 1996-1, MCL 330.3101.

kk. Executive Order 1996-2, MCL 445.2001.

ll. Executive Order 1997-2, MCL 29.451.

mm. Executive Order 1997-3, MCL 324.99904.

nn. Executive Order 1998-2, MCL 29.461.

oo. Executive Order 2007-6, MCL 324.99905.

pp. Executive Order 2007-7, MCL 324.99906.

qq. Executive Order 2007-8, MCL 324.99907.

rr. Executive Order 2007-10, MCL 324.99908.

ss. Executive Order 2007-13, MCL 324.99909.

tt. Executive Order 2007-21, MCL 324.99911.

uu. Executive Order 2007-29, MCL 324.99912.

vv. Executive Order 2007-33, MCL 324.99913.

ww. Executive Order 2007-34, MCL 324.99914.

xx. Executive Order 2009-13, MCL 324.99915.

yy. Executive Order 2009-17, MCL 333.26365.

zz. Executive Order 2009-26, MCL 324.99918.

aaa. Executive Order 2009-28, MCL 333.26367.

bbb. Section 11117 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.11117, as transferred under Section IV.D. of this Order.

2. The powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Department of Environmental Quality transferred to the Department of Natural Resources and Environment under Section IV of this Order shall include, without limitation, the powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources of the Department of Environmental Quality relating to invasive species management.

3. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Director of the Department of Environmental Quality are transferred to the Director of the Department of Natural Resources and Environment.

4. The Department of Environmental Quality is abolished.

5. After the effective date of this Order, statutory and other legal references to the Department of Environmental Quality shall be deemed references to the Department of Natural Resources and Environment.

B. Office of the Great Lakes

1. The Office of the Great Lakes created under Section 32903 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.32903, and subsequently transferred to the Department of Environmental Quality by Executive Order 1995-18, MCL 324.99903, is transferred by Type I transfer from the Department of Environmental Quality to the Department of Natural Resources and Environment.

2. The Director of the Office of the Great Lakes shall continue to serve as a member of the Governor's Cabinet.

C. Low-Level Radioactive Waste Authority

1. The Low-Level Radioactive Waste Authority, created within the Department of Management and Budget under Section 3 of the Low-Level Radioactive Waste Authority Act, 1987 PA 204, MCL 333.26203, and transferred to the Department of Commerce under Executive Order 1991-23, MCL 333.26251, and to the Department of Environmental Quality under Executive Order 1996-2, MCL 445.2001, is transferred by Type I transfer from the Department of Environmental Quality to the Department of Natural Resources and Environment.

2. The authority, powers, duties, and functions of the Commissioner of the Low-Level Radioactive Waste Authority are transferred by Type III transfer to

the Department of Natural Resources and Environment. The Director of the Department of Natural Resources and Environment, or his or her designee from within the Department, may perform the functions of the Commissioner of the Low-Level Radioactive Waste Authority or may administer the assigned functions of the Commissioner of the Low-Level Radioactive Waste Authority in other ways to promote efficient administration.

D. Site Review Board

1. The Site Review Board created within the Department of Environmental Quality under Section 11117 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.11117, is transferred by Type III transfer to the Department of Environmental Quality.

2. The Site Review Board is abolished.

V. DEPARTMENT OF AGRICULTURE

A. Michigan Commission of Agriculture

1. The Michigan Commission of Agriculture is transferred by Type II transfer to the Department of Agriculture. This paragraph does not affect the continued service or terms of office of the Michigan Commission of Agriculture.

2. Upon the effective date of this Order, the Director of the Department of Agriculture shall be the head of the Department. Consistent with Section 3 of Article V of the Michigan Constitution of 1963, after the effective date of this Order, any vacancy in the office of Director of the Department of Agriculture shall be filled by appointment of the Governor, subject to disapproval under Section 6 of Article V of the Michigan Constitution of 1963, and the Director of the Department of Agriculture shall serve at the pleasure of the Governor.

B. Agricultural Preservation Fund Board

1. The Agricultural Preservation Fund Board created within the Department of Agriculture under Section 36204 of the Natural Resources and Environmental Protection Act 1994 PA 451, MCL 324.36204, is transferred by Type III transfer to the Department of Agriculture.

2. The Agricultural Preservation Fund Board is abolished.

C. Michigan Family Farm Development Authority

1. The Michigan Family Farm Development Authority created within the Department of Agriculture under Section 3 of the Michigan Family Farm

Development Act, 1982 PA 220, MCL 285.253, is transferred by Type III transfer to the Department of Agriculture.

2. The Michigan Family Farm Development Authority is abolished.

D. Pesticide Advisory Committee

1. The Pesticide Advisory Committee created within the Department of Agriculture under Section 8326 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.8326, is transferred by Type III transfer to the Department of Agriculture.

2. The Pesticide Advisory Committee is abolished.

3. The Director of the Department of Agriculture may establish advisory workgroups, advisory councils, or other ad hoc committees to provide citizen and other public input and to advise the Director or the Department on the exercise of authority, powers, duties, functions, responsibilities vested in the Department of Agriculture, including, but not limited to, authority, powers, duties, functions, responsibilities vested in the Department of Agriculture under this Section V.D.

E. Office of Racing Commissioner

1. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Office of Racing Commissioner created within the Department of Agriculture under Section 3 of the Horse Racing Law of 1995, 1995 PA 279, MCL 431.303, are transferred from the Department of Agriculture to the Michigan Gaming Control Board, including, but not limited to, the authority, powers, duties, functions, records, personnel, property, independent balances of appropriations, allocations, or other funds under all of the following:

a. The Horse Racing Law of 1995, 1995 PA 279, MCL 431.301 to 431.336.

b. 1951 PA 90, MCL 431.252 to 431.257.

c. Section 12 of the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.212.

d. Sections 4 and 5 of the Compulsive Gaming Prevention Act, 1997 PA 70, MCL 432.254 and 432.255.

2. The Office of Racing Commissioner and the position of Racing Commissioner are abolished.

3. The authority, powers, duties, functions, and personnel transferred under Section V.E. of this Order shall be performed under the direction and supervision of the Executive Director of the Michigan Gaming Control Board.

4. The Executive Director of the Michigan Gaming Control Board shall perform all the functions and exercise the powers of the Racing Commissioner, including, but not limited to, possessing the final authority over contested cases, licensing, and rule promulgation.

5. Except as otherwise provided in Section V.E. of this Order, the Executive Director of the Michigan Gaming Control Board shall provide executive direction and supervision for the implementation of all transfers under Section V.E. of this Order.

6. Internal organizational changes shall be made as may be administratively necessary to complete the realignment of responsibilities necessary under Section V.E. of this Order.

7. The authority, powers, duties, functions, and responsibilities transferred under Section V.E. of this Order shall be administered by the Executive Director of the Michigan Gaming Control Board in such ways as to promote efficient administration.

8. The Executive Director of the Michigan Gaming Control Board may in writing delegate a duty or power conferred on the Executive Director under Section V.E. of this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director.

9. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Office of Racing Commissioner for the activities, powers, duties, functions, and responsibilities transferred under Section V.E. of this Order are transferred to the Michigan Gaming Control Board.

10. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of Section V.E. of this Order.

11. Departments, agencies, and state officers within the executive branch of state government shall fully and actively cooperate with the Executive Director of the Michigan Gaming Control Board in the implementation of Section V.E. of this Order. The Executive Director may request the assistance of other departments, agencies, and state officers with respect to personnel, budgeting, procurement,

telecommunications, information systems, legal services, and other issues related to implementation of the transfers under Section V.E. of this Order, and the departments and agencies shall provide the assistance requested.

VI. DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH

A. Upon the effective date of this Order, the State Interagency Council on Spanish-Speaking Affairs created under Section 6 of 1975 PA 164, MCL 18.306, transferred to the Director of the Department of Career Development by Type III transfer under Executive Order 2000-5, MCL 18.311, and restored within the Department of Energy, Labor, and Economic Growth under Executive Order 2003-18, MCL 445.2011, shall consist of all of the following members:

1. The Attorney General or his or her designee from within the Department of Attorney General.

2. The Director of the Department of Agriculture or his or her designee from within the Department of Agriculture.

3. The Director of the Department of Civil Rights or his or her designee from within the Department of Civil Rights.

4. The Director of the Department of Community Health or his or her designee from within the Department of Community Health.

5. The Director of the Department of Corrections or his or her designee from within the Department of Corrections.

6. The Director of the Department of Human Services or his or her designee from within the Department of Human Services.

7. The Director of the Department of Information Technology or his or her designee from within the Department of Information Technology.

8. The Director of the Department of Energy, Labor, and Economic Growth or his or her designee from within the Department of Energy, Labor, and Economic Growth.

9. The Director of the Department of Management and Budget or his or her designee from within the Department of Management and Budget.

10. The Director of the Department of Natural Resources and Environment or his or her designee from within the Department of Natural Resources and Environment.

11. The Executive Director of the Women's Commission.

12. The Executive Director of the Michigan State Housing Development Authority or his or her designee from within the Michigan State Housing Development Authority.

13. The President of the Michigan Strategic Fund or his or her designee from within the Michigan Strategic Fund.

14. The State Personnel Director or his or her designee from within the Civil Service Commission.

15. The State Treasurer or his or her designee from within the Department of Treasury.

16. The Secretary of State or his or her designee from within the Department of State.

17. The Superintendent of Public Instruction or his or her designee from within the Department of Education.

VII. IMPLEMENTATION OF TRANSFERS TO DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

A. The Governor shall designate an individual to serve as the Transition Manager for the implementation of transfers to the Department of Natural Resources and Environment. The Transition Manager shall immediately initiate coordination with departments and agencies within the executive branch of state government to facilitate the transfers to the Department under this Order. State departments and agencies shall actively cooperate with the transition manager as the Transition Manager performs duties and functions relating to the implementation of this Order. Except as otherwise provided in this Order, the transition manager shall provide executive direction and supervision for the implementation of the transfers to the Department under this Order.

B. The functions transferred to the Department of Natural Resources and Environment under this Order shall be administered under the direction and supervision of the Director of the Department.

C. The Director of the Department of Natural Resources and Environment shall administer the assigned functions transferred to the Department under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order based upon initial recommendations from the transition manager.

D. Except as otherwise provided in this Order, any authority, duties, powers, functions, and responsibilities transferred to the Department of Natural

Resources and Environment under this Order, and not otherwise mandated by law, may in the future be reorganized to promote efficient administration by the Director of the Department.

E. Any records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred to the Department of Natural Resources and Environment under this Order are transferred to the Department of Natural Resources and Environment.

VIII. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. All rules, regulations, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

D. This Order shall not abate any criminal action commenced by this state prior to the effective date of this Order.

E. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements of Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Executive Order, except for Section IV.D. of this Order, are effective January 17, 2010 at 12:01 a.m. Section IV.D of this Order is effective 60 calendar days after the filing of this Order, consistent with Section 2 of Article V of the Michigan Constitution of 1963.

Given under my hand and the Great Seal of the State of Michigan this 8th day of October in the year of our Lord, two thousand nine.

JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR

JOHN ENGLER
GOVERNOR

EXECUTIVE ORDER
No. 1995 - 18

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

EXECUTIVE REORGANIZATION

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided in the Constitution; and

WHEREAS, the people of the State of Michigan have consistently demonstrated the importance they place on both natural resource management and protection of Michigan's unique environmental qualities; and

WHEREAS, maintaining a quality environment and sound management of our unique natural resources are of paramount importance to the Governor of the Great Lakes State; and

WHEREAS, natural resource management and environmental regulatory programs face a growing number of challenges to ensure that Michigan's quality of life is enhanced for current and future generations; and

WHEREAS, events have demonstrated the need to address environmental issues on a watershed basis and place additional focus on nonpoint sources of pollution; and

WHEREAS, environmental protection and resource management often have competing priorities that can best be addressed if these critical functions have cabinet level status as separate departments; and

WHEREAS, certain functions, duties and responsibilities currently assigned to the Michigan Department of Natural Resources can be more effectively carried out by the director of a new principal department; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. The Michigan Department of Environmental Quality is created as a principal department within the Executive Branch.

2. The Director of the Michigan Department of Environmental Quality shall be appointed by the Governor and shall serve at the pleasure of the Governor.

3. All the statutory authority, powers, duties, functions and responsibilities of the:

a. Air Quality Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 451 of the Public Acts of 1994, as amended, being Section 324.5501 et seq. of the Michigan Compiled Laws;

b. Environmental Response Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 451 of the Public Acts of 1994, as amended, being Section 324.20101 et seq. of the Michigan Compiled Laws;

c. Environmental Assistance Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 451 of the Public Acts of 1994, as amended, being Sections 324.3101 et seq., 324.4101 et seq., 324.4901 et seq., 324.5301 et seq., 324.5701 et seq., 324.14301 et seq. and 324.14501 et seq. of the Michigan Compiled Laws;

d. Surface Water Quality Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 451 of the Public Acts of 1994, as amended, being Section 324.3101 et seq., 324.4101 et seq., 324.4301 et seq. and 324.5101 et seq. of the Michigan Compiled Laws;

e. Underground Storage Tank Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Executive Order 1994-4 and Act No. 451 of the Public Acts of 1994,

as amended, being Sections 324.21101 et seq., 324.21301 et seq. and 324.21501 et seq. of the Michigan Compiled Laws;

f. Waste Management Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 451 of the Public Acts of 1994, as amended, being Sections 324.3101 et seq., 324.5101 et seq., 324.11101 et seq., 324.11301 et seq., 324.11501 et seq., 324.11701 et seq., 324.12101 et seq., 324.14701 et seq., 324.16101 et seq., 324.16301 et seq., 324.16501 et seq., 324.16701 et seq., 324.16901 et seq., 324.17101 et seq. and 324.19101 et seq. of the Michigan Compiled Laws;

g. Office of Administrative Hearings, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Executive Order 1995-4;

h. Office of the Great Lakes, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 59 of the Public Acts of 1995, being Sections 324.32903, 324.32904 and 324.33101 et seq. of the Michigan Compiled Laws;

I. Coordinator of Environmental Education, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 310 of the Public Acts of 1994, being Section 299.34 of the Michigan Compiled Laws; and

j. Environmental Education Advisory Committee, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 310 of the Public Acts of 1994, being Section 299.35 of the Michigan Compiled Laws

of the Michigan Department of Natural Resources, are hereby transferred to the Director of the Michigan Department of Environmental Quality by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

4. All the statutory authority, powers, duties, functions and responsibilities of the Environmental Investigations Unit of the Law Enforcement Division of the Michigan Department of Natural Resources are transferred to the Director of the Michigan Department of Environmental Quality by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

5. All the statutory authority, powers, duties, functions and responsibilities of the Geological Survey Division, including but not limited to the relevant authority, powers, duties, functions and responsibilities set forth in Chapter 3 of Act No. 57 of the Public Acts of 1995, with the exception of the geological resource evaluation and mapping program and the groundwater database program of the

Michigan Department of Natural Resources, are transferred to the Director of the Michigan Department of Environmental Quality by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

6. All the statutory authority, powers, duties, functions and responsibilities of the Land and Water Management Division, including but not limited to the authority, powers, duties, functions and responsibilities set forth in Act No. 59 of the Public Acts of 1995, being Sections 324.30101 et seq., 324.30301 et seq., 324.30701 et seq., 324.32301 et seq., 324.32501 et seq., 324.33701 et seq. and 324.35301 et seq., of the Michigan Compiled Laws, with the exception of the farmland and open space preservation program, natural rivers program, and the Michigan information resource inventory system of the Michigan Department of Natural Resources, are transferred to the Director of the Michigan Department of Environmental Quality by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

7. All authority to make decisions regarding administrative appeals associated with the transfers referred to in paragraphs 3, 5 and 6 above, which reside with the Commission of Natural Resources or the Michigan Department of Natural Resources, are transferred to the Director of the Michigan Department of Environmental Quality. In the event the Director is directly involved in an initial decision which is subsequently appealed through the Office of Administrative Hearings and to the Director for a decision, the Director shall appoint an individual within or outside the Michigan Department of Environmental Quality to decide the appeal.

8. All authority to establish general policies associated with the functions transferred in paragraphs 3, 4, 5 and 6 above, which reside with the Commission of Natural Resources or the Michigan Department of Natural Resources, are transferred to the Director of the Michigan Department of Environmental Quality.

9. All authority related to paragraphs 3, 4, 5 and 6 above, which reside with the Director, the Office of Director, the Deputy Director of Environmental Protection or the Office of the Deputy Director of Environmental Protection of the Michigan Department of Natural Resources, are transferred to the Director of the Michigan Department of Environmental Quality. This transfer shall specifically include the authority, duties, powers, functions and responsibilities of the Director of the Department of Natural Resources and/or the Department of Natural Resources set forth in Act No. 57 of the Public Acts of 1995, being Section 324.61501 et seq. of the Michigan Compiled Laws.

10. The Director of the Michigan Department of Environmental Quality shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Department of Environmental Quality, and all related prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications,

shall be transferred to the Director of the Michigan Department of Environmental Quality consistent with Executive Order 1995-6.

11. The Director of the Michigan Department of Environmental Quality may perform a duty or exercise a power conferred by law or this Order upon the Director of the Michigan Department of Environmental Quality at the time and to the extent the duty or power is delegated to the Director of the Michigan Department of Environmental Quality by law or by this Order.

12. The Director of the Michigan Department of Environmental Quality may by written instrument delegate a duty or a power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent that such duty or power is delegated by the Director.

13. Decisions made by the Director of the Michigan Department of Environmental Quality or persons to whom the Director has lawfully delegated decision-making authority, pursuant to this Order relating to natural resource management or environmental protection, shall be final when reduced to writing and delivered to all affected persons, unless otherwise provided by law.

14. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available to or to be made available to the activities, powers, duties, functions and responsibilities transferred to the Michigan Department of Environmental Quality by this Order are transferred to the Michigan Department of Environmental Quality.

15. The Directors of the Michigan Department of Natural Resources and the Michigan Department of Environmental Quality shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

16. The Director of the Michigan Department of Natural Resources and the Deputy Director for Environmental Protection of the Michigan Department of Natural Resources shall immediately initiate coordination to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Department of Environmental Quality.

17. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

18. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective October 1, 1995, at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 31st day of July, in the Year of our Lord, One Thousand Nine Hundred Ninety-Five.

GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

Filed with Secretary of State
on 8-1-95 at 10:35 AM

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MICHIGAN DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT

INTEROFFICE COMMUNICATION

EXECUTIVE ORDER 2009-45
DELEGATION LETTER

Letter No.: AQD-55-12
Effective Date: October 1, 1995
Revised Date: May 8, 2001
Revised Date: August 23, 2010

TO: All Unit Supervisors

FROM: Rebecca A. Humphries, Director

SUBJECT: Delegation Pursuant to Executive Order 2009-45 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451) – Compliance and Enforcement

I hereby delegate all statutory authority, powers, duties, functions, and responsibilities of Part 55, as outlined below, unless circumstances in individual cases warrant a decision at a higher level. The powers and duties are delegated for the purposes of administering the program pursuant to statute and rules. Authorities, powers, duties, functions, and responsibilities of Part 55 that are reserved for the director or a deputy director of the Department of Natural Resources and Environment (DNRE) and not delegated are at the end of this document.

This delegation includes anyone acting in the capacity of the position named in the delegation below. Any authority or power delegated to a subordinate position may be exercised by a position higher in that position's chain of command on a case-by-case basis, as circumstances warrant.

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
1. Authority to enter into consent orders or voluntary agreements.	MCL 324.5503(f) MCL 324.5518 MCL 324.5528	Chief of the AQD or Assistant Chief of the AQD
2. Authority to enter and inspect property to determine compliance.	MCL 324.5503(i) MCL 324.5526	AQD staff
3. Authority to investigate and act upon complaints regarding air pollution.	MCL 324.5503(j)	AQD staff
4. Authority to do such other things as necessary to enforce the Act, rules, permit and orders.	MCL 324.5503(u)	Chief of the AQD
5. Maintain a list of proposed consent order public notices.	MCL 324.5511(2)	AQD Enforcement Unit Supervisor

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
6. Authority to order immediate shut-down if there is imminent and substantial endangerment to public health, safety, or welfare.	MCL 324.5518	Deputy Director of the DNRE or Chief of the AQD
7. Assess administrative fine for violations of Act, rule, permit requirement, or terms of an order.	MCL 324.5529	Chief of the AQD or Assistant Chief of the AQD
8. Authority to suspend enforcement to an individual or company.	MCL 324.5535	Chief of the AQD
9. Authority to grant, revoke or modify variances to the requirements of the act.	MCL 324.5536 MCL 324.5537 MCL 324.5538 MCL 324.5539	Chief of the AQD
10. Authority to enforce the act in areas where local governments fail to implement local ordinances.	MCL 324.5542	Chief of the AQD
11. Authority to provide public notice of proposed and final declaratory rulings.	R 336.2606(3)	Chief of the AQD
12. Authority to issue a declaratory ruling.	R 336.2607	Chief of the AQD

Exceptions to delegation: The authority to institute court proceedings to compel compliance and bring appropriate legal action to enforce the Act and rules will not be delegated and will remain with the Director of the DNRE.

This delegation will be in effect until further notice.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT

INTEROFFICE COMMUNICATION

EXECUTIVE ORDER 2009-45
DELEGATION LETTER

Letter No.: AQD-55-02
Effective Date: October 1, 1995
Revised Date: May 14, 2001
Revised Date: August 23, 2010

TO: All Unit Supervisors

FROM: Rebecca A. Humphries, Director

SUBJECT: Delegation Pursuant to Executive Order 2009-45 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451) - New Source Review (Permit to Install) Program

I hereby delegate all statutory authority, powers, duties, functions, and responsibilities of Part 55, as outlined below, unless circumstances in individual cases warrant a decision at a higher level. The powers and duties are delegated for the purposes of administering the program pursuant to statute and rules. Authorities, powers, duties, functions, and responsibilities of Part 55 that are reserved for the director or a deputy director of the Department of Natural Resources and Environment (DNRE) and not delegated are at the end of this document.

This delegation includes anyone acting in the capacity of the position named in the delegation below. Any authority or power delegated to a subordinate position may be exercised by a position higher in that position's chain of command on a case-by-case basis, as circumstances warrant.

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
1. Authority to approve or deny state and federal permits to install not involving substantial and relevant unresolved issues.	MCL 324.5503(b) and (c) MCL 324.5505(1) MCL 324.5510 R 336.1201(1) and (2) R 336.1205 R 336.1206(2) R 336.1207(1)	AQD Permit Section Supervisor
2. Authority to approve or deny state and federal permits to install involving substantial and relevant unresolved issues.	MCL 324.5503(b) and (c) MCL 324.5505(1) MCL 324.5510 R 336.1201(1) and (2) R 336.1205 R 336.1206(2) R 336.1207(1)	Deputy Director of the Department of Natural Resources and Environment (DNRE), Chief of the AQD, or Assistant Chief of the AQD
3. Format and content of permit application form.	R 336.1201a(2) R 336.1203(1)	AQD Permit Section Supervisor

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
4. Authority to establish emissions standards or other conditions as part of issuing a permit.	MCL 324.5503(b) R 336.1201(3)	AQD Permit Decision Maker
5. Authorize extensions beyond 18 months after permit issuance for commencement of construction.	R 336.1201(4) R 336.2810(4)	AQD Permit Decision Maker
6. Determine that permitted process or process equipment has been permanently shut down.	R 336.1201(5)	AQD District Supervisor
7. Authority to void permits to install.	R 336.1201(4)-(6)	AQD Permit Section Supervisor
8. Revoke a permit to install consistent with Section 5510 of the Act.	MCL 324.5510 R 336.1201(8)	Deputy Director of the DNRE or Chief of the AQD
9. Approve the use of a general permit to install.	MCL 324.5505(4) R 336.1201a(1)	Deputy Director of the DNRE or Chief of the AQD
10. Grant terms and conditions on approved general permit to install to a specific source.	R 336.1201a(1) and (2)	AQD Permit Section Supervisor
11. Determine that a source did not qualify to use the general permit to install.	R 336.1201a(1)	AQD District Supervisor or Permit Section Supervisor
12. Maintain a list of permit applications, general permits to install issued to specific sources, and those registered to limit potential to emit; make available possible emission offset information.	MCL 324.5511(1) R 336.1201a(3) R 336.1208a(13) MCL 324.5505(2)	AQD Permit Section Supervisor
13. Approve a waiver to proceed with construction.	R 336.1202	AQD District Supervisor
14. Authority to require information regarding an application for a permit to install or to limit potential to emit.	R 336.1203(1)(a)-(f), (h) R 336.1203(2)-(3) R 336.1208a(6) R 336.2814	All AQD Staff Evaluating Permits
15. Authority to require information necessary for the preparation of an environmental impact statement.	R 336.1203(1)(g)	Deputy Director of the DNRE
16. Authority to approve an averaging time greater than 1 month.	R 336.1205(1)(a)	AQD Permit Decision Maker
17. Authority to notify the applicant of the receipt and completeness of the application or registration form.	R 336.1206(1) R 336.1208a(3)	All AQD Staff Evaluating Permits or Registrations

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
18. Authority to deny an application for a permit to install based on lack of information.	MCL 324.5503(c) R 336.1207(1)(d)	AQD Permit Unit Supervisors
19. Authority to issue a source-wide permit to install concurrent with ROP issuance or renewal.	R 336.1214a(1)	AQD District Supervisor
20. Authority to approve demonstration that a new emissions unit under a plant-wide applicability limitation (PAL) will not cause a meaningful change in the nature or quantity of toxic air contaminants.	R 336.1277(a)	AQD District Supervisor
21. Authority to request process or process equipment owner to demonstrate the applicability of a permit to install exemption.	R 336.1278a(1)	AQD Permit Section or District Supervisor
22. Authority to require adjustment to a fugitive dust plan for a concrete batch plant.	R 336.1289(d)(vii)(E)	AQD District Supervisor
23. Request and inspect records of material use and calculations identifying the quality, nature, and quantity of air contaminant emissions.	R 336.1290(d)	All AQD Permit Section and AQD District Staff
24. Authority to allow use of a different time period to set the baseline actual emission rate.	R 336.2801(b)(i)	All AQD Permit Section Staff
25. Authority to rescind a PM_{10} minor source baseline date.	R 336.2801(bb)(iv)	AQD Permit Section Supervisor
26. Authority to set a notification time period of less than 10 days for relocation of a portable stationary source.	R 336.2809(1)(c)(iv)	AQD District Supervisor
27. Authority to exempt, require, or reduce the duration of air quality monitoring required prior to submittal of a permit to install application or post-construction.	R 336.2809(5) R 336.2813(1) and (2)	AQD Permit Decision Maker
28. Notify EPA, other state air agencies, the applicant and the public of a major source permit application, AQD's preliminary determination, opportunity for comment, and the final determination.	R 336.2816(1) R 336.2817(2)	AQD Permit Section Supervisor

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
29. Determine if we concur with federal land manager demonstration.	R 336.2816(2)	AQD Permit Decision Maker
30. Issue a permit for a proposed or modified source exceeding Class 1 area allowable concentration increases.	R 336.2816(3) and (4)	AQD Permit Decision Maker
31. Provide opportunity for public hearing and consider comments.	R 336.2817(2)	AQD Permit Decision Maker
32. Make final determination; approve, approve with conditions, or disapprove application.	R 336.2817(2)	AQD Permit Decision Maker
33. Authority to request records related to reasonable possibility provisions of R 336.2818(3) or R 336.2902(6).	R 336.2818(4) R 336.2902(7)	AQD District and Permits Staff
34. Authority to approve or withdraw an approval to use innovative control technology.	R 336.2819(2) and (3)	AQD Permit Decision Maker
35. Authority to approve the use of a PAL in a permit to install and reopen a PAL permit.	R 336.2823(2)(a) and (4) R 336.2823(8)(b) R 336.2907(2)(a), (4)(a), and (5)	AQD Permit Decision Maker
36. Authority to determine that PM_{10} precursors from a major stationary source or major modification of PM_{10} do not contribute significantly to PM_{10} levels.	R 336.2908(7)	Chief of the AQD

Exceptions to delegation: None

This delegation will be in effect until further notice.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT

INTEROFFICE COMMUNICATION

EXECUTIVE ORDER 2009-45
DELEGATION LETTER

Letter No.: AQD-55-14
Effective Date: October 1, 1995
Revised Date: May 8, 2001
Revised Date: August 23, 2010

TO: All Unit Supervisors

FROM: Rebecca A. Humphries, Director

SUBJECT: Delegation Pursuant to Executive Order 2009-45 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451) – Renewable Operating Permits (ROP)

I hereby delegate all statutory authority, powers, duties, functions, and responsibilities of Part 55, as outlined below, unless circumstances in individual cases warrant a decision at a higher level. The powers and duties are delegated for the purposes of administering the program pursuant to statute and rules. Authorities, powers, duties, functions, and responsibilities of Part 55 that are reserved for the director or a deputy director of the Department of Natural Resources and Environment (DNRE) and not delegated are at the end of this document.

This delegation includes anyone acting in the capacity of the position named in the delegation below. Any authority or power delegated to a subordinate position may be exercised by a position higher in that position's chain of command on a case-by-case basis, as circumstances warrant.

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
1. Authority to approve an authorized representative for a responsible official.	R 336.1118(j)(i)(B)	AQD District Supervisor
2. Determine that a source did not meet the criteria required for registration.	R 336.1208a(3)	AQD District Supervisor
3. Authority to request required records.	R 336.1208a(5)(b)	AQD District Staff
4. Authority to request additional information.	R 336.1208a(6)(b)	AQD District Staff

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
5. Determine whether an application for a ROP is administratively complete and provide notification to the applicant of all supplemental materials needed for an administratively complete application.	MCL 324.5507 R 336.1210(2)(a)	AQD District Supervisor or Assistant District Supervisor
6. Determine that an administratively complete application for a ROP requires additional technical information and request such information.	MCL 324.5506(17) R 336.1210(3)	All AQD Staff Evaluating Permits
7. Authority to approve an alternative schedule for a ROP application submittal.	R 336.1210(4)(g)	AQD Field Operations Supervisor
8. Authority to request information necessary to determine whether cause exists to modify, revise or revoke an ROP or to determine compliance with the permit.	R 336.1213(1)(e)	AQD District Supervisor
9. Authority to include in an ROP additional limits agreeable to both the applicant and the department.	R 336.1213(2)	AQD ROP Decision Maker
10. Determine that submission of progress reports (for a source not in compliance) should be more frequent than semi-annually.	R 336.1213(4)(b)	AQD ROP Permit Decision Maker
11. Determine that additional information should be included in a company's compliance certification.	R 336.1213(4)(c)(v)	AQD ROP Permit Decision Maker
12. Determine that specific requirements are not applicable to a stationary source, for purposes of the permit shield.	R 336.1213(6)(a)(ii)	AQD ROP Permit Decision Maker
13. Determine that an ROP should have a term of less than 5 years.	R 336.1213(7)	AQD ROP Permit Decision Maker
14. Determine that reasonably anticipated operating scenarios should be allowed for a stationary source.	R 336.1213(8)	AQD ROP Permit Decision Maker
15. Authority to approve ROPs and ROP renewals.	MCL 324.5506(4)(g) R 336.1214(7)	AQD District Supervisor
16. Authority to approve ROP administrative permit amendments, minor permit modifications, and significant permit modifications not involving substantial and relevant unresolved issues.	MCL 324.5506(4)(g) R 336.1216(1)(b)(i) R 336.1216(2)(c)(iii) R 336.1216(3)(d) R 336.1216(4)(c)	AQD District Supervisor or AQD Permit Section Supervisor

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
17. Authority to approve ROPs, ROP renewals, administrative permit amendments, minor permit modifications, and significant permit modifications involving substantial and relevant unresolved issues.	MCL 324.5506(4)(g) R 336.1214(7) R 336.1216(1)(b)(i) R 336.1216(2)(c)(iii) R 336.1216(3)(d) R 336.1216(4)(c)	Deputy Director of the Department of Natural Resources and Environment (DNRE), Chief of the AQD, or Assistant Chief of the AQD
18. Authority to deny or revoke ROPs, ROP renewals, administrative permit amendments, minor permit modifications, and significant permit modifications.	MCL 324.5506(4)(g) MCL 324.5510 R 336.1214(7) R 336.1216(1)(b)(i) R 336.1216(2)(c)(iii) R 336.1216(3)(d) R 336.1216(4)(c)	Deputy Director of the DNRE, Chief of the AQD, or Assistant Chief of the AQD
19. Authority to determine whether other changes to the permit are necessary in conjunction with an administrative permit amendment for a change of ownership or operational control.	R 336.1216(1)(a)(iv)	AQD District Supervisor
20. Determine whether an application for an administrative permit amendment provides an acceptable demonstration of compliance with the terms and conditions of the Permit to Install.	R 336.1216(1)(c)(i)	AQD District Supervisor
21. Authority to reopen a ROP.	MCL 324.5506(7) R 336.1217(2)	AQD ROP Permit Decision Maker
22. Authority to issue a general ROP.	MCL 324.5506(16) R 336.1218(1)	Chief of the AQD, or Assistant Chief of the AQD
23. Determine that a source does not qualify for an issued general ROP.	R 336.1218(1)	AQD District Supervisor
24. Maintain list of ROP applications and their status.	MCL 324.5511(1)	AQD District Supervisor

Exceptions to delegation: None

This delegation will be in effect until further notice.

ATTACHMENT B

2-8 Ethical Standards and Conduct

2-8.3 (a)(1)Disclosure

At least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.

ATTACHMENT C

ENVIRONMENTAL CALENDAR April 21, 2014

AIR QUALITY DIVISION
Statewide

MICHIGAN INFRASTRUCTURE STATE IMPLEMENTATION PLAN APPLICABLE TO THE 2010 NITROGEN DIOXIDE, 2010 SULFUR DIOXIDE, 2008 OZONE, AND 2012 PARTICULATE MATTER 2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS (STATEWIDE). Written comments are being accepted by the Air Quality Division on proposed revisions to the Michigan State Implementation Plan (SIP) Infrastructure applicable to the 2008 Ozone National Ambient Air Quality Standards (NAAQS), the 2010 Sulfur Dioxide and Nitrogen Dioxide NAAQS, and the 2012 Particulate Matter $_{2.5}$ NAAQS. These revisions state that the Michigan Department of Environmental Quality has the resources and authorities to implement and complete the requirements set forth in Section 110 of the federal Clean Air Act for each of these NAAQS. The Michigan Department of Environmental Quality also intends to revise the Michigan Infrastructure State Implementation plan to include Michigan Civil Service Rule 2-8.3(a)(1) for the purposes of meeting requirements as obligated under the federal Clean Air Act. The proposed State Implementation Plan revisions can be viewed at http://www.michigan.gov/documents/deq/deq-aqd-michigan_proposed_multi-infrastructure_SIP_452365_7.pdf. Submit written comments to Erica Wolf, Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48933. Written comments will be accepted by e-mail and all statements must be received by 5:00 p.m. on May 7, 2014 to be considered by the decision-maker prior to final action. If requested in writing by May 7, 2014, a public hearing may be scheduled. Information Contact: ***Erica Wolf***, Air Quality Division, 517-284-6766 or wolfe1@michigan.gov. Decision-maker: ***DEQ Director***.

ENVIRONMENTAL CALENDAR May 5, 2014

AIR QUALITY DIVISION
See Map - Statewide

MICHIGAN INFRASTRUCTURE STATE IMPLEMENTATION PLAN (SIP) FOR THE 2010 NITROGEN DIOXIDE, 2010 SUFLUR DIOXIDE, 2008 OZONE, AND 2012 PARTICULATE MATTER 2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS. The Air Quality Division will be extending the public comment period for an additional 30 days, and holding a public hearing on June 4, 2014, at 1:00 p.m. on the proposed Michigan Infrastructure SIP applicable to the 2008 Ozone National Ambient Air Quality Standards (NAAQS), the 2010 Sulfur Dioxide and Nitrogen Dioxide NAAQS, and the 2012 Particulate Matter $_{2.5}$ NAAQS. The proposed SIP states that the Michigan Department of Environmental Quality has the resources and authorities to implement and complete the requirements set forth in Section 110 of the federal Clean Air Act for each of these NAAQS. The Michigan Department of Environmental Quality also intends to revise the Michigan SIP to include Michigan Civil Service Rule 2-8.3(a)(1) for the purposes of meeting requirements in Sections 110 and 128 of the federal Clean Air Act. The hearing will be held on June 4, 2014, at 1:00 p.m. at Constitution Hall, William Ford Conference Room, 2$_{nd}$ Floor, South Tower, 525 West Allegan Street, Lansing, Michigan. If there are no participants or if those who are present have been afforded the opportunity to speak, the hearing will close at 2:00 p.m. The proposed SIP can be viewed on the Internet at: http://www.michigan.gov/documents/deq/deq-aqd-michigan_proposed_multi-infrastructure_SIP_452365_7.pdf. Copies of the proposed SIP may also be obtained by contacting the Michigan Department of Environmental Quality, Air Quality Division, at 517-284-6740. Comments will be accepted until 5:00 p.m. on June 4, 2014, and will be accepted by e-mail to wolfe1@michigan.gov or by mail to Erica Wolf, Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48933. Information Contact: ***Erica Wolf***, Air Quality Division, wolfe1@michigan.gov or 517-284-6766. Decision-maker: ***DEQ Director***.

ATTACHMENT D

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

PROPOSED INFRASTRUCTURE STATE IMPLEMENTATION PLAN FOR THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS), 2010 NITROGEN DIOXIDE NAAQS, 2010 SULFUR DIOXIDE NAAQS, AND THE 2012 PARTICULATE MATTER 2.5 NAAQS

SUBJECT

The Department of Environmental Quality, Air Quality Division, is proposing to revise the Michigan State Implementation Plan (SIP) for the 2008 Ozone NAAQS, 2010 Nitrogen Dioxide NAAQS, 2010 Sulfur Dioxide NAAQS, and the 2012 Particulate Matter 2.5 NAAQS.

PURPOSE AND SUMMARY OF THE PROPOSED INFRASTRUCTURE SIPS

Each time the U.S. Environmental Protection Agency revises a NAAQS each state must certify that their air management program contains the authorities necessary to implement and enforce the new standard and revise their SIP as needed. This SIP submittal is commonly referred to as the "Infrastructure" SIP. The USEPA promulgated a new NAAQS for Ozone in 2008, Nitrogen Dioxide and Sulfur Dioxide in 2010 and Particulate Matter 2.5 in 2012. The DEQ has, in the proposed Infrastructure SIP, confirmed that the state retains the authorities necessary to evaluate ambient air quality, develop plans to attain and maintain new and existing air quality standards, meet the requirements of the new source review program, and effectively enforce all applicable requirements for these new NAAQS.

In this Infrastructure SIP submittal, the DEQ is also requesting approval to add Civil Service Rule 2-8.3(a)(1) to the Michigan SIP. This Civil Service Rule is the only change proposed to the current Michigan SIP in this proposed Infrastructure SIP submittal. Civil Service Rule 2-8.3(a)(1) requires certain employees to disclose potential conflicts of interest on an annual basis and is a requirement to satisfying the Section 110(a)(2)(E)(ii) general state board requirements under Section 128 of the Clean Air Act. Only one part of Section 128 applies to Michigan, and it requires that the head of an executive agency, with the power to approve permits or enforcement orders adequately disclose any conflicts of interest. The DEQ Director has this power and therefore must disclose all potential conflicts of interest under this civil service rule. To be clear, this is not a new requirement for the DEQ Director only a new addition to the Michigan SIP.

Vince Hellwig, Chief
Air Quality Division

Department of Environmental Quality

Opening Statement
By: Mike Jackson, Hearing Officer

June 4, 2014

Introduction

My name is Mike Jackson, and I am Supervisor of the Air Quality Division's Administration Section at the Michigan Department of Environmental Quality. I will be serving as the Hearing Officer for this public hearing on the proposed revisions to:

Michigan's State Implementation Plan Infrastructure for 2008 Ozone, 2010 Nitrogen Dioxide and Sulfur Dioxide, and 2012 Particulate Matter 2.5

With me are Vince Hellwig, Chief of the Air Quality Division, who is representing the Director of the Department, Dan Wyant, as the decision-maker, and Cari DeBruler, Air Quality Division Rule Coordinator. I would also like to introduce other Air Quality Division or AQD staff, Barb Rosenbaum, Mary Maupin and Erica Wolf, who have been instrumental in developing the proposed revisions to the State Implementation Plan or SIP.

Hearing Agenda

First, we will briefly describe the proposed SIP revisions. Then, we will take your comments. Finally, we will explain what will happen after today's hearing.

Background Information

Erica Wolf will now briefly summarize the proposed revisions.

Purpose of Public Hearing

Thank you Erica. Now, Cari DeBruler will explain the purpose of today's hearing and how your comments will be used.

The purpose of today's hearing is to give anyone interested in the proposed SIP revisions an opportunity to provide information that the Department can use in making its decision.

As you came in, you were given an opportunity to fill out an attendance card. We request that everybody fill out a card and indicate if you wish to make a comment. We will use these cards to maintain a record of people who are interested in the proposed SIP revisions and to call upon those who want to make a statement today. When all of the names have been called, we will ask if anyone else would like to make a statement.

When your name is called, please approach the table and give your statement. If you have written comments or materials that you would like to present, please hand them to Mr. Jackson as you come to the table. Before you begin your comments, please state your name and any group or association you may represent.

This hearing is being recorded and your comments will become a part of the information that the Department will consider when making its decision on the proposed Infrastructure SIP. The public comment period for the proposed Infrastructure SIP ends today at 5:00 p.m. Any and all comments received by 5:00 p.m. today will be considered when the Department makes its decision.

Following the public hearing, the AQD staff will review the verbal and written comments received, prepare a response, and make changes to the proposed Infrastructure SIP, if appropriate. A packet including the proposed Infrastructure SIP and a summary of those comments and responses, will then be submitted to the USEPA and will be available on the Department's website or by contacting the AQD office.

Thank you Cari. I will now begin calling the names of those who have indicated that they would like to make a statement.

Closing Statement

Thank you for your comments and cooperation. We appreciate that you have shown an interest in this proposed SIP revision by taking the time to be here today.

As previously mentioned, the public comment period ends today at 5:00 p.m.

If you have any questions regarding the proposed SIP revision, Air Quality Division staff will be available immediately following this hearing to answer them.

The hearing is now closed. Thank you again.

ATTACHMENT E

Response to Comments On the Proposed Certification of and Revision to the Infrastructure of the Michigan State Implementation Plan for the 2008 Ozone, 2010 Sulfur Dioxide and Nitrogen Dioxide, and 2012 Particulate Matter 2.5 National Ambient Air Quality Standards

The Michigan Department of Environmental Quality (MDEQ) received public comments via email and in person at the June 4, 2014 public hearing for the Proposed Certification and Revision to the Michigan Infrastructure State Implementation Plan (I-SIP) for the 2008 Ozone, 2010 Sulfur Dioxide (SO_2) and Nitrogen Dioxide (NO_2), and the 2012 Particulate Matter$_{2.5}$ ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Those comments are summarized here with two included in their entirety in this Michigan I-SIP submittal packet. The responses are also included below.

Summary of Comments Received:

On June 4, 2014, Brad van Guilder (Sierra Club) emailed to MDEQ comment letters from 90 Michigan citizens and a petition signed by 1,124 Michigan residents regarding the proposed Michigan I-SIP. The petition requests that the Michigan I-SIP set stronger pollution limits on coal-fired power plants. The citizens letters made numerous, similar comments which are summarized and included below.

On June 4, 2014, Craig Harris and Alex Sagady emailed comments to MDEQ that opposed incorporation of the Clean Corporate Citizen law into the SIP. Mr. Sagady's comment is included in its entirety in this I-SIP submittal packet. The comments are summarized and included below.

In a June 4, 2014, letter from Elizabeth Toba Pearlman, Kristin Henry, and Shannon Fisk to MDEQ, the Sierra Club submitted written comments on several aspects of the proposed Michigan I-SIP. These comments are summarized and included below. In addition to the comments, the Sierra Club also submitted modeling demonstrations for the following power plants: Belle River, St. Clair, Eckert, J.H. Campbell, and Presque Isle. For reasons stated below, these modeling demonstrations are not used in the Michigan I-SIP.

On June 4, 2014, five people attended a public hearing on the proposed Michigan I-SIP, of those, four read statements that are summarized below:

- Sandra Dupuis commented that the MDEQ should spend more effort reducing pollution in areas around power plants and schools. She was also concerned that the current air pollutant standards are not being met by facilities throughout the state.
- Brad van Guilder summarized the written comments from the Sierra Club given to MDEQ on June 4, 2014.
- Ken Oritch summarized the Sierra Club petition submitted to MDEQ on June 4, 2014. Specifically, he commented that the I-SIP should end NAAQS violations before a finding of non-attainment is made by EPA, the DEQ should give coal-fired power plants stronger SO_2 and Ozone limits, and the MDEQ should require modeling to set SO_2 limits to protect public health.
- John Polanyi commented that coal-fired power plants are polluting more heavily in areas surrounded by lower income populations. He commented that Wayne County is one of the worst areas in the state for environmental justice based on SO_2 emissions from power plants. Mr. Polanyi suggested that the MDEQ take into consideration environmental justice when making emissions limitations for facilities.

Comments and Responses Regarding $PM_{2.5}$:

There were no comments received regarding the I-SIP for $PM_{2.5}$.

Comments and Responses Regarding NO_2:

There were no comments received regarding the I-SIP for NO_2.

Comments and Responses Regarding Section 110(a)(2)(A), Enforceable Emission Limits:

1) **The Michigan I-SIP should include the 2010 SO_2 and 2008 Ozone NAAQS.**
Sections 110(a)(1) and 110(a)(2) of the Clean Air Act require each state to certify that its SIP has adequate provisions to implement, maintain and enforce the NAAQS, or to submit proposed revisions necessary to assure that the air program infrastructure is adequate. Nothing in Sections 110(a)(1) or 110(a)(2), nor in the September 13, 2013, U.S. Environmental Protection Agency (EPA) Guidance on Infrastructure SIP Elements, suggest or require the inclusion of the NAAQS in the SIP. However, the current Michigan SIP contains Rule 336.1101(j), which states "'[a]ir quality standard' means the concentration...of an air contaminant specified...by the national ambient air quality standards as contained in...40 C.F.R. part 50 (2002)....."The MDEQ is in the process of updating this rule to reflect the current version of 40 C.F.R. part 50 and will update the SIP when completed.
2) **The Michigan I-SIP should use air quality modeling to set facility-specific SO_2 emission limits for coal-fired power plants.**
This comment is outside the scope of the proposed Michigan I-SIP. As stated above, an I-SIP is a certification of the adequacy of the air program authorities and resources to implement, maintain, and enforce the NAAQS. Per the USEPA Guidance on Infrastructure SIP Elements, Section 110(a)(2)(A) of the Clean Air Act requires states to identify existing USEPA-approved provisions or new SIP provisions that limit emissions of pollutants relevant to the NAAQS. If the state has existing USEPA approved SIP provisions that limit emissions of pollutants, as Michigan does, there is no requirement to enact more stringent source-specific regulations for the I-SIP. In fact, The USEPA, in the March 27, 2014 Federal Register (Vol. 79, No. 59, pg. 17045) commented that "EPA interprets the requirement in section 110(a)(2)(A)...to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS[.]...With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit."
As stated in the USEPA Guidance, emission limitations necessary for attainment of new or revised NAAQS in nonattainment areas are required in an Attainment Demonstration SIP due on a different schedule than the I-SIP. Michigan fully intends to comply with this requirement of the schedule set forth in the federal Clean Air Act.
3) **The Michigan I-SIP should set limits on Ozone-forming pollutants from coal-burning power plants, particularly in counties that failed Ozone air quality standards.**
This comment is outside the scope of the proposed Michigan I-SIP. As stated above, setting facility-specific pollutant limits is a not the purpose of an I-SIP. Per USEPA's comments published in the Approval of Virginis Section 110(a)(2) Requirements, March 27, 2014 Federal Register, (Vol. 79, No. 59, pg. 17046) "EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state....EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state." Also, Michigan does not currently have any designated nonattainment areas for the 2008 Ozone NAAQS. In addition, permitting rules

contained in Michigan's SIP do set forth emission limits for the revised NAAQS addressed in Michigan's I-SIP for new and modified sources.

4) **Michigan's rule R 336.1915, on start-up, shutdown, or malfunction fails to comply with Section 110(a)(2)(A).**
This comment is outside the scope of the proposed Michigan I-SIP. Per the USEPA Guidance on I-SIP Elements, "(t)he EPA does not interpret section 110(a)(2) to require air agencies and the EPA to address potentially deficient pre-existing SIP provision..." including startup, shutdown, malfunction, "in the context of acting on an infrastructure SIP." The USEPA has alternative tools to deal with existing SIP deficiencies. Concerning SSM, the USEPA has proposed a SIP Call requesting a number of states (including Michigan) to address this issue through revisions to their SIPs. If and when the USEPA SIP Call becomes final, the MDEQ will proceed to revise the Michigan SIP as appropriate.

5) **Michigan's Clean Corporate Citizen law (MCL 324.1421 through MCL 324.1429) fails to comply with Section 110(a)(2)(A).**
MCL 324.1421 through MCL 324.1429 (Part 14) does not affect Michigan's compliance with Section 110(a)(2)(A) of the Clean Air Act. Section 110(a)(2)(A) requires states to identify existing USEPA-approved provisions or new SIP provisions that limit emissions of pollutants relevant to the NAAQS. Part 14 sets enforcement mechanisms for the MDEQ to follow in certain situations; it does not deal with emissions limits. Therefore, this law is not addressed under (and does not apply to) Section 110(a)(2)(A), but it is addressed in relation to Section 110(a)(2)(C), Programs for Enforcement.

6) **Nothing about MCL 324.1427 requires strict compliance with the CAA Section 110 requirements for federally enforceable emission limitations that is contained in the SIP. (Reword to – MCL 324.1427 undermines the CAA Section 110 requirement that emission limitations contained in the SIP be federally enforceable?)**
This is a misinterpretation of Section 110(a)(2) of the Clean Air Act. This section requires that states have state authorities and resources that are adequate to implement state plans (i.e., SIPs); the section does not require federal enforceability. Anything in an approved SIP is automatically federally enforceable.

7) **The DEQ should give coal-fired power plants stronger SO_2 and Ozone limits and the I-SIP should significantly decrease the emissions from power plants.**
This comment is outside the scope of the proposed Michigan I-SIP. As stated above, an I-SIP is a demonstration that Michigan can implement, maintain, and enforce the NAAQS. Setting facility-specific pollution limits is not the purpose of an I-SIP, therefore the MDEQ does not include specific SO_2, Ozone, or other emission limits for power plants in the proposed Michigan I-SIP.

8) **The MDEQ should take into account environmental justice when setting emission limits for facilities.**
This comment is outside the scope of proposed Michigan I-SIP. As stated above, an I-SIP is a demonstration that Michigan can implement, maintain, and enforce the NAAQS. It is not an attainment demonstration that would require stricter limits on facilities within nonattainment areas.

Comments and Responses Regarding Section 110(a)(2)(B), Ambient Air Monitoring:

1) **MDEQ should regularly monitor areas to make sure the NAAQS are being met and report these checks to the community.**
As stated in the Section 110(a)(2)(B) of Michigan's I-SIP, the MDEQ maintains a comprehensive network of air quality monitors. The MDEQ currently has a monitoring network that consists of more than 45 state and tribal monitors. These monitor sites are chosen based on USEPA minimum requirements and criteria and modeling demonstrations that take into account

population density and emitting facilities in the areas. The results from these monitors are available to the community through the MDEQ website (http://www.deqmiair.org/monitoringdata) and the EnviroFlash network (http://miair.enviroflash.info), as stated in Section 110(a)(2)(J) in the Michigan I-SIP.

2) **The MDEQ should expand monitoring sites to areas downwind of power plants**
This comment is outside the scope of the proposed Michigan I-SIP. As stated above, the MDEQ does have an established air monitoring network. This network goes through an annual USEPA required review, as stated in Section 110(a)(2)(B) of the I-SIP, to determine if the network is operating in compliance with federal requirements.

Comments and Responses Regarding Section 110(a)(2)(C), Programs for Enforcement:

1) **Michigan's Clean Corporate Citizen program weakens Michigan's enforcement abilities.**
Act 451 provides the MDEQ with authority and mechanisms to enforce compliance with the NAAQS. Michigan's Clean Corporate Citizen program, Part 14 of Act 554, directs the MDEQ how to conduct compliance and enforcement activities on Clean Corporate Citizen facilities. As stated in MCL 324.1427, Part 14 "shall not be construed in a manner that conflicts with state or federal law or regulation." Therefore, Michigan's Clean Corporate Citizen program does not weaken the MDEQ's enforcement abilities.
2) **The benefits for Michigan's Clean Corporate Citizen program and facilities interfere with the rule that all applicable requirements and emission limitations be binding on emissions sources and be federally enforceable as required by Section 110 of the Clean Air Act.**
As stated above, Part 14, including the benefits of Part 14 "shall not be construed in a manner that conflicts with state or federal law or regulation."
3) **Act 554 is an attempt by the state of Michigan to circumvent and evade the requirement that emission limitations and applicable requirements be enforceable.**
As stated above, the MDEQ has clarified the proposed I-SIP to explain that Act 554 (i.e., Part 14 of Act 451) does not restrict MDEQ's enforcement authority.
4) **Act 554 in the I-SIP proposal makes it non-approvable as part of the federally approved Michigan SIP.**
The MDEQ considers all Michigan's enforcement provisions together, including Act 554, to be sufficient under Section 110(a)(2)(C), but ultimate approvability is decided by USEPA.
5) **MCL 324.1401 through MCL 324.1429 does nothing to ensure the provisions of Act 554 do not damage the federal enforceability of Michigan's source emission limitations, permit provision and applicable requirements.**
This is a misinterpretation of Section 110(a)(2)(C) of the Clean Air Act. This section requires that states have state authorities and resources that are adequate to implement state plans; the section does not require federal enforceability. Anything in an approved SIP is automatically federally enforceable. The MDEQ considers our authority to be sufficient under Section 110(a)(2)(C), but ultimate approvability is decided by USEPA.
6) **Act 554 is not compatible with EPA's requirements for the submittal and adoption of SIPs and approval of such Plans under the Clean Air Act.**
Part 14 is part of the MDEQ's enforcement provisions. As stated above and in the I-SIP, Part 14 does not restrict MDEQ's enforcement authorities.

Comments Regarding Section 110(a)(2)(D), Interstate Pollution Transport:

1) **The I-SIP should address sources that are significantly contributing to nonattainment or interfering with maintenance of the NAAQS in downwind states.**
Section 110(a)(2)(D)(i)(I) requires each state to address in their I-SIP any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state. Michigan's proposed I-SIP states that "Michigan is not subject to any

finding of significant contribution to any other state's attainment or maintenance at this time," therefore, there are no sources to address under Section 110(a)(2)(D) at this time.

General Comments and Responses:

1) **The MDEQ should require health-based studies prior to allowing building or remodeling of any educational facility**
   This comment is outside the scope of the proposed Michigan's I-SIP. As stated above, an I-SIP is a demonstration that Michigan can implement, maintain and enforce the NAAQS. The MDEQ's Air Quality Division is tasked with regulating sources of air pollutants. The MDEQ is not the main department tasked with regulating construction activities.
2) **The MDEQ should require modeling to set SO_2 limits for public health.**
   This comment is outside the scope of the proposed Michigan I-SIP. Modeling is used to make attainment demonstrations, which are submitted to USEPA on a different schedule than the I-SIP. As stated in the proposed I-SIP, the MDEQ has adequate authority to regulate the discharge of air pollutants and promulgate rules to establish standards for ambient air quality and emission, including SO_2.
3) **Michigan I-SIP should include specific standards to protect the health of Michigan's most vulnerable citizens.**
   This comment is outside the scope of the proposed Michigan I-SIP. As stated above, an I-SIP is a certification that Michigan has the authorities in place to implement, maintain, and enforce the NAAQS. The USEPA sets the NAAQS at levels determined to be adequately protective of human health and welfare.
4) **The I-SIP should address fracking, air toxics, pet coke, and pollution from vehicles.**
   This comment is outside the scope of the proposed Michigan I-SIP. As stated above, an I-SIP is a certification that Michigan can implement, maintain, and enforce the NAAQS. Hydraulic fracturing (fracking), air toxics and petroleum coke may have impacts on air quality but they are not germane to this proposed I-SIP.
5) **The I-SIP should end NAAQS violations before a finding of non-attainment is made by EPA.**
   This comment is outside the scope of the proposed Michigan I-SIP. As stated above, an I-SIP is a certification that Michigan can implement, maintain, and enforce the NAAQS.

From: Wolf, Erica (DEQ)
To: Barr, Carrie (DEQ)
Subject: FW: Infrastructure SIP comment
Date: Thursday, July 10, 2014 8:56:33 AM

From: ajs@sagady.com [mailto:ajs@sagady.com]
Sent: Wednesday, June 04, 2014 3:48 PM
To: Wolf, Erica (DEQ); enviro-mich@great-lakes.net
Subject: Infrastructure SIP comment

Attention - ERICA WOLF - Air Quality Division, Michigan Department of Environmental Quality

This is a comment intended for filing in the comment period
on the proposed State of Michigan
Infrastructure SIP at:

http://www.michigan.gov/documents/deq/deq-aqd-michigan_proposed_multi-infrastructure_SIP_452365_7.pdf

MDEQ proposed to add the provisions of Act 554 of 2012 to the State of Michigan
State implementation Plan under the Clean Air Act and proposed for EPA approval.
Act.

MDEQ states as so-called benefits of the Act 554 of 2012 revisions to be:

"1. Unless it had been established by clear and convincing evidence that either the C3 facility's
actions posed a significant endangerment to public health, safety or welfare or that the C3
facility's violation was intentional or occurred as a result of the operator's gross negligence,
the C3 facility is not subject to a civil fine or violation if the facility acted promptly to correct
the violation after discovery and reporting the violation to the MDEQ within 24 hours of
discovery;

2. The MDEQ shall conduct routine inspections of C3 facilities half as

frequently as the
inspections would be conducted for non-C3 facilities; and

3. The MDEQ shall give C3 facility operators at least 72 hours' advance notice of any routine
inspection."

All three so-called "benefits" MDEQ lists for the C3 program and facilities are elements which interfere with the rule that all applicable requirements and emission limitations be binding on emission sources and be federally enforceable as required by Section 110 of the Clean Air Act. Act 554 of 2012 should not be submitted for approval by EPA because it is an attempt by the state of Michigan circumvent and evade the requirement that emission limitations and applicable requirements be enforceable. In fact, Act 554 of 2012 should be rescinded by the Legislature because its presence in the infrastructure
SIP proposal makes it non-approvable as part of the federally approved Michigan State Implementation Plan.

This claim by MDEQ.....

"While this program, on its face, does restrict MDEQ enforcement ability, MCL 324.1427 states
that nothing in the C3 program can be construed in a manner that conflicts with or authorizes any
violation of state or federal law or regulation. Therefore, MCL 324.1401 through 324.1429 do not restrict the MDEQs enforcement authority."

...is not legitimate. MDEQ acknowledges that the Act 554 of 2012 provision interfere with enforcement, but nothing at all about MCL 324.1427 requires strict compliance with the CAA Section 110 requirement for federally enforceable emission limitations that is contained in the SIP. The MDEQ conclusion...

"Therefore, MCL 324.1401 through 324.1429 do not restrict the MDEQs enforcement authority."

...is a nullity since it does nothing at all to ensure the provisions of Act 554 of 2012 do not damage the federal enforceability of Michigan's source emission limitations, permit provisions and applicable requirements.

MDEQ-AQD should remove all Act 554 of 2012 provisions from its submittal and withdraw its attempts to gain federal SIP approval of this statutory authority. If MDEQ fails to follow this comment, then EPA Region V should reject any State of Michigan attempt to add provisions of Act 554 of 2012 to the federally approved State Implementation Plan.

Act 554 of 2012 should be rescinded because it is not compatible with EPA's requirements
for the submittal and adoption of Statement Implementation Plans
and approval
of such Plans under the Clean Air Act.

regards, Alex Sagady

Alex J. Sagady & Associates http://www.sagady.com/
Twittering at: http://www.twitter.com/envirenforcer

Environmental Enforcement, Permit/Technical Review, Public Policy, Expert Witness Review and Litigation investigation on Air, Water and Waste/Community Environmental and Resource Protection

Prospectus at: http://www.sagady.com/sagady.pdf

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VIA ELECTRONIC MAIL

June 4, 2014

Erica Wolf
Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48933
wolfe1@michigan.gov

Re: Comments Concerning Michigan State Implementation Plan Infrastructure Applicable to the 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2008 Ozone, and 2012 Particulate Matter 2.5 National Ambient Air Quality Standards

Dear Ms. Wolf:

On behalf of Sierra Club, its over 13,800 members in Michigan, and others who are adversely impacted by Michigan's sources of sulfur dioxide ("SO_2") and ozone pollution, we submit the following comments on Michigan's Proposed Infrastructure State Implementation Plan for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards ("NAAQS"), 2010 Sulfur Dioxide NAAQS, 2008 Ozone NAAQS, and 2012 Particulate Matter NAAQS ("Draft ISIP").[1] According to the state of Michigan's Environmental Calendar from May 5, 2014 on the proposed amendment to the Michigan ISIP, interested parties must submit written comments by 5:00 p.m. via electronic mail on June 4, 2014, so these comments are timely submitted.

As acknowledged by the Michigan Department of Environmental Quality's ("MDEQ") public notice, Michigan must submit an Infrastructure State Implementation Plan ("Infrastructure SIP" or "ISIP") that addresses all of the requirements in sections 110(a)(1) and (2) of the Clean Air Act ("CAA" or "Act") for five distinct NAAQS recently promulgated by the U.S. Environmental Protection Agency, including: (1) the June 2, 2010 one-hour primary SO_2 standard; and (2) the March 27, 2008 eight-hour primary ozone standard. 42 U.S.C. § 7410(a)(1) & (2). As proposed, Michigan's Draft ISIP does not satisfy several essential requirements of Section 110(a)(1) and (2), including requirements to establish enforceable emission limits and to

[1] Please note that the actual title is Michigan's Proposed Infrastructure State Implementation Plan for the 2010 Nitrogen Dioxide NAAQS, 2010 Sulfur Dioxide NAAQS, and the 2012 Particulate Matter NAAQS. It does not include 2008 Ozone NAAQS. This appears to be a typographical error.

address significant contributions to downwind states. The following comments explain these deficiencies in greater detail.[2]

By addressing the deficiencies in its draft ISIP, the state of Michigan will benefit in four ways. First, and most importantly, Michigan will take action required to improve public health impacts in the state. There are currently at least fourteen counties that are exceeding the SO_2 or ozone NAAQS. Since the NAAQS set ambient pollution levels that states should not exceed in order to protect the health of its citizen, the potential public health benefits of addressing these deficiencies are significant. For example, there are over 230,000 children and over 700,000 adults who currently have asthma in Michigan. The disease costs approximately $224 million in direct medical costs alone, and an additional $170 million in indirect costs.[3] Second, Michigan will meet its obligations under the Clean Air Act and insulate itself from EPA having to take corrective action. Third, Michigan can prevent the inevitable future designation of fourteen counties as being in nonattainment for the 2010 SO_2 or 2008 ozone NAAQS, thus sparing the state from having to comply with rigorous Clean Air Act requirements. Finally, the state could bring regulatory certainty to coal-fired power plants in Michigan, which could ultimately save these regulated entities money, as they are deciding how to comply with a number of environmental regulations.

I. Background

A. National Ambient Air Quality Standards

The Clean Air Act ("CAA") is, at its core, a directive to protect the public from harmful air pollution. Indeed, "pollution prevention" is a "primary goal" of the CAA. 42 U.S.C. §7401(c). Pursuant to this mandate, EPA is required to promulgate "primary ambient air quality standards ["NAAQS"] . . . the attainment and maintenance of which . . . are requisite to protect the public health." 42 U.S.C. § 7409(b)(1). So far, EPA has identified six criteria pollutants—sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen oxide, and lead—that have scientifically demonstrated effects on health and the environment, at certain levels.

The NAAQS represent a ceiling of air pollution concentrations that apply throughout the country. As such, the primary NAAQS form the basis for regulating air emissions for the entire country and provide the foundation for setting specific emission limitations for most large stationary sources. The primary national ambient air quality standards set ambient pollution levels that should not be exceeded in order to protect public health with an adequate margin of safety. *See* 42 U.S.C. § 7409(b)(1). These standards serve as the basis for development and approval of infrastructure state implementation plans ("ISIPs").

1. Sulfur Dioxide: Public Health Impacts and the Current NAAQS

[2] A copy of these comments, all exhibits, and supporting modeling files can be found at https://app.box.com/s/q8ikvwkff0yr749pk92x.
[3] Asthma Initiative of Michigan, "Asthma in Michigan 2010: A Blue Print for Action," available at http://www.michigan.gov/documents/mdch/AsthmaInitiativeofMichigan_Strategic_Plan6-06_269864_7.pdf

Exposure to SO_2 in even very short time periods—such as five minutes—has significant health impacts and causes decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. *See* Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010) (hereinafter "Final Rule"). EPA has also determined that SO_2 exposure can also aggravate existing heart disease, leading to increased hospitalizations and premature deaths. *See* Final Rule, 75 Fed. Reg. at 35,525.

On June 2, 2010, EPA revised the primary SO_2 NAAQS by establishing a new one-hour standard at a level of 75 ppb which is met when the 3-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 ppb. *See* Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520 (June 20, 2010), [hereinafter "Final SO_2 NAAQS Rule"]. The primary SO_2 NAAQS was set at such a level in order to protect public health from the serious threats posed by short-term exposure to SO_2.

Due to both the shorter averaging time and the numerical difference, the new 1-hour SO_2 NAAQS is far more protective of human health than the prior SO_2 NAAQS and promises huge health benefits. EPA has estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year will be prevented by the new standard. Envtl. Prot. Agency, Final Regulatory Impact Analysis (RIA) for the SO_2 National Ambient Air Quality Standards (NAAQS) tbl. 5.14 (2010). Timely implementation of the new NAAQS is thus critical. Each year of delay in implementing the SO_2 NAAQS means 5,900 people will die prematurely and 54,000 asthma attacks will occur unnecessarily. Each year of delay will likewise drive up the medical costs that individuals will have to pay, and will be another year in which people must abstain from everyday activities such as exercise, school, and work. EPA estimated that the net benefit of implementing the 75 ppb SO_2 NAAQS was up to $36 billion dollars. 75 Fed. Reg. 35,520, 35,588 (June 22, 2010).

2. Ozone: Public Health Impacts and the Current NAAQS

Exposure to ozone in the air we breathe can cause serious problems to our health, including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. 73 Fed. Reg. 16,436 (Mar. 27, 2008). Ground level ozone also can reduce lung function and inflame the linings of the lungs. Id. Repeated exposure may permanently scar lung tissue. *Id.* These effects may lead to increased school absences, medication use, visits to doctors and emergency rooms, and hospital admissions. Research also indicates that ozone exposure may increase the risk of premature death from heart or lung disease. Id. Ozone also damages vegetation and trees, including forests, parks, and crops.

In 2008, EPA revised the primary ozone standard to 75 ppb of the annual fourth-highest daily maximum eight-hour concentration averaged over 3 years. *See* National Ambient Air Quality Standard for Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008). This revised standard, if properly implemented, will result in improvements in public health (including preventing premature deaths) and the environment. When EPA revised the ozone standard, EPA recognized it was providing increased protection for public health, especially for children, the elderly, and asthmatics.

EPA estimates that the 2008 eight-hour ozone NAAQS has the potential to avoid 260 to 2,000 premature deaths annually as of 2020. The total benefits in ozone reduction from this standard are estimated to save $2 to $17 billion per year. EPA, Fact Sheet: Final Revisions to the National Ambient Air Quality Standards for Ozone, at 1-3 (2008), http://www.epa.gov/glo/pdfs/2008_03_factsheet.pdf. In fact, 2011 and 2012 ozone ambient monitoring data indicate that EPA's estimates of the health benefits from reducing ozone exposure may have been low.[4]

B. Implementation of the NAAQS

The Clean Air Act creates a framework for the "development of cooperative Federal, State, regional, and local programs to prevent and control air pollution." 42 U.S.C. § 7401(a)(4). Pursuant to section 109(b)(1) of the Act, EPA has established primary NAAQS for six criteria air pollutants, "the attainment and maintenance of which . . . are requisite to protect the public health." *Id.* § 7409(b)(1). States have "primary responsibility" for assuring air quality within the state. *Id.* § 7407(a). Following promulgation of a NAAQS, the Act requires that a state shall "adopt and submit to the Administrator . . . a plan which provides for implementation, maintenance, and enforcement of such primary [NAAQS]." *Id.* § 7410(a)(1). For attainment and unclassifiable areas, section 110(a)(2)(A) requires that these Infrastructure SIPs or ISIPs "include enforceable emission limitations . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements" of the Clean Air Act, including the requirement to maintain the NAAQS. 42 U.S.C. §§ 7410(a)(2)(A), 7410(a)(1); *Conn. Fund for Env't, Inc. v. EPA*, 696 F.2d 169, 172 (2d Cir. 1982) (CAA requires that SIPs contain "measures necessary to ensure the attainment and maintenance of NAAQS"); *Mont. Sulphur & Chem. Co. v. EPA*, 666 F.3d 1174, 1180 (9th Cir. 2012) ("The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of national ambient air quality standards ("NAAQS") through enforceable emission limitations.") (citing 42 U.S.C. §§ 7407(a), 7410(a)(2)(A)); *Hall v. EPA*, 273 F.3d 1146, 1153 (9th Cir. 2001) ("Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State") (internal citations omitted); *see also* EPA, "Sulfur Dioxide Implementation—Programs and Requirements for Reducing Sulfur Dioxide," *available at* http://www.epa.gov/airquality/sulfurdioxide/implement.html.

EPA may approve an Infrastructure SIP only if it meets the requirements of section 110(a)(2) of the Act. *See* 42 U.S.C. § 7410(a)(2)(A)-(M). The state bears the burden of demonstrating that its SIP submission satisfies the standards of section 110(a)(2). *Mich. Dep't of Envtl. Quality v. Browner*, 230 F.3d 181, 183, 185 (6th Cir. 2000) (affirming EPA's rejection of

[4] In 2012, much of the country experienced record high temperatures and very high ozone levels. However, the 2008 ozone NAAQS benefits analysis was based on 2008 ozone levels and thus did not account for the higher ozone levels that were experienced in 2012. Current science indicates that temperatures experienced during 2012 will soon become typical due to climate change. If we do not reduce greenhouse emissions rapidly and substantially, the hottest summer of the last 20 years is expected to occur every other year, or even more frequently. *See, e.g.*, "Changes in Ecologically Critical Terrestrial Climate Conditions," *Science*, 2 Aug. 2013, Vol. 341, no. 6145, 486-492. Therefore, the benefits analysis likely underestimated the ozone reductions that the 2008 ozone NAAQS will require and, consequently, the benefits the standard will provide.

a SIP proposal where the state "failed to offer evidence that [the] proposed rules will not interfere with the attainment and maintenance of the NAAQS."). An adequate Infrastructure SIP "must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." 40 C.F.R. § 51.112(a).

1. The Plain Language and Legislative History of the Clean Air Act Require that Infrastructure SIPs Must Impose Emission Limits Adequate to Prevent NAAQS Exceedances in Areas Not Designated Nonattainment.

The Clean Air Act, on its face, requires ISIPs to prevent exceedances of the NAAQS. Following promulgation of a NAAQS, a state must "adopt and submit to the Administrator . . . a plan which provides for implementation, maintenance, and enforcement of such [NAAQS]." 42 U.S.C. § 7410(a)(1). Pursuant to section 110(a)(2)(A), this ISIP must "include *enforceable emission limitations* . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements" of the Clean Air Act (which include the requirement to maintain compliance with the NAAQS). *Id.* § 7410(a)(2)(A) (emphasis added). As defined by the Act, the term "emission limitation" means "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter." *Id.* § 7602(k). Thus, the plain language of section 110(a)(2)(A) requires that ISIPs include enforceable emission limits on sources that are sufficient to ensure attainment and maintenance of the NAAQS.

The legislative history of the Clean Air Act also supports this interpretation. As the Senate Committee Report accompanying the 1970 Clean Air Act explained, the Act "would establish certain tools as potential parts of an implementation plan and *would require that emission requirements be established by each State for sources of air pollution agents or combinations of such agents in such region* and that these emission requirements be monitored and enforceable." Sen. Cmte. on Pub. Works Rpt. at 12 (Sept. 17, 1970) (emphasis added), attached hereto as Ex. 1. This was reaffirmed in the subsequent Senate Conference Report, which stated that: "In order to implement the national ambient air quality standards, these [state implementation] plans *must provide for emission limitations on all services in the region covered by the plan*, together with schedules and timetables of compliance, systems for monitoring both ambient air and emissions from individual sources, and adequate enforcement authority." Sen. Conf. Rpt., 116 Cong. Rec. 42,381, 42,384 (Dec. 18, 1970) (emphasis added), attached hereto as Ex. 2.[5]

[5] Although the language of current section 110(a)(2)(A) was originally found in section 110(a)(2)(B), the substance has remained true to the statements found in the Senate Committee Reports. There were only two substantive changes between 1970 and the present. First, the addition of former section 172(c)'s requirement that SIPs' emission limitations, schedules, and timetables be "enforceable." *See* Rpt. of the Senate Cmte. on Envt. and Pub. Works accompanying the Clean Air Act Amendments of 1989 at 20 (Dec. 20, 1989) (explaining that "Paragraph (1) of rewritten section 110(c) combines and streamlines existing section 110(a)(2)(b) and the enforceability requirements of section 172(c) of current law"), attached as Ex. 3; *see also* 42 U.S.C. § 7502(c) (section 172(c)) (requiring that a SIP revision submitted before July 1, 1982 pursuant to a demonstration under subsection (a)(2)

2. EPA Regulations Implementing the Clean Air Act Require That Infrastructure SIPs Impose Emission Limits Adequate to Prohibit NAAQS Exceedances in Areas Not Designated Nonattainment.

EPA regulations implementing section 110(a)(2) also require that infrastructure SIPs contain emission limits that ensure NAAQS attainment. Pursuant to these regulations, in order for EPA to approve a SIP, it "must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." 40 C.F.R. § 51.112(a). As the regulation clearly states, all SIPs must contain emission limits that adequately ensure the NAAQS is achieved. *Id.* Although these regulations were developed before the Clean Air Act was amended to separate Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations nonetheless apply to ISIPs. EPA has not changed the regulation since 1990, and in the preamble to the final rule promulgating 40 C.F.R. § 51.112, EPA expressly identifies that its new regulations were *not* implementing Subpart D, the new nonattainment provisions of the Act. *See* Air Quality Implementation Plans: Restructuring SIP Preparation Regulations, 51 Fed. Reg. 40,656, 40,656 (Nov. 7, 1986) ("It is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . . ."). Consequently, EPA intended 40 C.F.R. § 51.112 to apply to ISIPs. Thus, it is clear that ISIPs must contain "measures, rules, and regulations" sufficient to ensure maintenance of the NAAQS.

3. Prior EPA Interpretations of the Act Require that Infrastructure SIPs Impose Emission Limits Adequate to Prohibit NAAQS Exceedances in Areas Not Designated Nonattainment.

EPA has relied on section 110(a)(2)(A) and 40 C.F.R. § 51.112 on multiple occasions to reject Infrastructure SIPs that did not contain specific emissions limits sufficient to demonstrate attainment and maintenance of the NAAQS. For example, in March 2006, EPA disapproved Missouri's attempt to revise the SO_2 emission limits in its ISIP for two power plants because the new emission limits would not ensure maintenance of the three-hour sulfur dioxide NAAQS then in effect. *See* Approval and Promulgation of Implementation Plans; State of Missouri, 71 Fed. Reg. 12,623, 12,624 (Mar. 13, 2006). In so doing, EPA explained that "Section 110(a)(2)(A) of the [Act] requires, in part, that the [state implementation] plan include emission limitations to meet the requirements of the Act, including the requirement in section 110(a)(1) that the plan must be adequate to attain and maintain ambient air quality standards." *Id.* EPA further explained that "40 C.F.R. 51.112 requires that the plan demonstrate that rules contained in the SIP are adequate to attain the ambient air quality standards." *Id.* In the case of Missouri's proposed ISIP, EPA expressed concern that the SO_2 emission rates for the two power plants in question were "not protective of the short-term sulfur dioxide NAAQS" because, while Missouri had lowered the emission rates for the facilities, it had dramatically increased the averaging times (from a 3-hour average to an annual average) without providing "a demonstration, as

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"shall contain enforceable measures to assure attainment of the applicable standard not later than December 1, 1987"). Second, the clarification in the 1990 Clean Air Act Amendments that the "means[] or techniques" for meeting the requirements of the Act included "economic incentives such as fees, marketable permits, and auctions of emissions rights." 42 U.S.C § 7410(a)(2)(A).

required by the [Clean Air Act] and EPA regulations, that the [sulfur dioxide national ambient air quality] standards, and particularly the three-hour and the twenty-four hour standards, can be protected by an annual emission limit." *Id.*

More recently, in December 2013, EPA rejected a revision to Indiana's sulfur dioxide ISIP pursuant to 40 C.F.R. § 51.112, because Indiana failed to demonstrate that the ISIP, as revised, was sufficient to ensure maintenance of the sulfur dioxide NAAQS. *See* Approval of Air Quality Implementation Plans; Indiana: Disapproval of State Implementation Plan Revision for ArcelorMittal Burns Harbor; Final Rule, 78 Fed. Reg. 78,720, 78,721 (Dec. 27, 2013). Indiana had submitted a request to EPA to revise its sulfur dioxide ISIP for the ArcelorMittal Burns Harbor facility to remove the SO_2 emission limit for the blast furnace flare at the facility. *Id.* In the proposed disapproval, EPA explained that "[u]nder 40 C.F.R. 51.112(a), each SIP must demonstrate that the measures, rules, and regulations it contains are adequate to provide for the timely attainment and maintenance of the NAAQS." *See* Approval of Air Quality Implementation Plans; Indiana; Disapproval of State Implementation Plan Revision for ArcelorMittal Burns Harbor; Proposed Rule, 78 Fed. Reg. 17,157, 17,158 (Mar. 20, 2013). EPA rejected the proposed amendment because Indiana did not demonstrate that existing emission limit for the ArcelorMittal blast furnace gas flare was "redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions," and, consequently, that removal of the limit would not "affect the validity of the emission rates used in the existing attainment demonstration, thus undermining the SIP's ability to ensure protection of the SO_2 NAAQS." *Id.* at 17,159; *see also* 78 Fed. Reg. at 78,721.

4. Supreme and Appellate Court Opinions Hold that Infrastructure SIPs Must Impose Emission Limits Adequate to Prohibit NAAQS Exceedances in Areas not Designated Nonattainment.

Since the inception of the modern Clean Air Act in 1970, courts have interpreted the language presently found in section 110(a)(2)(A) to require that SIPs contain enforceable emission limits sufficient to prevent exceedances of the NAAQS. In *Train v. NRDC*, a seminal case on SIP approval requirements, the Supreme Court explained that:

> In complying with this requirement [that a SIP provide for attainment and maintenance of the NAAQS] a State's plan must include 'emission limitations,' which are regulations of the composition of substances emitted into the ambient air from such sources as power plants, service stations, and the like. They are the specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meets the national standards.

421 U.S. 60, 78 (1975); *see also id.* at 67 (citing language from then-current section 110(a)(2)(B) now found in section 110(a)(2)(A)).

Courts of Appeals have followed this holding without exception. For example, in *Pennsylvania Department of Environmental Resources v. EPA*, the Third Circuit stated that the Clean Air Act "directs the EPA to withhold approval from a state implementation plan if the

'maintenance of [the] standard' cannot be assured." 932 F.2d 269, 272 (3rd Cir. 1991).[6] The court observed that the "need to maintain the Clean Air Act standards once they are reached is well-recognized by the Courts." *Id.* Other courts have provided similar analyses. In *Mision Industrial, Inc. v. EPA*, for example, the First Circuit explained that, "[b]efore approving an air quality implementation plan or revision, the Administrator must determine that it 'includes emission limitations . . . and such other measures as may be necessary to insure attainment and maintenance of (the) primary or secondary standard . . . .'" 547 F.2d 123, 129 (1st Cir. 1976) (quoting former section 110(a)(2)(B)).

The 1990 Clean Air Act amendments do not alter this picture. Court decisions since the 1990 amendments have continued to hold that ISIPs must have emission limits that maintain the NAAQS. In *Alaska Department of Environmental Conservation v. EPA*, the Supreme Court explained that an Infrastructure SIP under CAA section 110(a)(1) must be a "plan which provides for implementation, maintenance, and enforcement of [NAAQS]." 540 U.S. 461, 470 (2004) (quoting section 110(a)(1)). "While States have wide discretion in formulating their plans . . . SIPs must include certain measures Congress specified to assure that national ambient air quality standards are achieved." *Id.* (internal citations and quotations omitted). Thus, in order for EPA to approve a SIP, it "must 'include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable [CAA] requirements.'" *Id.* (quoting 42 U.S.C. § 7410(a)(2)(A)).

The circuit courts have also been clear that section 110(a)(2)(A) from the post-1990 Clean Air Act requires enforceable emission limits in ISIPs. For example, the Ninth Circuit affirmed that "[t]he Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of national ambient air quality standards ('NAAQS') *through enforceable emission limitations*." *Mont. Sulphur & Chem. Co.*, 666 F.3d at 1180 (citing 42 U.S.C. §§ 7407(a), 7410(a)(2)(A)) (emphasis added). And the Sixth Circuit has explained that "EPA's deference to a state is conditioned on the state's submission of a plan 'which satisfies the standards of § 110(a)(2)' and which includes emission limitations that result in compliance with the NAAQS." *Mich. Dep't of Envtl. Quality*, 230 F.3d at 185 (quoting *Train*, 421 U.S. at 79).

Additionally, in *Hall v. EPA*, the Ninth Circuit held that EPA had not fulfilled its responsibility under another provision—section 110(l)[7]—to evaluate whether a revised air quality plan will achieve the pollution reductions required under the Act. 273 F.3d at 1152. In *Hall*, the court held that EPA had incorrectly approved a revision to an air quality plan solely on the basis that the revisions did not relax the existing SIP, rather than "measur[ing] the existing level of pollution, compar[ing] it with the national standards, and determin[ing] the effect on this comparison of specified emission modifications." *Id.* at 1157-58 (*quoting Train*, 421 U.S. at 93). EPA claimed a statutory equivalence between non-relaxation of rules approved in 1981 and non-

[6] The court was interpreting the 1977 version of the statute in which Subpart 1 of Part D had been added. *id.* at 271 n.1, but relied on the language of then-current section 110(a)(2)(B) (now found in section 110(a)(2)(A)). *Pennsylvania Dep't of Envtl. Res.*, 32 F.2d at 272.

[7] Section 110(l) provides, in relevant part, that "[t]he Administrator shall not approve a revision of a [state implementation] plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter." 42 U.S.C. § 7410(l).

interference with current attainment requirements. *Id.* at 1155. The court rejected EPA's application of the "no relaxation" rule, finding it inconsistent with the Act because it set an improper baseline that failed to take into consideration the 1990 amendments, which set new deadlines for attainment and established other new requirements for incremental progress towards attainment. *Id.* at 1160-61. Those current attainment requirements were the baseline from which EPA should have measured "non-interference." *Id.* EPA's analysis was required to reflect consideration of the prospects of meeting current attainment requirements under a revised air quality plan. *Id.* Just as a plan revision must not interfere with attainment of the NAAQS under section 110(l), an ISIP must likewise include enforceable limits sufficient to ensure the initial plan provides for maintenance of the NAAQS under 110(a)(2)(A).

II. Michigan's Draft Infrastructure SIP Fails to Meet the Requirements of Section 110(a)(2) of the Clean Air Act.

A. Michigan's Draft ISIP does not incorporate the 2010 SO_2 and 2008 Ozone NAAQS.

As discussed in detail above, an Infrastructure SIP must provide for the implementation maintenance, and enforcement of the primary NAAQS, the levels of air quality necessary to protect public health. 42 U.S.C. § 7410(a)(1) & § 7409(b)(1). Michigan's proposed ISIP must address the following NAAQS:

- The 2010 SO_2 NAAQS, which imposes a new one-hour standard at a level of 196 micrograms per cubic meter ("µg/m3") or 75 ppb, which is met when the 3-year average of the 99th percentile of the annual distribution of daily maximum one-hour average concentrations is less than or equal to 75 ppb. 40 C.F.R. § 50.17(a)-(b).

- The 2008 primary ozone standard, which imposes the standard of 75 ppb of the annual fourth-highest daily maximum eight-hour concentration averaged over 3 year. 40 C.F.R. § 50.15(a)-(b).

A preliminary requirement to implementing these primary NAAQS is to incorporate the standards directly into the ISIP meant to attain and maintain them. 42 U.S.C. § 7410(a)(2)(A). Despite this requirement, Michigan fails to include the revised NAAQS in its regulations. Accordingly, in order to comply with the Clean Air Act, Michigan must revise the Draft ISIP so that it contains accurate, up-to-date ambient air quality standards reflective of the 2010 one-hour SO_2 and 2008 eight-hour ozone NAAQS.

B. The Draft ISIP Fails to Include Enforceable One-hour SO_2 Emission Limitations to Ensure Attainment and Maintenance of the Primary SO_2 NAAQS.

Michigan's Draft ISIP fails to include restrictions on major SO_2 sources to ensure that areas not currently designated nonattainment will attain and maintain the new one-hour SO_2 NAAQS.

1. Michigan must revise the Draft ISIP to include enforceable one-hour SO_2 emission limits for sources that have emissions or emission limits that cause an exceedance of the NAAQS.

The Draft ISIP fails to include adequate enforceable emission limitations or other required measures for sources of SO_2 sufficient to ensure attainment and maintenance of the 2010 SO_2 NAAQS. As discussed above, under section 110(a)(2)(A), the ISIP must "include enforceable emission limitations . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements" of the Clean Air Act (which include the requirement to maintain compliance with the NAAQS).

Emission limits are especially important for meeting the one-hour SO_2 NAAQS given the "strong source-oriented nature of SO_2 ambient impacts." Final SO_2 NAAQS Rule, 75 Fed. Reg. at 35,570. Nationally, large point sources account for 95 percent of SO_2 emissions, 66 percent of which come from fossil fuel combustion at electric facilities. *Id*. at 35,524. In Michigan, eighty percent (or 229,015 out of 285,658 tons) of SO_2 emissions come from coal electric generating units ("EGUs"). *See* SO2 NEI All Sectors(2011)_28 Apr 2014.xlsx, Excel Worksheet "Percentage Summary (All States)", attached hereto as Ex. 4,; *see also* EPA, The National Emissions Inventory, Sector Summaries, http://www.epa.gov/ttn/chief/net/2011inventory.html. 2011inventory.html.

Despite the large contribution from coal EGUs, MDEQ has not even attempted to demonstrate that emissions allowed by the Draft ISIP will ensure compliance with the one-hour SO_2 standard. In fact, the Draft ISIP would simply allow the major air pollution sources in the state to continue operating under their present emission limits. Michigan must correct these deficiencies before it finalizes its ISIP since its own modeling shows that the Belle River and St. Clair power plants are causing an exceedance of the SO_2 NAAQS. In addition, Sierra Club did additional modeling which shows that Belle River, St. Clair, Eckert, J.H. Campbell, and Presque Isle's emissions are causing exceedances of the SO_2 NAAQS. In order to comply with Section 110(a)(2) of the Clean Air Act, MDEQ must establish emission limits on these facilities to ensure maintenance of the SO2 NAAQS.

a. MDEQ's Own Modeling Shows that the Belle River and St. Clair Power Plants' Emissions are Causing Exceedances of the NAAQS.

Michigan modeled the SO2 emissions from the Belle River and St. Clair power plants as part of its process in developing its Wayne County SO_2 nonattainment SIP. MDEQ shared its modeling files with Sierra Club. According to MDEQ's modeling, Belle River and St. Clair power plants' emissions are authorized to cause exceedances of the NAAQS. *See* H. Andrews Gray, *SO_2 Impacts from the St. Clair and Belle River Power Plants* (June 3, 2014) (attached hereto as Ex. 5) [Gray Report]. The following table summarizes the results of MDEQ's modeling:

Table 1. Modeled SO2 Emission Rates[8]

source group	CONC ug/m3	CONC ppb	receptor location XR	YR
St. Clair	994.526	379.6	373000	4731250
Belle River	403.449	154.0	374500	4736500
ALL	1,004.144	383.3	371000	4730000

Sierra Club hired a modeler to run AERMOD using the MDEQ's input files but making some conservative adjustments, such as using the fourth highest value rather than the maximum value. The results of this modeling demonstrate that the emissions from Belle River and St. Clair power plants will cause a violation of the NAAQS. *Id.*

Table 2. Modeled Maximum 5-year Average of the 4th-Highest Daily Peak 1-hr Average SO_2 Concentration (NAAQS Design Value)

source group	CONC ug/m3	CONC ppb	receptor location XR	YR
St. Clair	488.009	186.3	376750	4733750
Belle River	223.085	85.1	374500	4734500
ALL	589.978	225.2	375250	4739500

The SO2 concentration impact from both sources exceeds 100 ppb across the entire 23 km x 15 km receptor grid, covering an area of almost 350 km^2. *Id.* The maximum 5-yr average of the 4th highest daily peak 1-hr SO_2 concentration (the "design value") for both sources combined was 225 ppb, at a receptor located about 4 km NW of Belle River and about 6 km NW of the St. Clair power plant (about 3-4 km SW of the city of St. Clair). *Id.* The SO_2 impact (design value concentration) due to St. Clair emissions was 186 ppb, located about 3 km to the SW of the St. Clair source. Belle River showed somewhat lower SO2 impacts than St. Clair, with a design value of 85 ppb, at a receptor located 4 km to the SW of the Belle River power plant. *Id.*

Using the results of the AERMOD model, one can determine the SO_2 emission reductions that would be required to meet the 1-hr SO2 NAAQS. *Id.* Facility-wide SO_2 emissions at St. Clair would need to be reduced by 60 percent to reduce the design value (186 ppb) to a level in which the NAAQS would no longer be violated (75 ppb). *Id.* Facility-wide emissions would therefore need to be reduced from 98,322 tpy to 35,590 tpy (9,039 lb/hr) so that St. Clair's emissions are not, on their own, causing a violation of the 1-hr SO2 NAAQS. *Id.*

[8] *Id.*

Similarly, emissions from the two large Belle River boiler units would need to be reduced by 12 percent to in order to reduce its design value (85 ppb) down to the NAAQS level (75 ppb). *Id*. Total SO_2 emissions from the Belle River facility would have to be reduced from 71,631 tpy to 63,094 (14,405 lb/hr) so that no violations of the 1-hr SO_2 NAAQS occur (due just to Belle River emissions). *Id*.

The combined impact from both St. Clair and Belle River was 225 ppb (design value), which implies that SO_2 emissions from both sources combined would need to be reduced by 67 percent in order to meet the 1-hr SO_2 NAAQS (assuming no other sources contribute to the peak concentrations, and that background SO_2 is negligible). *Id*. If this level of emission reduction were applied to both power plants, St. Clair's facility-wide SO2 emissions would be reduced to 32,748 tpy (7,477 lb/hr) and Belle River's two large units would emit only 23,857 tpy (5,447 lb/hr) of SO2. *Id*.

Since the state is aware of Belle River and St. Clair's impact on the attainment of the NAAQS in St. Clair County, it simply cannot finalize the ISIP without addressing this problem.

b. Sierra Club's modeling shows that Belle River, St. Clair, Eckert, J.H. Campbell, and Presque Isle's emissions are causing exceedances of the NAAQS.

As determined by expert air dispersion modeling conducted at Sierra Club's request, emission limits allowed at the Belle River, St. Clair, Eckert, J.H. Campbell, and Presque Isle coal-fired power plants are insufficient to attain and maintain the NAAQS. *See* Steven Klafka, *Belle River and St. Clair Power Plants, St. Clair, Michigan, Evaluation of Compliance with 1-hour NAAQS for SO_2 (May 28, 2014)*, [hereinafter "Belle River and St. Clair Report"], attached hereto as Ex. 6; Steven Klafka, Eckert Station, Lansing, Michigan, *Evaluation of Compliance with 1-hour NAAQS for SO_2 (May 30, 2014)*, [hereinafter "Eckert Report"], attached hereto as Ex. 7; Steven Klafka, *J.H. Campbell Plant, West Olive, Michigan, Evaluation of Compliance with 1-hour NAAQS for SO_2 (May 28, 2014)*, [hereinafter "J.H. Campbell Report"], attached hereto as Ex. 8; Steven Klafka, *Monroe Power Plant, Monroe, Michigan, Evaluation of Compliance with 1-hour NAAQS for SO_2 (April 16, 2014)*, [hereinafter "Monroe Report"], attached hereto as Ex. 9; Steven Klafka, *Presque Isle Power Plant, Marquette, Michigan, Evaluation of Compliance with the 1-hour NAAQS for SO_2 (May 30, 2014)* [hereinafter "Presque Isle Report"], attached hereto as Ex. 10.

The Belle River and St. Clair Report, Eckert Report, J.H. Campbell Report, Monroe Report, and Presque Isle Report present the results of an air dispersion modeling analysis for each plant that compares the modeled ambient air concentrations of each plant's SO_2 emissions with the 2010 one-hour primary SO_2 NAAQS. The modeling analyses employed EPA's AERMOD program to model the plants' "allowable" (based on the current Title V permit) and in certain instances "actual" emissions (based on maximum plant-wide hourly emissions obtained from annual emission inventory reports) or "maximum" emissions (based on the highest combined emission rate form all units during a single hour from USEPA *Air Markets Program Data*) to determine whether each plant's emissions could cause exceedances of the one-hour SO_2 NAAQS. *See* Belle River and St. Clair Report at 3; Eckert Report at 3; J.H. Campbell Report at 3; Monroe Report at 3; Presque Isle Report at 3. In particular, the modeling based on the

allowable emissions is crucial to a determination of whether the Michigan Draft ISIP is adequate to attain and maintain the SO_2 NAAQS, because this is what is allowed in each plant's permit.

The modeling protocol employed in these analyses is consistent with all available technical guidance, including Appendix W and EPA's March 2011 guidance for implementing the one-hour SO_2 NAAQS. Additionally, the modeler used the most recent version of AERMOD, AERMET, and AERMINUTE available at the time of the studies. *See* Belle River and St. Clair Report at 1; Eckert Report at 1; J.H. Campbell Report at 1; Monroe Report at 1; Presque Isle Report at 1. Where any assumptions were made in the running of the models, the modeler employed conservative inputs, which favor the prediction of lower impacts from the plants, so that the results may understate the plants' SO_2 emission impacts. *See* Belle River and St. Clair Report at 5; Eckert Report at 4; J.H. Campbell Report at 4; Monroe Report at 4; Presque Isle Report at 4.

The modeling reports demonstrate that the Draft ISIP improperly authorizes these plants to continue to cause exceedances of the one-hour SO_2 NAAQS based on their allowable emission rates and in some instances actual or maximum emission rates. *See* Belle River and St. Clair Report at 3, Table 1; Eckert Report at 3, Table 1; J.H. Campbell Report at 3, Table 1; Monroe Report at 3, Table 1; Presque Isle Report at 3, Table 1. The modeling results are above the NAAQS and show exceedances in St. Clair, Macomb, Eaton, Clinton, Ingham, Ottawa, Monroe, and Marquette counties, Michigan. *See* Belle River and St. Clair Report at 6-7, Figure 1 and Figure 2; Eckert Report at 5, Figure 1; J.H. Campbell Report at 5, Figure 1; Monroe Report at 5, Figure 1; Presque Isle Report at 5, Figure 1. Currently, only a portion of Wayne County has been designated nonattainment under the one-hour SO_2 NAAQS. *See generally* Air Quality Designations for the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard, 78 Fed. Reg. 47,191, 47,201 (Aug. 5, 2013), [hereinafter "Final 2010 SO_2 Designations"].[9] Because these power plants are in areas that are not currently designated nonattainment, MDEQ must submit an ISIP that "provides for implementation, maintenance, and enforcement of" the NAAQS within those areas. 42 U.S.C. § 7410(a)(1).

The findings from each modeling report are summarized in Table 3 below.

[9] EPA has yet to issue designations for areas aside from those containing monitors that recorded exceedances of the NAAQS. *See* Final 2010 SO_2 Designations at 47,191 (designating areas with monitor violations from 2009-2011 as nonattainment).

Table 3: Summary of Modeled Allowable, Actual, and Maximum Emissions

Power Plant	Emission Rates	Facility Impact ($\mu g/m^3$)	Background ($\mu g/m^3$)[10]	Total Impact Facility Impact plus Background ($\mu g/m^3$)	SO_2 NAAQS ($\mu g/m^3$)[11]	Counties Impacted (Not Designated Nonattainment)
Belle River Plant	Allowable	244.2	31.4	275.6	196.2	St. Clair[12]
	Maximum	287.7	31.4	319.1	196.2	St. Clair
St. Clair Power Plant	Allowable	518.3	31.4	549.7	196.2	St. Clair and Macomb[13]
	Actual	290.1	31.4	321.5	196.2	
Eckert Station	Allowable	306.1	31.4	337.5	196.2	Eaton, Clinton, and Ingham
J.H. Campbell Plant	Allowable	290.7	31.4	322.1	196.2	Ottawa
	Maximum	184.0	31.4	215.4	196.2	
Monroe Power Plant	Allowable	237.8	31.4	269.2	196.2	Monroe
	Actual	370.5	31.4	401.9	196.2	
Presque Isle Power Plant	Allowable	772.5	31.4	803.9	196.2	Presque Isle
	Maximum	419.5	31.4	450.9	196.2	

See Belle River and St. Clair Report at 3, Table 1 and 6-7, Figure 1 and Figure 2; Eckert Report at 3, Table 1 and 5, Figure 1; J.H. Campbell Report at 3, Table 1 and 5, Figure 1; Monroe Report at 3, Table 1 and 5, Figure 1; Presque Isle Report at 3, Table 1 and 5, Figure 1.

Based on the modeling results summarized above, MDEQ must promulgate enforceable emission limits with one-hour averaging times into its Draft ISIP that are no less stringent than the limits listed in Table 4, below, to achieve and maintain the one-hour SO_2 NAAQS. These limits represent the maximum rate that each facility can emit without causing NAAQS exceedances, thus reducing each plant's allowable emissions by the corresponding percentage.

[10] Mr. Klafka used the 2010-2012 design value for Kent County, Michigan to estimate the background level. Kent County design value was the lowest measured background in the state. Thus, using this background level likely underestimates the SO_2 levels in the counties mentioned in Table 1.

[11] The 75 ppb standard can be converted to $\mu g/m^3$ as follows: 75/0.3823 = 196.2 $\mu g/m^3$.

[12] This plant also causes impacts in Canada, resulting in SO_2 NAAQS exceedances in another country. Addressing these exceedances now would prevent a potential action by EPA under section 115, which requires EPA to prevent or eliminate a reasonably anticipated danger to public health impacting another country.

[13] This plant also causes impacts in Canada, resulting in SO_2 NAAQS exceedances in another country. Addressing these exceedances now would prevent a potential action by EPA under section 115, which requires EPA to prevent or eliminate a reasonably anticipated danger to public health impacting another country.

These emission limits must apply at all times, including during periods of start-up, shutdown, and malfunction, to ensure that all areas of Michigan attain and maintain the SO_2 NAAQS.[14]

Table 4: Limits Necessary to Achieve and Maintain the One-Hour SO_2 NAAQS

Plant	Required Total Facility Reduction Based on Allowable Emissions (%)	Required Total Facility Emission Rate (lbs/hr)	Required Total Facility 1-hour Average Emission Rate (lbs/MMBtu)
Belle River Plant	33%	11,037.0	0.81
St. Clair Power Plant	68%	7,138.2	0.53
Belle River and St. Clair, Combined[15]	72%	10,702.7	0.40
Eckert Station	46%	3,573.3	0.90
J.H. Campbell Plant	43%	11,333.3	0.79
Monroe Power Plant	31%	6,826.4	0.22
Presque Isle Power Plant	79%	1,484.7	0.30

See Belle River and St. Clair Report at 4, Table 3; Eckert Report at 4, Table 3; J.H. Campbell Report at 4, Table 3; Monroe Report at 4, Table 3; Presque Isle Report at 4, Table 3.

As demonstrated by the modeling reports, Belle River Power Plant, St. Clair Power Plant, Eckert Station J.H. Campbell Plant, Monroe Power Plant, and Presque Isle Power Plant are currently authorized to cause exceedances of the one-hour SO_2 NAAQS based on their allowable, actual, and/or maximum emission rates. Therefore, MDEQ must impose additional emission limits on the plants that ensure attainment and maintenance of the NAAQS at all times. As the ISIP submission does not incorporate emission limitations that are necessary to meet the applicable requirements of the Clean Air Act (or indeed, any new emission limits for these or other SO_2-emitting facilities), including the requirement to maintain compliance with the 2010 SO_2 NAAQS, the Draft ISIP must be appropriately revised.

2. Modeling is the appropriate tool for evaluating the adequacy of Infrastructure SIPs and ensuring attainment and maintenance of the SO_2 NAAQS.

As outlined by EPA in the Final SO_2 NAAQS Rule, 75 Fed. Reg. at 35,551, air dispersion modeling is the best method for evaluating the short-term impacts of large SO_2 sources. This is consistent with EPA's historic use of air dispersion modeling for attainment designations and SIP revisions. Furthermore, an agency may not ignore information put in front of it, such as Sierra Club's modeling submitted with these comments. *See generally Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (holding that it was

[14] Modeling-based emissions limits are well-documented. For example, Minnesota has used SO_2 modeling to establish emission limits on several plants in order to avoid nonattainment designations. *See* Black Dog Plant Permit No. 03700003-11, Technical Support Document, at 5 & 10 (permit emission limits based on modeling analyses), attached hereto as Ex. 11; *see also* Allen S. King Title V Technical Support Document, at 6, 14, 16 & 39 (permit emission limits based on modeling analyses), attached hereto as Ex. 12.

[15] The combined results for Belle River and St. Clair look at the cumulative impacts of both facilities together on air quality. A 72% reduction in emissions rate is needed at *each* plant in order to prevent exceedances of the NAAQS.

arbitrary and capricious for the agency to ignore an important aspect of an issue placed before it); *see also NRDC v. EPA,* 571 F.3d 1245, 1254 (D.C. Cir.2009) (restating EPA's own statement that additional information presented in a notice-and-comment rulemaking must be considered during the rulemaking by the corresponding state and EPA) (*citing* 70 Fed. Reg. 71,612, 71,655).

MDEQ has long been on notice that modeling data is an important resource in the SO_2 NAAQS attainment and maintenance process. Appropriately, MDEQ is currently using modeling to determine the level of emissions reductions required to bring Wayne County into attainment. *See* Ex. 5. EPA has historically used modeling in determining attainment for the SO_2 standard. *See e.g.*, U.S. EPA, *Implementation of the 1-Hour SO_2 NAAQS Draft White Paper for Discussion* at 3, fn. 1, [hereinafter "EPA White Paper"], *available at* http://www.epa.gov/airquality/sulfurdioxide/pdfs/20120522whitepaper.pdf; *see also* Respondent's Opposition to Motion of the State of North Dakota for a Stay of EPA's 1-Hour Sulfur Dioxide Ambient Standard Rule at 3, *National Environmental Development Association's Clean Air Project v. EPA* (D.C. Cir. 2010) (No. 10-1252), attached hereto as Ex. 13 ("the Agency has historically relied on modeling to make designations for sulfur dioxide"). In fact, in EPA's 1994 SO_2 Guideline Document, EPA noted that "for SO_2 attainment demonstrations, monitoring data alone will generally not be adequate." U.S. EPA, 1994 SO_2 Guideline Document, [hereinafter "1994 SO_2 Guideline Document"], *available at* http://www.epa.gov/ttn/oarpg/t1/memoranda/so2_guide_092109.pdf, at 2-5, and that "[a]ttainment determinations for SO_2 will generally not rely on ambient monitoring data alone, but instead will be supported by an acceptable modeling analysis which quantifies that the SIP strategy is sound and that enforceable emission limits are responsible for attainment." *Id*. at 2-1. The 1994 SO_2 Guideline Document goes on to note that monitoring alone is likely to be inadequate: "[f]or SO_2, dispersion modeling will generally be necessary to evaluate comprehensively a source's impacts and to determine the areas of expected high concentrations based upon current conditions." *Id*. at 2-3.

EPA's approval and acceptance of modeling for making attainment designations stretches back decades and demonstrates that modeling is equally applicable to determining the adequacy of an Infrastructure SIP. In 1983, the Office of Air Quality Planning and Standards ("OAQPS") issued a Section 107 Designation Policy Summary. *See* Sheldon Meyers Memorandum re Section 107 Designation Policy Summary (April 21, 1983), attached hereto as Ex. 14. OAQPS explained that "air quality modeling emissions data, etc., should be used to determine if the monitoring data accurately characterize the worst case air quality in the area." *Id*. at 1. Without modeling data, the worst-case air quality may not be accurately characterized. In certain instances, EPA relied solely on modeling data to determine nonattainment designations: demonstrating modeling is accepted and trustworthy. *Id*. at 2. In fact, reliance on modeling for nonattainment designations stretches back to the Carter Administration. In 1978, EPA designated Laurel, Montana as nonattainment "due to measured and modeled violations of the primary SO_2 standard." *Mont. Sulphur & Chem. Co.*, 666 F.3d at 1181 (citing 43 Fed. Reg. 8,962 (Mar. 3, 1978)).

EPA's final 2010 SO_2 NAAQS rule simply built upon EPA's historical practice of using modeling to determine attainment and nonattainment status for SO_2 NAAQS. In doing so, EPA properly recognized the "strong source-oriented nature of SO_2 ambient impacts," Final SO_2 NAAQS Rule at 35,370, and concluded that the appropriate methodology for purposes of

determining compliance, attainment, and nonattainment with the new NAAQS is modeling. *See id.* at 35,551 (describing dispersion modeling as "the most technically appropriate, efficient and readily available method for assessing short-term ambient SO_2 concentrations in areas with large point sources."). Accordingly, in promulgating the 2010 SO_2 NAAQS, EPA explained that, for the one-hour standard, "it is more appropriate and efficient to principally use modeling to assess compliance for medium to larger sources . . . ." *Id* at 35,570. Similarly, EPA then explained in the EPA White Paper that using modeling to determine attainment for the SO_2 standard "could better address several potentially problematic issues than would the narrower monitoring-focused approach discussed in the proposal for the SO_2 NAAQS, including the unique source-specific impacts of SO_2 emissions and the special challenges SO_2 emissions have historically presented in terms of monitoring short-term SO_2 levels for comparison with the NAAQS in many situations (75 FR 35550)." EPA White Paper at 3-4.

Moreover, the courts have upheld EPA's use of modeling. For example, in *Montana Sulphur*, the company challenged a SIP call, a SIP disapproval, and a Federal Implementation Plan ("FIP") promulgation, because they were premised on a modeling analysis that showed the Billings/Laurel, Montana area was in nonattainment for SO_2. 666 F.3d at 1184. The court rejected Montana Sulphur's argument that EPA's reliance on modeling was arbitrary and capricious or otherwise unlawful. *Id.* at 1185; *see also Sierra Club v. Costle*, 657 F.2d 298, 332 (D.C. Cir. 1981) ("Realistically, computer modeling is a useful and often essential tool for performing the Herculean labors Congress imposed on EPA in the Clean Air Act"); *Republic Steel Corp. v. Costle*, 621 F.2d 797, 805 (6th Cir. 1980) (approving use of modeling to predict future violations and incorporating "worst-case" assumptions regarding weather and full-capacity operations of pollutant sources). Further demonstrating the superiority of modeling, the D.C. Circuit has acknowledged the inherent problem of using monitored data for criteria pollutants, namely that "a monitor only measures air quality in its immediate vicinity." *Catawba County v. EPA*, 571 F.3d 20, 30 (D.C. Cir. 2009).

Indeed, EPA employs and relies on modeling to inform its designations because the agency is well aware that modeling produces reliable results. For example, as John C. Vimont, EPA Region 9's Regional Meteorologist, has stated under oath:

> EPA does recognize the usefulness of ambient measurements for information on background concentrations, provided reliable monitoring techniques are available. EPA does not recommend, however, that ambient measurements be used as the sole basis of setting emission limitations or determining the ambient concentrations resulting from emissions from an industrial source. These should be based on an appropriate modeling analysis.

Declaration of John C. Vimont at 1, 11 (emphasis added), attached hereto as Ex. 15. Testimony as to the accuracy and appropriateness of modeling has also been presented by Roger Brode, a physical scientist in EPA's Air Quality Modeling Group who co-chairs the AMS/EPA Regulatory Model Improvement Committee (AERMIC) and the AERMOD Implementation Workgroup. *See* Declaration of Roger W. Brode at 1, 2, attached hereto as Ex. 16. Mr. Brode has stated under oath that AERMOD is "readily capable of accurately predicting whether the revised primary SO_2 NAAQS is attained and whether individual sources cause or contribute to a violation of the SO_2 NAAQS." *Id.* at 2. Mr. Brode has explained:

> As part of the basis for EPA adopting the AERMOD model as the preferred model for nearfield applications in the *Guideline on Air Quality Models*, Appendix W to 40 CFR Part 51, the performance of the AERMOD model was extensively evaluated based on a total of 17 field study data bases (AERMOD: Latest Features and Evaluation Results. EPA-454/R-03-003. U.S. Environmental Protection Agency, Research Triangle Park (2003), portions of which are attached to this affidavit) ("EPA 2003"). The scope of the model evaluations conducted for AERMOD far exceeds the scope of evaluations conducted on any other model that has been adopted in Appendix W to Part 51. These evaluations demonstrate the overall good performance of the AERMOD model based on technically sound model evaluation procedures, and also illustrate the significant advancement in the science of dispersion modeling represented by the AERMOD model as compared to other models that have been used in the past. In particular, adoption of the AERMOD model has significantly reduced the potential for overestimation of ambient impacts from elevated sources in complex terrain compared to other models.

Id. at 3-4 (emphasis added). The Belle River Power Plant, St. Clair Power Plant, Eckert Station, J.H. Campbell Plant, Monroe Power Plant, and Presque Isle Power Plant are clear examples of elevated sources.

EPA's practice in a number of other contexts also demonstrates that modeling is a technically superior approach for ascertaining impacts on NAAQS, as well as the extensive history of EPA's preference for modeling over monitoring to evaluate compliance. For example, all NO_2, PM2.5, SO_2 NAAQS, and Prevention of Significant Deterioration ("PSD") increment compliance verification analyses are performed with air dispersion modeling, such as running AERMOD in a manner consistent with the Guideline on Air Quality Models. 40 C.F.R. § 52.21(l)(1). Indeed, in order to ensure consistency in how air impacts are determined, both existing sources and newly permitted sources should be assessed using the same methods. AERMOD modeling performs particularly well in evaluating emission sources with one or a handful of large emission points. The stacks are well characterized in terms of location, dimensions, and exhaust parameters, and have high release heights. AERMOD accurately models medium-to-large SO_2 sources—even with conditions of low wind speed, the use of off-site meteorological data, and variable weather conditions. Indeed, AERMOD has been tested and performs very well during conditions of low wind speeds:

> AERMOD's evaluation analyses included a number of site-specific meteorological data sets that incorporate low wind speed conditions. For example, the Tracy evaluation included meteorological data with wind speeds as low as 0.39 meter/second (m/s); the Westvaco evaluation included wind speeds as low as 0.31 m/s; the Kincaid SO_2 evaluation included wind speeds as low as 0.37 m/s; and the Lovett evaluation included wind speeds as low as 0.30 m/s. Concerns . . . regarding AERMOD's ability to model low wind speed conditions seem to neglect the data used in actual AERMOD evaluations.

Comments of Camille Sears 1, at 10, attached hereto as Ex. 17 (citing AERMOD evaluations and modeled meteorological data, *available at* http://www.epa.gov/ttn/scram/dispersion_prefrec.htm).

Finally, EPA's use of air dispersion modeling and AERMOD in particular was upheld in the context of a recent Clean Air Act § 126 petition for resolution of cross-state impacts. *See Genon Rema, LLC v. U.S. EPA*, 722 F.3d 513, 526 (3rd Cir. 2013). In this case, the EPA granted the New Jersey Department of Environmental Protection's 126 petition, finding that trans-boundary sulfur dioxide emissions from the Portland coal-fired power plant in Pennsylvania were significantly contributing to nonattainment and interference with the maintenance of the one-hour SO_2 NAAQS in New Jersey. *Id.* at 518. EPA based its finding on a review of the AERMOD dispersion modeling submitted by New Jersey, its independent assessment of AERMOD, and other highly technical analyses. *Id.* The court upheld the EPA's decision after examining the record, which showed that EPA had thoroughly examined the relevant scientific data and clearly articulated a satisfactory explanation of the action that established a rational connection between the facts found and the choice made. *Id.* at 525-28.

EPA has acknowledged that, for the one-hour SO_2 NAAQS, modeling is the most accurate means of determining attainment with the NAAQS. Final SO_2 NAAQS Rule at 35,551, 35,570, yet the Michigan Draft ISIP lacks SO_2 emissions limitations informed by air dispersion modeling. As a result, the proposed amendment fails to ensure that Michigan will achieve and maintain the 2010 one-hour SO_2 NAAQS. To comply with the Act's obligations, Michigan must include adequate emissions limits in the ISIP—that is, source-specific one-hour SO_2 emission limits that show no exceedances of the NAAQS when modeled.

3. The Draft ISIP must include enforceable SO_2 emission limits with a one-hour averaging period that apply at all times.

As discussed, an emission limitation necessary to comply with section 110(a)(2)(A) means "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter." 42 U.S.C. § 7602(k). Therefore, emission limitations must also contain proper averaging times. Otherwise the emission limits would allow for peaks that cause exceedances of the NAAQS, but are averaged with lower emissions over time, and therefore do no register as exceedances. In this instance, the one-hour SO_2 NAAQS requires a one-hour averaging period.

In various contexts, EPA has stated that one-hour averaging times are necessary to comply with the one-hour SO_2 NAAQS. For instance, in 2011, EPA disagreed with the Kansas Department of Health and Environment's issuance of a PSD permit that contained a 30-day averaging time rather than a one-hour averaging period. *See* Letter from Karl Brooks, Regional Administrator, EPA Region 7 to Dr. Robert Moser, Secretary, Kansas Department of Health and Environment (Feb. 3, 2011), attached hereto as Ex. 18. EPA explained:

> [i]t is well known that there can be considerable variability in actual 1-hour emission rates. Therefore, to ensure protection of the 1-hour . . . SO_2 NAAQS . . . the permit needs to contain . . . SO_2 1-hour average emission limits for both new and existing steam generating units. To ensure the source does not cause or contribute to air pollution in violation of the NAAQS, the emission limits should be consistent with the modeling rates and have the same averaging period, i.e. in this case maximum hourly emission limits consistent with the 1-hour NAAQS.

Id. at 2. Similarly, in its disapproval of Missouri's SIP in 2006, EPA determined that the emission rates in the SIP were "not protective of the short-term sulfur dioxide NAAQS" because they were based on an annual average. *See* Approval and Promulgation of Implementation Plans; State of Missouri, 71 Fed. Reg. 12,623, 12,624 (Mar. 13, 2006). In 2011, the Environmental Appeals Board confirmed that emission limits for SO_2 should be based on hourly averaging times, and rejected an agency's attempt to use a 3-hour averaging time instead. *In re: Mississippi Lime Co.*, PSDAPLPEAL11-01, 2011 WL 3557194, at *26-27 (E.P.A. Aug. 9, 2011) ("Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. 40 C.F.R. pt. 51, app. W, § 10.2.3.1.a.").

In addition to including emissions limits based on a one-hour averaging period, Michigan's Draft ISIP must require monitoring of SO_2 emission limits on a continuous basis using a continuous emission monitor system or systems. Clean Air Act section 110(a)(2)(F) requires Michigan's Draft ISIP to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports. In order to ensure emission limits which are protective of the one-hour SO_2 NAAQS, the ISIP must require that SO_2 emissions are monitored from these sources during every hour of operation, regardless of whether SO_2 pollutant control equipment has been installed or not.

Michigan's ISIP is required to implement, maintain, and enforce the NAAQS and therefore must include "enforceable emission limitations" to ensure its effectiveness. 42 U.S.C. § 7410(a)(2)(A). Only one-hour averaging periods can ensure compliance with the one-hour SO_2 NAAQS.[16] Therefore, to ensure that all areas in Michigan attain and maintain the one-hour SO_2 NAAQS, MDEQ must revise its ISIP to include enforceable emission limits with one-hour averaging times, monitored continuously, for coal-fired power plants and other large sources of SO_2. These emission limits must apply at all times, including periods of start-up, shutdown, and malfunction.

4. Enforceable emission limits are necessary to avoid nonattainment designations.

In addition to being a required component of the ISIP, enforceable emission limits—either in permits or source-specific SIP provisions—are necessary to avoid future nonattainment designations in areas where modeling or monitoring shows that SO_2 levels exceed the one-hour NAAQS. *See* EPA, Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard at 4 (Feb. 6, 2013) (explaining that agencies should work "*to avoid a nonattainment designation by establishing and submitting to EPA enforceable emission limitations* ensuring that attainment with the SO_2 NAAQS (in the form of permit limits, source-specific SIP revisions, or other permanent and enforceable legal documents) occurs prior to the date that final designations based on modeling information are issued" (emphasis added)); Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. at 35,553 (June 22, 2010) (areas will "be designated 'nonattainment' if *either available monitoring data or modeling* shows that a violation exists, or 'attainment' if both available monitoring data and modeling indicate the area is attaining" (emphasis added)). Currently, Michigan only has one

[16] Though any averaging time longer than one hour will impermissibly allow exceedances of the short-term standard, if a state nonetheless uses a longer averaging time, the emission limits at minimum would need to be ratcheted down accordingly to ensure that no short-term exceedances of the standard occur.

county designated as nonattainment, but that number will jump to nine counties as the designation process continues. Nonattainment designations create rigorous Clean Air Act requirements that states must comply with, including offsets, LAER, and nonattainment NSR. Michigan could avoid having eight counties formally designated as nonattainment by using this opportunity to add enforceable emissions limits to attain the SO_2 NAAQS on and protect public health.

Addressing the issue now will also bring regulatory certainty to owners of coal-fired power plants in Michigan, which could ultimately save these regulated entities money. This is because many of the coal-fired power plants that do not already have flue gas desulfurization equipment are currently evaluating which sulfur controls to install as a result of other rules, including MATS, CSAPR, and Regional Haze. As a result, establishing emission limits and pollution control requirements through the ISIP will allow the sources to plan with certainty how they will comply with all potentially applicable rules and avoid the potential that a source will make a significant investment in one suite of pollution controls for MATS, Regional Haze or CSAPR only to conclude that the suite of controls is inadequate to comply with the SO_2 NAAQS and that a second suite of controls is necessary. Thus, complying with the SO_2 NAAQS may add little or no additional capital cost to the costs of complying with other rules—provided that the sources factor the SO_2 NAAQS into their initial decision on which controls to install so that the sources can comply with life-saving pollution reduction rules most economically by using only one suite of technologies.

Indeed, industry itself has made this same exact point to EPA, though in slightly different terms:

> Multiple recently-issued rules all focus on large combustion source-related emissions (e.g. boilers) and may require significant capital expenditures to achieve compliance. The compliance options and deadlines for these rules, however, vary widely. If the rules compliance deadlines and requirements are not coordinated, the sources subject to them will be forced to make investment decisions without a full understanding of what may be required to comply with the rules having later compliance deadline. This may result in a series of sub-optimized decisions . . . [with a] suboptimal overall solution—both from a cost and environmental perspective. For example . . . a source could invest in Boiler MACT controls without a full understanding of the SO2 NAAQS issued because SO2 air dispersion modeling has not yet been completed . . . .

See NAAQS Implementation Coalition Comments on the 10th Modeling Conference, March 6, 2012 Joseph C. Stanko, Hunton and Williams, at 10 (emphasis added). By regulating these facilities now, the state of Michigan can prevent a source from incurring additional expenses through piecemealed legislation.

To avoid inevitable nonattainment designations in eight counties and to bring regulatory certainty to sources in those counties, MDEQ should amend the Draft ISIP to establish enforceable emission limits to ensure that large sources of SO_2 do not cause exceedances of the one-hour SO_2 NAAQS.

C. The Draft ISIP fails to include enforceable emission limitations needed to address significant monitored violations of the primary ozone NAAQS.

Michigan's Draft ISIP also fails to include emission limits and other restrictions on sources of ozone precursors, including anthropogenic sources like nitrogen oxides ("NO_x") and volatile organic compounds ("VOCs"), to ensure that areas not designated nonattainment will attain and maintain the 2008 eight-hour Ozone NAAQS. Monitoring data demonstrates that the 2008 Ozone NAAQS is being exceeded in at least eight counties in Michigan.

Emission limits are especially important for meeting the eight-hour ozone NAAQS, because fuel combustion from sources such as electric generating units "is one of the largest anthropogenic sources of emissions of NO_X in the United States." 73 Fed. Reg. at 16504.[17] Specifically, in Michigan, coal-fired electric generating units are responsible for thirteen percent of all NO_x emissions released in the State (or 70,328 tons) in 2011. *See* NOx NEI All Sectors(2011)_28 Apr 2014.xlsx, Excel Worksheet "Percentage Summary (All States)", attached hereto as Ex. 19; *see also* EPA, The National Emissions Inventory, Sector Summaries, http://www.epa.gov/ttn/chief/net/2011inventory.html. Yet Michigan fails to demonstrate how it plans to address these significant NO_x emissions and other ozone precursors.

1. Monitoring data demonstrates that at least eight counties in Michigan are exceeding the 2008 Ozone NAAQS.

Michigan's Draft ISIP fails to impose necessary restrictions on ozone precursor sources sufficient to ensure the attainment and maintenance of the 2008 Ozone NAAQS in areas designated attainment as shown by the EPA's own ozone monitoring data. Ozone monitor data reveals that twelve counties from 2010-2012 had exceedances that are above attainment/unclassifiable levels. Looking at data from 2011-2013, eight counties again show exceedances of 0.076 ppm or higher. The monitors reveal that ozone concentrations in these areas exceed the 2008 Ozone NAAQS, and thus are above the level deemed safe for public health. *See* MI Ozone Monitors 2010-2013, Excel Worksheet "MI Ozone Monitors 2010-2013," attached hereto as Ex. 20; *see also* EPA AirData: Monitor Values Report, http://www.epa.gov/airdata/ad_rep_mon.html. Despite these exceedances, no areas with monitoring exceedances, and in fact no area in Michigan, is designated nonattainment. 77 Fed. Reg. 30,088, 30,128 (May 21, 2012) (labeling all of Michigan unclassifiable /attainment). Michigan must revise the Draft ISIP to address these exceedances and ensure attainment and maintenance of the 2008 Ozone NAAQS.

The 2008 eight-hour ozone monitor values are listed below for the violating counties

[17] Oil and gas production can also be a major source of ozone precursors. Michigan currently has twenty-seven pending active high volume hydraulic fracking permits throughout the state. High Volume Hydraulic Fracking: Active Applications and Active Permits, http://www.michigan.gov/documents/deq/High_Volume_Hydraulic_Fracturing_Activity_MAP_423435_7.pdf. MDEQ should analyze whether and how oil and gas production is affecting air quality and specifically ozone formation in the state. If the oil and gas production is found to be causing ozone exceedances, a minor source permitting program should be established that requires offsets for new and old oil and gas sources to combat emissions of ozone precursors. This will enable the state to meet its duty under the ISIP to attain and maintain the 2008 Ozone NAAQS.

from 2010 to 2013.

Table 5: Fourth Highest Monitor Values of Counties with Three-Year Averages from 2010 to 2013 equal to 0.076 ppm or Above.[18]

County (Monitor Number)	Average 2010-2012	Average 2011-2013
Allegan (#260050003)	0.084	0.086
Berrien (#260210014)	0.082	0.082
Cass (#260270003)	0.078	0.078
Genesee (#260490021)	0.076	0.074
Lenawee (#260910007)	0.076	0.075
Macomb (#260990009)	0.078	0.077
Macomb (#260991003)	0.079	0.077
Muskegon (#261210039)	0.082	0.081
Oakland (#261250001)	0.078	0.076
Ottawa (#261390005)	0.078	0.077
St. Clair (#261470005)	0.077	0.075
Washtenaw (#261610008)	0.076	0.075
Wayne (#261630019)	0.081	0.077

See Ex. 20

[18] Sierra Club has petitioned EPA to redesignate Allegan, Macomb, Muskegon, and Wayne counties as nonattainment for the 2008 Ozone NAAQS on the basis that the 2009-2011 monitoring data revealed that these counties were exceeding the NAAQS. *See* In the Matter of the Final Rule Published at 77 Fed. Reg. 30,088 (May 20, 2012), entitled "Air Quality Designations for 2008 Ozone National Ambient Air Quality Standards," Docket No. EPA-HQ-OAR 2008-0476 (July 20, 2012). Sierra Club also petitioned EPA to redesignate Allegan, Berrien, Cass, Genesee, Macomb, Muskegon, Oakland, Ottawa, St. Clair, Washtenaw, and Wayne counties as nonattainment for 2008 Ozone NAAQS on the basis that the 2010-2013 monitoring data revealed that these counties were exceeding the NAAQS. *See* Petition to the Administrator of the U.S. EPA to Redesignation as Nonattainment 57 Areas with 2012 Design Values Violating the 2008 8-Hour NAAQS for Ozone (Nov. 11, 2013).

Despite persistent ozone NAAQS exceedances in the state, the Draft ISIP does not even attempt to demonstrate that emissions allowed under it will ensure compliance with the eight-hour ozone standard, let alone includes any NO_x limits to address such exceedances. In order for Michigan to comply with the Clean Air Act and the requirements of section 110(a)(2)(A), Michigan must revise its ISIP to include enforceable emission limits and other measures that will ensure the attainment and maintenance of the 2008 Ozone NAAQS.

2. Adding control devices and emissions limits on electric generating units are a cost effective option to reduce NO_x and attain and maintain the 2008 Ozone NAAQS.

Control devices and limits on coal-fired EGUs are generally the most cost effective option to ensure the 2008 Ozone NAAQS are attained and maintained. A power plant can cost-effectively reduce nitrogen oxides by installing selective catalytic reduction ("SCR") technology, and by imposing short-term stringent emission limits on all coal-fired EGUs. Notably, only three major coal-burning power plants in Michigan have installed or are planning to install SCR technology: Monroe, J.H. Campbell (Units 2 and 3), and Dan E. Karn. The other sixty-seven coal-fired EGUs in Michigan lack SCR, accounting for 89 percent of all Michigan EGUs. Moreover, only two plants—Sims and T.B. Simon—have even installed SNCR, a less effective control technology. The uncontrolled EGUs cause or contribute to exceedances of the NAAQS. In fact, several of these EGUs are located in counties where ozone design values exceed the NAAQS, including the Trenton Channel, River Rouge, and Wyandotte power plants in Wayne County, and the J.H. Campbell power plant in Ottawa County. In addition, St. Clair and Belle River power plants likely contribute to the Wayne County exceedances, as well as to recent exceedances in St. Clair County. The most cost effective way to address ozone exceedances is to place emissions limits on all EGUs that will ensure that power plants contributing to the exceedances install SCR, and that those with SCR installed run their controls continuously.

In Michigan, where at least eight counties show exceedances of the 2008 Ozone NAAQS, all EGUs should have emission limits based on available and demonstrated control technology. SCR catalysts have been applied over the last 20 years as retrofits to existing power plants across the country and have a proven track record of meeting low emission rates. In particular, a limit of 0.07 pound per MMBtu ("lb/MMBtu") based on an eight-hour averaging time that applies at all times, including during startup and shut down is readily achievable. EPA has long acknowledged that 90% removal efficiency for SCR on coal-burning units is achievable. *See* EPA, "Ambient Air Quality Impact Report for Desert Rock Energy Facility PSD Permit," at 8, Table 3, attached hereto as Ex. 21. Thus, taking even the highest emission rate that EPA has set with no post-combustion control—that is, 0.5 lb/MMBtu—and applying the 90% control from SCR, an emission limit of 0.05 lb/MMBtu is clearly achievable. However, MDEQ could add a 40% "safety factor" and establish limitations in the ISIP at 0.07 lb/MMBtu. A review of the RACT/BACT/LAER clearinghouse demonstrates that numerous PSD permits for coal-burning boilers were issued in the early 2000s with emission limits of 0.07 lb/MMBtu. Later that decade, permits for proposed new coal plants were issued with NO_x limits of 0.05 lb/MMBtu. For example, MDEQ's permit to install for the Consumers Energy Karn-Weadock plant included a NO_x emissions limit of 0.05 lb/MMBtu. EPA acknowledged, in setting limits for the proposed Desert Rock facility, that even 0.05 lb/MMBtu involves a significant "safety factor." In 2001, Babcock & Wilcox Company, in its paper, "How Low Can We Go", attached hereto as Ex. 22,

said that 0.016 lb/MMBtu was achievable for units burning bituminous coal and 0.008 lb/MMBtu for those burning Powder River Basin coal. *See* Ex. 22 at 5, Table 2.

Actual data confirms that 0.07 lb/MMBtu is easily achievable. For example, during the 2006 ozone season, approximately 88 coal-fired units achieved emission limits of less than 0.07. *See* CAMD NO_x Ranked Low to High Ozone 2006, attached hereto as Ex. 23. While these emission rates should be based on 0.07 lb/MMBtu, the limit should be set as a lb/hour limit, calculated by multiplying 0.07 MMBtu/hr times the maximum allowable heat input or maximum heat input in prior permit applications for the EGU. Setting the limit in lb/hour ensures consistent protection of the ambient air quality regardless of whether the claimed maximum heat input capacity for the unit is accurate or changes in the future. In addition, a limit in lb/hour addresses the issue of startup and shutdown. Even if the NO_x emission rate in lb/MMBtu is higher during startup and shutdown when the SCR cannot be engaged, the source should be able to remain under the limit because the heat input is lower during startup and shutdown.

Ideally, Michigan should set the limit with an 8-hour averaging time to protect the 8-hour averaging time of the 2008 Ozone NAAQS. This is especially important for coal-burning EGUs, because electricity demand tends to be highest on hot, summer days, which coincides with those times when ozone levels are the worst. Without short-term averaging times, EGUs could emit NO_x at higher rates at precisely the time when the ozone levels are the worst and still meet the emission limit using a longer-term average period by reducing their NO_x emissions during periods when the ozone levels are not as severe.

3. Enforceable emission limits are necessary to avoid future nonattainment designations.

In addition to being a required component of the ISIP, enforceable emission limits—either in permits or source-specific SIP provisions—are necessary to avoid nonattainment designations in areas where modeling or monitoring shows that ozone levels exceed the eight-hour NAAQS. Michigan should use this ISIP process to address current ozone exceedances in at least eight counties and prevent these counties from being redesignated as nonattainment for the 2008 Ozone NAAQS, or designated nonattainment for the forthcoming Ozone NAAQS, by adding appropriate enforceable emission limits on NO_x sources.[19] In order to comply with section 110(a)(2)(A) and avoid nonattainment designations for areas impacted by high ozone levels, MDEQ must amend the Draft ISIP to ensure that large sources of NO_x cannot continue to contribute to exceedances of the eight-hour Ozone NAAQS.

D. The Draft ISIP fails to Include Measures that Ensure Compliance with Section 110(a)(2)(A) of the Act Regarding the 2010 SO_2 and 2008 Ozone NAAQS.

The statutory and regulatory sections that MDEQ incorporated into its Draft ISIP are insufficient to ensure compliance with the 2010 SO_2 and 2008 Ozone NAAQS. Most striking is that none of the rules and regulations cited in Michigan's Draft ISIP include appropriate

[19] In January, EPA solicited comments on the Ozone NAAQS. *See generally* Review of National Ambient Air Quality Standards for Ozone; Draft Document (Doc ID: EPA-HQ-OAR-2008-0699-0116) (Jan. 29, 2014).

emission limits for the 2010 SO_2 and 2008 ozone NAAQS, as shown by modeling and monitoring data. *See generally* Draft ISIP. Michigan is taking little to no action to address any NAAQS exceedances.

For example, Michigan's sulfur emission limits on coal-burning facilities require a 2.5 lb/MMBtu for plant with steam capacity less than or equal to 500,000 lbs per hour and 1.67 lb/MMBtu for plant steam capacity greater than 500,000 lbs per hour. *See* R.336.1401, Table 41. As discussed above, the limits necessary to meet the 2010 SO_2 NAAQS range from 0.95 to 0.22 lb/MMBtu. Nitrogen oxides limits are equally as weak. Sources that emit more than 25 tons during the ozone control period and serve a generator that has a nameplate capacity of 25 megawatts must meet an emission rate of 0.25 lbs/MMBtu input or a 65% reduction of 1990 NO_x levels by May 31, 2014. *See* R.336.1801(2)(a)-(b). The regulation also allows for plants to avoid this limit for two years after the compliance date. *See* R.336.1801(2) (b). As discussed above, a 0.07 lb/MMBtu limit is feasible and should be required in order to attain and maintain the 2008 Ozone NAAQS.

Further, the final ISIP must not allow for ambient air incremental increases, variances, exceptions, or exclusions with regard to limits placed on sources of pollutants; otherwise, Michigan cannot assure compliance with the 2010 SO_2 and 2008 ozone NAAQS. Michigan's rules allow exemptions from enforcement that undermine the programs meant to ensure attainment and maintenance with the NAAQS. *See generally* Draft ISIP.

Particularly concerning is Michigan's Clean Corporate Citizen (C3) program (MCL 324.1421 through 324.1429). *See* Draft ISIP at 2. A business can become a so-called Clean Corporate Citizen by meeting minimal requirements, *see generally* MCL §§ 324.1401-1429, yet with the designation companies can avoid enforcement measures. In fact, Michigan states that the program allows a facility to avoid civil fines or violations "unless it had been established by clear and convincing evidence that either C3 facility's actions posed a significant endangerment to public health, safety or welfare…was intentional or occurred as a result of the operator's gross negligence…" *See* Draft ISIP at 2. In addition, C3 designated companies will experience fewer inspections and be given 72-hours' notice before an inspection occurs. *Id.* at 2-3. This weakens Michigan's enforcement abilities and, in light of Michigan's significant air quality problems, is extremely troubling.

More generally, the regulations allow for various exceptions. For example, MDEQ has wide discretion to promulgate rules that exempt certain sources from obtaining permits. *See* MCL § 324.5505(4). Michigan also undercuts its enforcement program by allowing various excuses as affirmative defenses and allowing MDEQ to suspend enforcement, as well as grant variances from requirements for undue hardship. *See* MCL §324.5527; MCL §324.5535; MCL §324.5537. MDEQ also has enforcement discretion for excess emissions resulting from malfunction, start-up, or shutdown. *See* R.336.1915. These regulations impair the ability of Michigan to attain and maintain the NAAQS.

As a result of all of these inadequacies, exemptions, variances, and other shortfalls not listed in these comments, the Draft ISIP cannot ensure that Michigan will attain and maintain the 2010 SO_2 and 2008 Ozone NAAQS. Michigan must revise its ISIP to include enforceable

emission limits that address the exceedances shown by the modeling and monitor data and that otherwise address 2010 SO_2 and 2008 Ozone NAAQS, and it must update its emission regulations to ensure that proper mass limitations and short term averaging periods are imposed on large sources of pollutants, including coal-fired power plants.

E. The Draft Infrastructure SIP Fails to Address Sources Significantly Contributing to Nonattainment or Interference with Maintenance of the NAAQS in Downwind States.

Michigan must address interstate transport of its emissions that will contribute to exceedances or interfere with the maintenance of the NAAQS. Under section 110(a)(2)(D), a SIP must contain "adequate provisions (i) prohibiting . . . any source . . . from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard . . . ." 42 U.S.C. § 7410(a)(2)(D)(i)(I); *see also EPA v. EME Homer City Generation*, No. 12-1182, slip op. at 14 (U.S. Apr. 29, 2014) (reiterating that this is a mandatory duty) [hereinafter "*Homer City*"]. Michigan's ISIP, as proposed, fails to address any cross-state impacts that are due to sources within the state. *See* Draft ISIP at 3. This is inadequate and should result in EPA disapproving the submittal.

The Clean Air Act sets a mandatory duty for states to submit ISIPs within three years of promulgation of a NAAQS. 42 U.S.C. § 7410(a)(1). Under CAA section 110, there is no prerequisite action required, such as EPA issuing guidance, before states must fulfill their mandatory duty. *See Homer City* at 14 ("the CAA sets a series of precise deadlines to which the States and EPA must adhere."). MDEQ cannot rely on the fact that EPA's 2013 ISIP Guidance does not address interstate transport provisions. *See* Draft ISIP at 3.[20] This guidance directly contradicts the language of the Clean Air Act. Therefore, Michigan must create an ISIP to address Prongs 1 and 2 of the interstate provisions and provide the public with an opportunity to comment on it.[21]

Further, it has already been demonstrated through CSAPR that Michigan is contributing to other states' pollution problems, and so Michigan's contention that it is not subject to any finding of significant contribution to any other state's attainment or maintenance at this time, *see* Draft ISIP at 3, is incorrect. Under CSAPR, which is a less stringent standard than the 2010 SO_2

[20] The Supreme Court has resoundingly disapproved the belief that states cannot address the section 110(a)(2)(D)(i), the Good Neighbor provision, until EPA first calculates the budget of emissions and gives upwind states the opportunity to propose SIPs allocating those budgets among in-state sources before issuing a FIP. *See Homer City*, 696 F.3d 7, 37 (D.C. Cir. 2012), rev'd, No. 12-1182, slip op. at 27-28 (U.S. Apr. 29,2014) (stating "nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations" and finding the D.C. Circuit impermissibly altered the clear deadlines in the Act).

[21] Just as EPA has historically used air dispersion modeling in attainment designations and SIP revisions, so has the agency relied on modeling to assess cross-state impacts under the Act's Good Neighbor provision—section 110(a)(2)(D)(i)(I). Under the Clean Air Interstate Rule ("CAIR") and the Cross-State Air Pollution Rule ("CSAPR"), as well as the 2003 NO_x SIP Call, EPA has used modeling to determine pollutants' cross-state impacts. Note that the D.C. Circuit court never questioned the agency's use of modeling to assess cross-state impacts. *See generally North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

and 2008 Ozone NAAQS, Michigan was required to reduce its NO_x and SO_2 emissions to address 1997 8-hour ozone, 1997 Annual $PM_{2.5}$, and 2006 24-hour $PM_{2.5}$. *See* EPA, CSAPR: Resources for Implementation, http://www.epa.gov/airtransport/CSAPR/stateinfo.html#states (showing Michigan on a list of states that are included in CSAPR).[22]

Michigan must demonstrate that it is addressing its contributions to other states' pollution. Michigan cannot rely on its Prevention of Significant Deterioration ("PSD") and nonattainment New Source Review ("NNSR") permitting program to determine that Michigan is not contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. *See* Draft ISIP at 4. PSD and NNSR programs only address new sources, thus old sources are never evaluated to determine if they are contributing to downwind states' pollution. Additionally, the NNSR program only applies to nonattainment areas, which Michigan does not have for ozone, nitrogen dioxide, and $PM_{2.5}$. Thus, Michigan must still address whether it is contributing to nonattainment areas or interfering with the NAAQS in other states to satisfy its requirements under the Interstate Transport Provision.[23]

In light of the *Homer City* Supreme Court decision, MDEQ should act quickly to address pollution that may be contributing to another state's nonattainment or interfering with another state's maintenance of the NAAQS. The Court's decision means Michigan must address its exceedances under its own volition, or EPA will be required to act. Even if CSAPR is fully implemented, Michigan will still have to address the pollutants that are contributing to nonattainment or interference with the NAAQS that are not covered by CSAPR. Michigan should take the opportunity now to place enforceable emission limits on large sources contributing to problems with the attainment and maintenance of the NAAQS in other states. MDEQ must provide provisions in its proposed ISIP to ensure that pollution from Michigan is not preventing other states from attaining or maintaining the NAAQS.

III. CONCLUSION

The Draft ISIP fails to ensure that 2010 SO_2 and 2008 Ozone NAAQS are attained and maintained, as described above. Michigan must adopt new provisions in the ISIP to protect public health and comply with the Act's requirements. The Sierra Club is happy to provide any other information that might assist Michigan in evaluating the impacts of these sources and developing an ISIP in full compliance with the Clean Air Act.

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[22] Even if CSAPR were simply reinstated, however, a state cannot rely on CSAPR to address its transport requirements for the newer standards that CSAPR was never meant to address, such as 2008-hour ozone and 2012 Annual $PM_{2.5}$ NAAQS. http://www.epa.gov/airtransport/CSAPR/stateinfo.html#states.

[23] Just as EPA has historically used air dispersion modeling in attainment designations and SIP revisions, so has the agency relied on modeling to assess cross-state impacts under the Act's Good Neighbor provision—section 110(a)(2)(D)(i)(I). Under CAIR and CSAPR, as well as the 2003 NO_x SIP Call, EPA has used modeling to determine pollutants' cross-state impacts. Note that the D.C. Circuit court never questioned the agency's use of modeling to assess cross-state impacts. *See generally North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

Respectfully submitted,

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