

Summary of Public Comments for Rule Set # 2019-35 EG: Supplying Water to the Public

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) per- and polyfluoroalkyl substances (PFAS) rulemaking public comment period ran from December 19, 2019, through January 31, 2020, during which time **3,334 written public comments** were received via the designated email inbox (EGLE-PFAS-RuleMaking@Michigan.gov) and by mail via the Drinking Water and Environmental Health Division (DWEHD) mailbox:

Drinking Water and Environmental Health Division
Michigan Department of Environment, Great Lakes, and Energy
Attention: Suzann Ruch
P.O. Box 30817
Lansing, Michigan 48909-8311

An additional **82 oral public comments** were presented to EGLE representatives during three public hearings:

Public Hearing Dates and Locations		
Wednesday, January 8, 2020	Tuesday, January 14, 2020	Thursday, January 16, 2020
Grand Valley State University LV Eberhard Center 301 Fulton Street West Grand Rapids, Michigan 49504	Washtenaw Community College Towsley Auditorium 4800 East Huron River Drive Ann Arbor, Michigan 48105	Ralph A. MacMullan Conference Center 104 Conservation Drive Roscommon, Michigan 48653

The template utilized in drafting the Joint Committee on Administrative Rules (JCAR) Agency Report Package dictates a breakdown by two categories: *persons submitting comments of support* and *persons submitting comments of opposition*. This model does not easily fit the reality and range of public comments in this case as the majority of these (whether *in favor*, *neutral*, or *in opposition*) included some number of recommendations for improvement. In order to meet the requirements of the JCAR Agency Report Package, only the two required categories are included in the form – however, the neutral comment group is included in EGLE’s considerations as summarized in this report.

Additionally, at the request of the Michigan Office of Administrative Hearings and Rules, Administrative Rules Division, the list of commenters included in the report form comprises example commenters for each of six form letter-style comments. This is due to a limited amount of space within the online form which cannot accommodate the names of over 3,300 authors of written comments.

These comments were individually read and reviewed by EGLE-DWEHD Emerging Contaminants Unit staff, assigned categories of concern based on the content of each comment, and classified as *in favor*, *neutral*, or *in opposition* regarding the proposed PFAS maximum contaminant level (MCL) rule set 2019-35 EG.

In addition, if any comment did not apply to the proposed rule set, it was classified as “not pertaining to proposed rules,” and was not counted as *in favor*, *neutral*, or *in opposition*.

Criteria for the three comment categories are summarized below.

I. Comments in Favor: 2,584 (75.6%)

Comments were classified as *in favor* in cases where language directly indicated overall support for the rulemaking effort. Examples include:

- “...strongly supports the Michigan Department of Environment, Great Lakes, and Energy’s (EGLE) efforts to establish a rule to create a maximum contaminant level (MCL) for PFAS;”
- “As a Michigan resident, I’m encouraged to hear that the Department of Environment, Great Lakes, and Energy (EGLE) has proposed new drinking water rules that would help reduce exposure to toxic PFAS chemicals in a big way;”
- “...the proposed MCLs are an improvement over those contained in EPA guidance...;” and
- “The PFAS limits proposed by the state are a step in the right direction, but key changes need to be made to ensure they protect the health of Michigan communities.”

Often, comments *in favor* included feedback regarding proposed adjustments to the draft rule language. These are reflected in **IV. Categories of Concern**, below.

II. Neutral Comments: 816 (23.9%)

Comments were classified as *neutral* in cases where language did not directly indicate positive or negative leaning. These comments often included feedback about categories of concern similar to that presented in the comments *in favor* described above.

III. Comments in Opposition: 16 (0.5%)

Comments were classified as *in opposition* in cases where language directly indicated opposition, such as:

- “...to articulate its strong opposition to the proposed changes and additions set out at R 325.10107, R 325.10116, R 325.10308b, R 325.10313, R 325.10401a, R 325.10405, R 325.12701, R 325.10604g, R 325.10717d, R 325.12708, and R 325.12710 (collectively, the “Proposed PFAS Rules”);”

- “The rushed regulatory process has resulted in a Proposed Rule that is scientifically flawed and relies on speculative and unquantified benefits in an attempt to demonstrate it is necessary to protect human health;” and
- “The rush to develop the MCL proposal is reflected in the inadequacy of the Regulatory Impact Statement (RIS) that EGLE has filed for the rulemaking;” and
- “...the public’s confidence is achieved by ensuring the integrity and soundness of the process and information used as the solid foundation for setting safety standards. Anything less subjects regulators, drinking water systems, and others to potential skepticism and lack of confidence in drinking water safety.”

AND/OR cases where a different path forward for developing a standard was proposed. Examples of this include:

- “...continues to urge the development of uniform federal standards;”
- “...EGLE does not appear to have considered it to establish MCLs for PFOA and PFOS equal to EPA’s LHA of 70 ppt and to continue monitoring levels of the other five PFAS while EPA develops guidance on these substances;” and
- “While we recognize that not all states and stakeholders can agree on specific priorities or approaches to PFAS regulations, these congressional actions combined with USEPA’s efforts, are important national developments that should be supported by the states through their contribution of expertise, resources, and efforts as the Nation works to respond to the PFAS exposure risks.”

IV. Categories of Concern

Across *in favor*, *neutral*, and *in opposition* classifications, comments were also assigned into *categories of concern*, identified by EGLE-DWEHD Emerging Contaminants Unit staff during review. Of these categories, the seven listed in this section were the most common (an additional 19 categories were identified in less than 2 percent of comments – see Table 1, Appendix A).

Many of these *categories of concern* directly address the health-based values (HBVs) developed by the Michigan PFAS Action Response Team (MPART) Science Advisory Work Group (SAWG), a group of experts in the fields of epidemiology, toxicology, and risk assessment. In order to address these categories, EGLE requested that MPART perform a review of the arguments presented and provide a response. The MPART Human Health Workgroup was handed this task and concluded that none of the comments submitted raise concerns which would meaningfully alter the SAWG’s conclusions.

With MPART's comments in mind, EGLE reviewed the *categories of concern* and offer the following responses:

1. EGLE must take into account all new data/science in determining the appropriate levels used in developing PFAS MCLs.

A methodical approach was undertaken by MPART leading to the identification of seven PFAS compounds for which exist published PFAS drinking water criteria and/or reference doses. This determination was made by the MPART SAWG.

MPART and EGLE recognize that this class of emerging contaminants will require ongoing assessment of available science as new information may come to light which requires a re-assessment of the proposed MCLs. The existing rulemaking process allows this as needed.

2. EGLE should consider utilizing a class-based approach in developing a PFAS MCL.

A class-based approach is not presently feasible, as PFAS analytical techniques are currently only useful in quantifying a set of known PFAS compounds (18 for the United States Environmental Protection Agency (USEPA) Method 537.1). Semi-quantitative and qualitative analysis for non-targeted PFAS analytes are available but must be paired with well-established quantitative analyses to accurately assess PFAS analyte levels in drinking water.

Additionally, the orders-of-magnitude variations in HBVs for PFAS do not lend themselves to a single combined level. This number would necessarily be lower than all but the lowest individual proposed values.

3. Michigan must be/is a leader in developing PFAS MCLs.

Michigan is one of several states which have chosen to develop regulatory standards for PFAS compounds in drinking water. This approach is proactive and is not contingent on the development of a federal MCL by the USEPA, which will likely be a multi-year process.

Michigan's statewide public water PFAS survey presently provides a unique tool to assess the scope of PFAS contamination and has been a driver for the development of the PFAS MCLs. Other states have since begun similar initiatives, but Michigan has been a leader in this regard.

4. EGLE should include a combined PFAS MCL, including some or all of the seven compounds proposed.

As stated by the MPART SAWG, there is not currently scientific consensus regarding which PFAS compounds should be grouped, or whether there is a basis for that grouping, when developing HBVs.

Also, as discussed in Response 2, above, the orders-of-magnitude variations in HBVs for PFAS do not lend themselves to a combined level.

Again, it is recognized that the science of PFAS is evolving, and an ongoing assessment will be undertaken by the EGLE-DWEHD Emerging Contaminants Unit, with any new information being considered in potential re-assessment of the rule. The rulemaking process allows this as needed.

5. Michigan's MCLs must be at a level which is protective of its most vulnerable populations.

For the approach taken by the MPART SAWG in deriving the HBVs, the bioaccumulative nature and developmental toxicity of PFAS compounds were taken into account while addressing their effect on Michigan's vulnerable populations.

6. Michigan's MCLs must be protective of public health.

The charge with which the MPART SAWG was presented was to develop toxicity values for certain PFAS compounds for the purpose of protecting public health. This was accomplished and the MPART SAWG HBVs were published, which were then utilized as the starting point for the MCL process.

During the rulemaking process, the proposed MCLs were not adjusted from the initially proposed values (HBVs). The result is a set of proposed MCLs protective of public health.

7. EGLE must complete rule promulgation more quickly.

The rule promulgation process for Michigan's PFAS MCLs has moved as quickly as feasible, with EGLE meeting the benchmarks of the rulemaking process in as expedient a manner as possible. The process for the proposed MCLs began in April 2019 and is slated to be complete in early May 2020. A one-year promulgation of an MCL represents an accelerated timetable, with these rules normally taking multiple years to complete.

Some commenters also submitted that the risk of moving too rapidly through rulemaking should also be considered. Care must be taken to assure that the process, while accelerated, remains thorough and

establishes appropriate and enforceable drinking water standards. EGLE's approach to Michigan's PFAS MCLs has been both expedient and thorough.

V. Regulatory Impact Statement/Cost Benefit Analysis

A common theme among comments in opposition was to question the appropriateness of the Regulatory Impact Statement (RIS) prepared by EGLE-DWEHD. Having reviewed these comments, EGLE-DWEHD has deemed that nothing was presented that would change the existing RIS.

VI. Proposed Rule Changes

Having reviewed the public comments, EGLE identified an item within the rule for which a change is necessary. The Chemical Abstracts Service numbers listed for two of the seven PFAS compounds were incorrect in the draft rule document. These were identified by EGLE staff as well as two participants in the public comment process:

- PFBS 375-73-5
- PFHxS 355-46-4

These will be corrected in the final document.

APPENDIX A

Table 1 – Categories of Concern

Rank	Category of Concern	Percent Incidence
1	Take into account all new data	93.76%
2	Class based MCL	80.15%
3	Michigan is a leader	68.33%
4	Combined MCL	59.87%
5	Protect vulnerable populations	55.94%
6	Protect public health	25.09%
7	Further expedite process	18.00%
8	100% clean water	1.67%
9	Include tough penalties for polluters	1.23%
10	Lower standards/Add more compounds	1.46%
11	Require regular rule review	0.88%
12	Costs to communities not addressed	0.67%
13	Shift regulation to the sources	0.67%
14	Include private wells	0.59%
15	Focus on public health, not profits	0.53%
16	Require manufacturers to assess toxicity prior to use	0.41%
17	Unduly burden small public water supplies	0.41%
18	Concern about State MCL vs. USEPA #s (Primacy)	0.26%
19	Adjustable monitoring schedule based on results	0.23%
20	Consider additional PFAS methods in appropriate cases	0.23%
21	Outpacing PFAS science	0.18%
22	Make testing widely available, and affordable/free	0.15%
23	Public posting/rapid results sharing	0.15%
24	Harms Michigan's economy	0.12%
25	Premature/Misplaced	0.12%
26	Require disclosure in real estate transactions	0.03%