STATE OF MICHIGAN UNDERGROUND INJECTION CONTROL PROGRAM

Primacy Application to United States Environmental Protection Agency – Region 5

Michigan Department of Environment, Great Lakes, and Energy
Oil, Gas, and Minerals Division

September 2018 Revised February 2020

TABLE OF CONTENTS

State of Michigan Underground Injection Control Program Application

SECTION D APPLICABLE STATUTES AND RULES

Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended

Oil and Gas Operations Administrative Rules Promulgated Under Part 615

Part 17, Michigan Environmental Protection Act, 1994 PA 451, as Amended

Administrative Procedures Act of 1969, 1969 PA 306, as Amended

Revised Judicature Act of 1961, 1961 PA 236, as Amended

Part 13, Permits, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended

SECTION E OIL, GAS, AND MINERALS DIVISION, COMPLIANCE AND ENFORCEMENT POLICY AND PROCEDURES 601.00 - 601.13

SECTION 1: COMPLIANCE AND ENFORCEMENT INTRODUCTION
SECTION 2: COMPLIANCE AND ENFORCEMENT PROCESS
SECTION 3: ESCALATED COMPLIANCE AND ENFORCEMENT PROCESS
SECTION 4: SETTLEMENT ISSUES
POLICY: Refer to the EGLE Policy and Procedure Number 04-003, Appendix A
SECTION 5: COMPLIANCE COORDINATION, TRACKING, AND MEASUREMENT
SECTION 6: COORDINATION AND MANAGEMENT OF MULTIMEDIA CASES
Appendix A Compliance and Enforcement Process Flowchart
Appendix B Forms
Appendix C Escalated Enforcement Options
Withholding of Permits
Suspension of Operations
Notice of Determination
Stipulation and Consent Agreement (SCA) and Transfer Settlement Agreements (TSA)
Referrals to the Department of Natural Resources, Law Enforcement Division, Environmental Investigation Section
Referrals to the Department of Attorney General
Forms Used

SECTION A

Letter from The Honorable Rick Snyder, Governor of Michigan

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

BRIAN CALLEY
LT. GOVERNOR

September 24, 2018

VIA E-MAIL AND U.S. MAIL

Ms. Cathy Stepp, Regional Administrator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604-3507

Dear Ms. Stepp:

Transmitted herein is the State of Michigan's official application for approval of primacy for Class II well regulation as authorized by Part C, Section 1425, of Title XIV of the Public Health Service Act: Safety of Public Water Systems (Safe Drinking Water Act), Public Law 93-523, as amended. This application contains the supporting information required by the United States Environmental Protection Agency (USEPA) and the Safe Drinking Water Act for a state to qualify for primacy. It also affirms the State of Michigan's willingness to carry out the program described herein through the Michigan Department of Environmental Quality's (MDEQ) Oil, Gas, and Minerals Division (OGMD), the designated agency responsible for implementation of the program. As described in this application, the State of Michigan and the OGMD have the statutory authority, expert personnel, the data management system, and the fiscal resources necessary to carry out a program of regulation of Class II injection that effectively protects underground sources of drinking water.

A similar program has been carried out by the OGMD under state law for decades, and I am confident of the State of Michigan's ability to administer a successful program. The task of assuming primacy has been facilitated by the outstanding cooperation of the USEPA over the past three years as the State of Michigan has been preparing this application. I appreciate the strong relationship that the MDEQ and USEPA have had for several decades running parallel programs and look forward to continued cooperation in the future.

For the purpose of this application, Mr. Harold R. Fitch, Director, OGMD, will be acting as the MDEQ's liaison with the USEPA. Should the USEPA have any questions or require additional information, please contact Mr. Fitch at 517-284-6823 or fitchh@michigan.gov.

I look forward to the USEPA's favorable decision regarding this application and thank you in advance for your attention to this request.

Sincerely,

Rick Snyder
Governor

Enclosure
cc/enc: Attorney General Bill Schuette
Ms. C. Heidi Grether, Director, MDEQ
Mr. Aaron B. Keatley, Chief Deputy Director, MDEQ
Mr. Harold R. Fitch, MDEQ

SECTION B

Statement of Legal Authority from The Honorable Dana Nessel, Attorney General, State of Michigan

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

P.O. BOX 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

UNDERGROUND INJECTION CONTROL PROGRAM
ATTORNEY GENERAL'S STATEMENT

I hereby certify, in my capacity as the Division Chief of the Environment, Natural Resources, and Agriculture Division of the Michigan Department of Attorney General, pursuant to authority delegated to me by the Attorney General of the State of Michigan, and in accordance with the provisions of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, as amended, and 40 C.F.R. 145.24(a), that, in my opinion, the laws of the State of Michigan provide adequate authority to apply for, assume, and carry out the program set forth in the Program Description submitted by the Oil, Gas, and Minerals Division (OGMD) of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) in support of its application for EPA approval of primacy for the State of Michigan's Class II Underground Injection Well Program. The specific authorities as set out below are contained in lawfully enacted statutes and lawfully promulgated regulations in full force and effect as of the date of this Statement and which will be in full force and effect on the date of the approval of this program by EPA.

Part 615 (Supervisor of Wells) of the Natural Resources and Environmental Act, 1994 Public Act 451, as amended, MCL 324.61501 *et seq.*, and the administrative rules promulgated under Part 615, Michigan Administrative Code, R 324.101–R 324.1406, comprehensively regulate the siting, review requirements, construction, operation, monitoring, reporting, and plugging of wells associated with oil and gas exploration and development in the state, including Class II injection wells. Under Michigan law, authority to implement and enforce Part 615 is granted to the Supervisor of Wells, who is the Director of EGLE. That authority has been delegated to the Director and staff of EGLE OGMD.

After consultation with various stakeholders, and in anticipation of the application for EPA approval of primacy for the State of Michigan's Class II Injection Well Program, the former Michigan Department of Environmental Quality (MDEQ) promulgated revisions to its Part 615 administrative rules that became effective on June 7, 2018. 2018 Michigan Register 11. The MDEQ was renamed EGLE through Executive Order 2019-06, effective April 22, 2019. EGLE promulgated further revisions of its Part 615 administrative rules that became effective on October 18, 2019. 2019 Michigan Register 20. The rule revisions specifically address Class II injection wells and the protection of underground sources of drinking water. These rule revisions were promulgated pursuant to

authority granted in Part 615, MCL 324.61506, and in accordance with the Michigan Administrative Procedures Act, MCL 24.201 *et seq.*

Part 615 and the Part 615 administrative rules are legally sufficient for the State of Michigan to carry out its Class II Underground Injection Well Program in a manner that effectively protects underground sources of drinking water and is consistent with the requirements of Section 1425 of the SDWA, 42 USC 300h and 40 CFR Part 145.

The specific statutes and regulations, which are referenced and discussed in the Program Description, include the following:

Statutes

- Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*
- Part 13 (Permits), Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.1301 *et seq.*
- Part 17 (Michigan Environmental Protection Act), Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.1701 *et seq.*
- Part 615 (Supervisor of Wells), Natural Resources and Environmental Protection Act, 1994 PA 451, as amended
  - MCL 324.61501 (Definitions)
  - MCL 324.61604 (Prohibition of Waste)
  - MCL 324.61503 (Supervisor of Wells)
  - MCL 324.61505 (Jurisdiction and Authority of Supervisor)
  - MCL 324.61506 (Powers and Duties of Supervisor)
  - MCL 324. 61506a (Notice of Violation)
  - MCL 324.61507- MCL 324.61511 (Supervisor Hearings)
  - MCL 324.61516 (Rules, Orders and Public Hearings)
  - MCL 324.61518 (Enforcement)
  - MCL. 324.61519 (Failure to Obtain Permit)
  - MCL 324.61520 (Abandoning Well)
  - MCL 324.61521 (Unlawful Acts)
  - MCL. 324.61522 (Violations)
  - MCL 324.61525 (Permit to Drill Well)
- Part 616 (Orphan Well Fund), Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.61601 *et seq.*
- Revised Judicature Act, 1961 PA 236, as amended, MCL 600.631.

Administrative Rules

- Michigan Department of Environment, Great Lakes, and Energy Part 615 (Oil and Gas Operations) Administrative Rules, Michigan Administrative Code, R 324.1, *et seq.*, as amended by 2018 Michigan Register 11 (effective June 7, 2018) and 2019 Michigan Register 20 (effective October 18, 2019)
- R 324.102–R 324.104 (Definitions)
- R 324.201 (Application for Permit to Drill)
- R 324.206 (Modification of Permits)
- R 324.206 (Suspension of Operations Due to Failure to Transfer Permit)
- R 324.207 (Termination of Permit)
- R 324.210 (Conformance Bond or Statement of Financial Responsibility Requirements)
- R 324.213 (Cancellation of Conformance Bond)
- R 324.410 (Casing Other than Surface Casing)
- R 324.411 (Cementing)
- R 324.418 (Filing of Well Records)
- R. 324.419 (Borehole and Strata Evaluation Logging)
- R 324.504 (Well Sites and Surface Facilities)
- R 324.511 (Change of Well Status)
- R 324.801–R 324.816 (Injection Wells)
- R 324.901 (Notification of Intention to Abandon and Plug Well)
- R 324.902 (Pugging Instructions; Methods and Materials)
- R 324.1201–R 324.1212 (Hearings)
- R 324.1301 (Enforcement)

S. Peter Manning
Division Chief
Environment, Natural Resources and
Agriculture Division

Date: FEBRUARY 4, 2020

SECTION C

Program Description

I. INTRODUCTION: STRUCTURE, COVERAGE, AND SCOPE

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), formerly known as the Department of Environmental Quality (DEQ), is seeking primacy of the Underground Injection Control (UIC) Program for Class II wells pursuant to Part C, Section 1425, of Title XIV of the Public Health Service Act: Safety of Public Water Systems (SDWA), Public Law 93-523, as amended (42 U.S.C. § 300h-4) from the United States Environmental Protection Agency (USEPA).

Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and the administrative rules, orders, and instructions promulgated thereunder govern the siting, area of review requirements, construction, operation, monitoring and reporting, and plugging of wells associated with oil and gas exploration and production in the state, including Class II injection wells and natural gas storage wells. The authority to implement and enforce Part 615 is granted to the Supervisor of Wells (Supervisor), who is the Director of EGLE. That authority has been delegated to the Director and staff of the Oil, Gas, and Minerals Division (OGMD). Michigan Compiled Laws (MCL) 324.61506(a) gives authority to the Supervisor:

> *To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.*

After consultation with various stakeholders, including USEPA Region 5 staff, the State of Michigan amended its Part 615 administrative rules that became effective on June 7, 2018. In this Program Description, individual administrative rules are referred to as "R 324.XXX," and statute citations are referred to as "MCL 324.XXX." Most of the rule revisions are specific to Class II wells but also included a revision requiring increased bond amounts for all well types, including Class II wells. The State of Michigan's statutory authority under Part 615, supplemented by the updated administrative rules, provides for a strong effective regulatory framework for Class II injection wells to prevent endangerment of underground sources of drinking water (USDW). The OGMD has been dually regulating Class II injection wells under Part 615 alongside of the USEPA for decades and is intimately familiar with existing wells in the state of Michigan.

In developing this Program Description, EGLE has considered and benefitted from various comments from USEPA staff, including, most recently, a letter dated July 25, 2018, that raised a series of questions regarding Michigan's regulation of Class II injections wells. The substance

of specific questions and comments in that correspondence are addressed in the relevant sections of this Program Description below. As an overarching matter, it is important to note that, as affirmed by the Attorney General Statement accompanying Michigan's application for primacy, the relevant provisions of the Part 615 administrative rules are a valid exercise of the broad statutory authority granted to EGLE under Part 615. As such, the combination of Part 615 and the more detailed provisions of those rules specifically addressing the protection of underground sources of drinking water (USDW) provide EGLE clear legal authority to administer its Class II injection well program consistent with the standards of the Safe Drinking Water Act.

This Program Description applies to only Class II wells for this primacy application. A "Class II well" means a well utilized for the disposal of fluids associated with the production of oil and natural gas or utilized for the injection of fluids (including carbon dioxide) for the purpose of enhanced recovery operations, or that utilizes diesel fuels as a component of hydraulic fracturing fluid or utilized for injection for the storage of hydrocarbons that are liquid at standard temperature and pressure. This does not include injection wells used for the purpose of storage of hydrocarbons that are of pipeline quality and are gases at standard temperature and pressure.

This Program Description does not apply to any existing or new Class II wells sited on "Indian lands," which is defined in 40 CFR 144.3 as meaning "Indian country" as defined in 18 U.S.C. § 1151. Consequently, the USEPA will remain the UIC permitting and enforcement authority for Class II wells sited on Indian lands located within the state of Michigan even if primacy over Class II wells is granted to EGLE. Nothing in this statement is intended to limit the scope or applicability of state laws concerning injection wells of any class.

Currently, there are about 1,286 active Class II wells in Michigan. The majority (approximately 69 percent) of these are brine disposal wells; the balance are operated as injection wells for enhanced oil recovery. Note that Part 615 and the administrative rules promulgated thereunder refer to "enhanced recovery" as "secondary recovery" except in one instance. We use the terms interchangeably in this document. Natural gas storage wells do not fall under the jurisdiction of the UIC Program for Class II wells.

The primary purpose of this program is to prevent endangerment of USDWs by injection operations as specified in R 324.804(1):

> *Injection of fluid into an injection well shall be through a combination of casing, tubing, cement, and packer placement that isolates the injection interval and prevents the movement of fluids into or between underground sources of drinking water, including*

through vertical channels adjacent to the well bore, which has mechanical integrity.

and R 324.804(4):

A permittee of a well shall ensure that an injection well is constructed and operated so that the injection of fluids is confined to injection interval or intervals approved by the supervisor or authorized representative of the supervisor.

and MCL 324.61505:

The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.

and MCL 324.61501(q)(i)(B):

"Underground waste", as those words are generally understood in the oil business and including all of the following….
(A) Unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

USDW is defined by R 324.103(s):

"Underground source of drinking water" means fresh water or mineral water within an aquifer or portion of an aquifer that satisfies either of the following criteria:
(i) The aquifer or portion thereof supplies a public water system.
(ii) The aquifer or portion thereof contains a sufficient quantity of ground water to supply a public water system and meets either of the following criteria:
(A) The aquifer or portion thereof currently supplies drinking water for human consumption.

(B) The aquifer or portion thereof contains ground water that has fewer than 10,000 milligrams per liter total dissolved solids.

The current regulations under Part 615 include the above-referenced definition of a USDW to correspond to the definition under the SDWA. The Supervisor is charged with preventing waste, including unreasonable damage to the fresh or mineral waters that may be contained within USDWs. The specific definition of "waste" in R 324.801(v) also makes clear that the Supervisor is charged with protecting USDWs from "waste" and has broad authority to do so. The Supervisor interprets the importance of fresh water being free of contamination as it relates to use of fresh water for drilling; the Supervisor does not interpret the presence of contaminants in waters meeting the definition of USDW as negating potential use as a drinking water source and responsibility to protect it from waste.

Waste is further defined by R 324.801(v):

"Waste" as defined in section 324.61501 (q)(i)-(iii) of the act, MCL 324.61501, includes endangerment to an underground source of drinking water.

While Part 615 and the Part 615 rules do not define "unreasonable damage" or "unnecessary damage," it is clear that the statute and regulations, read as a whole, prohibit endangerment of a USDW. The only reason for the qualifiers "unreasonable" or "unnecessary" is that the physical construction of any well, even constructed according to best practices, could be viewed as "damage" to, i.e., physical alteration of, at least a small portion of a subsurface water-bearing formation. For example, "reasonable damage" would be drilling through aquifers and cementing with best practices and acceptable materials, in accordance with the Part 615 rules. Another example of necessary damage under MCL 324.61506(c) could be flooding a reservoir and changing fluid properties in order to achieve desired sweeping or pressure effects for enhanced recovery of oil.

Endangerment is defined by R 324.801(j):

"Endangerment to an underground source of drinking water" means that an injection operation may result in the presence of any contaminant in an underground source of drinking water, that supplies or may reasonably be expected to supply any public water system, and the presence of that contaminant may result in violation of any national primary drinking water regulation or may otherwise adversely affect the health of persons.

No permits or authorizations to inject are allowed under Part 615 and the Part 615 rules that endanger USDWs or allow migration of injectate out of the approved injection interval(s) nor into USDWs. Endangerment of a USDW is "waste" and may

adversely affect public health. Therefore, endangerment of a USDW is strictly prohibited.

The Part 615 rules identify the categories of Class II wells that are subject to regulation. Operations for the discovery, development, and production and handling of oil or gas are further defined by R 324.103(c):

> *"Operation of oil and gas wells" means the process of producing oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas, including all of the following:*
>
> *(i) Production, pumping, and flowing.*
> *(ii) Processing.*
> *(iii) Gathering.*
> *(iv) Compressing.*
> *(v) Treating.*
> *(vi) Transporting.*
> *(vii) Conditioning.*
> *(viii) Brine removal and disposal.*
> *(ix) Separating.*
> *(x) Storing.*
> *(xi) Injecting.*
> *(xii) Testing.*
> *(xiii) Reporting.*
> *(xiv) Maintenance and use of surface facilities.*
> *(xv) Secondary recovery.*

Within this broad statutory definition of "operation of oil and gas wells" each category of Class II well regulated under the Safe Drinking Water Act is represented. Disposal wells are covered as injecting and brine removal and disposal (viii and xi); enhanced recovery as injecting and secondary recovery (xi and xv); storage of liquid hydrocarbons as storing and injecting (x and xi); and the use of diesel fuels as a component of hydraulic fracturing fluid as injecting and treating (v and xi).

Therefore, under Part 615, the Supervisor has authority to implement the SDWA for construction, conversion, and operation of all Class II wells.

II. OPERATION OF RULES

The Underground Injection Control Program for Class II wells will be administered by the OGMD. Part 615 governs the location, drilling, construction, operation or conversion of a well to a Class II well, and well plugging under this program.

III. PERMITTING

A. General Requirements: A person must obtain a Class II well permit before commencing the drilling, operating, or conversion of any well pursuant to MCL 324.61506(c), R 324.201(1), R 324.201(2)(k), and R 324.802. An overview of the permitting and notification process is presented on the Generalized Class II Permit Processing and Notification Flowchart (Appendix 1a).

B. Pursuant to MCL 324.61525, R 324.201, and R 324.802, any person proposing to drill, deepen, convert to, or operate a Class II well in the state of Michigan must secure a written permit from the OGMD. In addition to other requirements for a proper permit application:

R 324.802(k) states:

> *(k) Information demonstrating that construction of the well will prevent the movement of fluid that causes endangerment to an underground source of drinking water.*

If the Supervisor or Supervisor's authorized representative determines the applicant must submit additional information to demonstrate no potential migration and ensure endangerment of USDWs will be prevented, this rule and the statute give them the authority to request such information pursuant to MCL 324.61506(c), MCL 324.61506(r), and R 324.802(k). This also includes the authority to require that as a condition of an approved permit the applicant must complete any required corrective action work to other wells within the area of review in order to protect USDWs. If the necessary corrective action cannot be performed for any reason, including the applicant's inability to secure permissions to perform required corrective actions from relevant property owners, the operations proposed under the Class II permit will not be allowed to proceed, since permit conditions will require corrective action work to be completed prior to drilling, converting, or operating the new well.

B. Signatories: Any permit application or form required for a Class II well must be signed by the permittee or an authorized agent. An individual who signs as an agent must furnish satisfactory evidence of authority to

the OGMD as required by R 324.201(2)(e), R 324.201(2)(h), and R 324.201(4). Also, in signing the application materials, the applicant explicitly certifies that they are authorized, that they have prepared the application under their supervision, and that the facts presented are true, accurate, and complete.

D. Pursuant to R 324.803, the Supervisor or Supervisor's authorized representative will issue no permit unless the proposed activity meets all of the following:
    a. The application complies with the requirements of the administrative rules.
    b. The method of injection proposed in the application complies with the law.
    c. The proposed method of injection will not threaten public health or safety and will not create waste or endanger an underground source of drinking water.

E. Timing: Part 13, Permits, of the NREPA, MCL 324.1301 *et seq.*, establishes procedures and time frames for EGLE permit decisions, including for Part 615 permits. In its present form, Part 13 specifies a processing period for the EGLE to make a decision on a Part 615 permit application, MCL 324.1301(i)(i), that is shorter than the time frame in R 324.803; however, a Part 615 permit does *not* automatically issue if the Part 13 schedule is not met. If the OGMD is unable to process a permit application within the Part 13, time frame (e.g., because a public hearing is held), the only consequence is that the OGMD will have to refund part of the application fee and account for the missed processing period. The procedural requirements in Part 13 do not affect the substance of any OGMD permit decision under Part 615, including permits for Class II wells. In the interest of clarity and consistency, the OGMD intends to seek at the earliest opportunity a statutory amendment to align Part 13 processing time with R 324.803.

F. Administrative Review of Permit Decisions: Both Part 615 and Part 13 provide procedures for administrative review of permit decisions under Part 615.
    a. Part 615:
        1. MCL 324.61503(2) states that a producer or owner may appeal a permit decision to the Natural Resources Commission. Subsequent executive orders transferred the commission's authority to hear such appeals to the director of EGLE. R 324.1212 governs the procedures for those appeals.
        2. MCL 324.61507 provides that any interested person may file a verified complaint alleging that waste is taking place or is reasonably imminent. If the Supervisor determines it

appropriate, the Supervisor shall hold a hearing and issue an order. R 324.1201 allows an owner, producer, lessee, lessor, or other person interested in the matter to file a petition for an evidentiary hearing regarding an action or order of the Supervisor. Under R 324.1205, various types of hearings may be held, including, among other things, a matter of local concern in the administration of the Part 615 rules. The OGMD has interpreted these provisions as allowing a permit applicant, permittee, or an interested person other than a permit applicant or permittee to request an administrative hearing regarding a permit decision. Pursuant to R 324.1203, such evidentiary hearings are subject to the contested case provisions of the Administrative Procedures Act, MCL 24.201 *et seq*.

b. Part 13: As recently amended by 2018 PA 286, Part 13 provides opportunities and procedures, in addition to those specified in Part 615 and the Part 615 rules, for review of EGLE permitting decisions, including those made under Part 615. MCL 324.1313 establishes an Environmental Permit Review Commission. Environmental permit panel members are selected by the Director of EGLE from the Environmental Permit Review Commission to consider specific permit appeals. Part 13 gives permit applicants extra avenues of review, both of pending permit decisions as well as formal contested case review of permit decisions, as follows:
    1. Under MCL 324.1315, a permit applicant may seek review of EGLE staff position by a panel by submitting a petition to EGLE Director before the permit has been approved or denied. The panel may make recommendations to the Director, and the Director may accept or reject the panel's recommendation. The Director may also choose neither to accept nor reject the panel's recommendation within 60 days and allow the recommendation to stand as a final agency decision. A generalized overview of the permit panel review flowchart is detailed on Appendix 1b.
    2. Under MCL 324.1317, after EGLE makes its initial permit decision, a permit applicant or interested party may seek a contested case hearing. In such a contested case, an Administrative Law Judge (ALJ) hears the evidence and makes the final decision on whether and under what conditions a permit shall be issued. Any party to the contested case, including EGLE and permittee, may then request a review of the ALJ's decision to the environmental permit panel. In an appealed contested case, the environmental permit panel issues the final agency decision. A generalized overview of the final contested case review flowchart is detailed on

Appendix 1c. If no environmental permit review panel is requested, the ALJ's decision is the final agency decision.

c. Standards of Review in Administrative Appeals: In any administrative review of a Part 615 permit decision, whether under the review provisions of Part 615 or under Part 13, the standard of review is whether the decision under review is consistent with the applicable requirements of Part 615 and the Part 615 rules.

G. Judicial Review of Permit Decisions: All final agency decisions on Part 615 permits are subject to judicial review by one of two means.

a. Final agency decisions made after a contested case (evidentiary) hearing are subject to judicial review under the Administrative Procedures Act. The scope and standard of review is specified in MCL 24.306 and includes consideration of whether the decision is consistent with the statutory authority of the agency, procedurally lawful, supported by substantial evidence on the record as a whole, or arbitrary, capricious, or clearly an abuse of discretion.

b. Final agency decisions not made after a contested case hearing are subject to judicial review under the Revised Judicature Act, MCL 600.631. The standard of review in such an appeal is whether the agency decision was authorized by law, i.e., whether the decision violated a statute or constitution, exceeded its statutory authority, materially prejudiced a party because of an unlawful procedure, or was arbitrary and capricious [see, e.g., *NRDC v Dept of Environmental Quality*, 300 Mich App 79, 87-88 (2013)].

III.A Applicable Regulatory Conditions

a. Duty to Comply: A person issued a permit must comply with the conditions of the permit as determined by the OGMD pursuant to the requirements of the OGMD contained within Part 615 and the administrative rules, orders, and instructions promulgated thereunder.

b. Duty to Reapply: Once a permit is voided, revoked, expired, or otherwise terminated, an application for the same location must be made by the applicant as if it were an initial filing.

c. Duty to Halt or Reduce Activity: The provisions of Part 615 and the administrative rules, orders, and instructions promulgated thereunder provide the State of Michigan with full enforcement authority to bring a person issued a permit under this article into compliance with the conditions of the permit.

MCL 324.61506(c) states that the Supervisor is empowered*:*

To require the locating, drilling, deepening, redrilling or reopening, casing, sealing, operating, and plugging of wells

drilled for oil and gas or for secondary recovery projects, or wells for the disposal of salt water, brine, or other oil field wastes, to be done in such manner and by such means as to prevent the escape of oil or gas out of 1 stratum into another, or of water or brines into oil or gas strata; to prevent pollution of, damage to, or destruction of fresh water supplies, including inland lakes and streams and the Great Lakes and connecting waters, and valuable brines by oil, gas, or other waters, to prevent the escape of oil, gas, or water into workable coal or other mineral deposits; to require the disposal of salt water and brines and oily wastes produced incidental to oil and gas operations in a manner and by methods and means so that unnecessary damage or danger to or destruction of surface or underground resources, to neighboring properties or rights, or to life does not result.

MCL 324.61516(1) states:

A rule or order shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, except emergency orders, unless public hearings are held. Except as provided in subsection (2), public hearings shall be held at such time, place, and manner and upon such notice, not less than 10 days, as shall be prescribed by general order and rules adopted in conformity with this part. The supervisor may promulgate emergency rules or issue orders without a public hearing as may be necessary to implement this part. The emergency rules and orders shall remain in force and effect for no longer than 21 days, except as otherwise provided for rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

R 324.504(1) provides:

A person shall use every reasonable precaution to stop and prevent waste. All wells, surface facilities, gathering lines, and flow lines shall be constructed and operated so that the materials contained in the facilities do not cause waste. An oil and gas operation shall not be commenced or continued at a location where it is likely that a substance may escape in a quantity sufficient to pollute the air, soil, surface waters, or groundwaters or to cause unnecessary endangerment of public health, safety, or welfare until the permittee has complied with the methods and means to prevent pollution or eliminate the unnecessary endangerment of public health, safety, or welfare as specified by the supervisor.

R 324.813 states:

(1) The supervisor or authorized representative of the supervisor may immediately require corrective action at a Class II well, including suspending any or all components of the injection or disposal operations, if the supervisor determines either of the following:

(a) The injection operations are in violation of the provisions of the act, these rules, permit conditions, instructions, or orders of the supervisor.

(b) The injection operations threaten the public health and safety or underground sources of drinking water.

(2) A suspension of injection or disposal operations shall be in effect for not more than 5 days or until the operation is in compliance and protection of the public health and safety and underground sources of drinking water is ensured.

(3) Unless the permittee brings the operations into compliance as required pursuant to subrule (1), the supervisor may issue an emergency order to continue the suspension of injection or disposal operations beyond 5 days and may schedule a hearing under part 12 of these rules. The total duration of the suspension of injection or disposal operations under this provision shall not be more than 21 days, as provided in section 61516 of Part 615, MCL 324.61516.

(4) Unless the permittee brings the operations into compliance as required pursuant to subrule (1) or (2) of this rule, the supervisor shall issue a new order following a minimum of ten day notice and public hearing as provided in section 61516 of Part 615, MCL 324.61516(1) and R 324.1211 enter into an administrative consent agreement, or enter other binding instrument to extend the suspension of injection or disposal operations under this provision beyond 21 days. The order, administrative consent agreement, or other binding instrument shall require corrective actions within specific time limits to achieve compliance and protection of the public health and safety and underground sources of drinking water and shall remain in force until the operation is brought into compliance.

(5) Authorization to resume injection shall not be given by the supervisor or authorized representative of the supervisor until compliance and protection of the public health and safety and underground sources of drinking water is

achieved. The authorization to inject will only be given when mechanical integrity is also demonstrated, if applicable.
(6) This rule supersedes R 324.1014 for Class II wells.

A hearing required to extend Suspension of Operations under R 324.813 will be noticed and scheduled within 21 days. Operations cannot resume until completion of the hearing and compliance with resulting order is achieved and mechanical integrity is demonstrated.

d. Duty to Mitigate: A permittee shall correct any adverse environmental impact that results from noncompliance with a permit or Part 615. Continued operation of a Class II well is prohibited until the noncompliance is abated or an extension of time for abatement is issued in writing by the OGMD pursuant to R 324.804(1) and (4), R 324.811, and R 324.813.
e. Proper Operation and Maintenance: A permittee must maintain proper operation and maintenance of all Class II wells and facilities pursuant to MCL 324.61519 and R 324.804(1) and (4). The operation and maintenance of all Class II wells must be in accordance with the Part 615 administrative rules, including the recently promulgated Part 8. Injection Wells.
f. Permit Actions: Under the provisions of Part 615, the OGMD may issue, reissue, modify, or revoke a permit for a Class II well. These actions are subject to administrative review. The Supervisor may order a permittee to perform remedial and repair work or plug a Class II well if injection from a well is a threat to public health and safety pursuant to MCL 324.61519. The Supervisor may utilize Part 615 funds, or Part 616, Orphan Well Fund, of the NREPA, to plug and abandon a well.
g. Property Rights: The issuance of a Class II well permit does not convey any property rights or exclusive privileges.
h. Inspection and Entry: Any person authorized by EGLE may at any reasonable time pursuant to MCL 324.61506(a) and (b):
    1. enter upon public or private land for the purpose of assuring compliance with Part 615 of the NREPA;
    2. require a permittee to produce all records related to the permitting, drilling, and operating of a well for oil and gas production or injection purposes.

A. Monitoring, Record Keeping and Reporting: Unless certain exceptions apply, permittees of all Class II wells are required to conduct monitoring and reporting pursuant to R 324.810. All records pertaining to a Class II well, including mechanical integrity test results, shall be retained for five years according to R 324.810(9). Permittees of Class II wells are

required to report any noteworthy anomalies or exceedances of maximum injection pressures pursuant to R 324.810(10).

B. Duration: A permit for a Class II well is effective for the life of the well, unless the permit is canceled, revoked, expired, or is otherwise terminated under the Part 615 administrative rules. According to R 324.208, a permit will expire two years after issuance unless drilling operations have reached a depth of not less than 100 feet below the ground surface elevation and the drilling operation is diligently proceeding or the well is otherwise being used for its permitted purpose. R 324.208(2) allows for an undrilled permit to be extended for an additional two years, provided that the permittee submits a written request at least 30 days before the initial termination date, and there have been no significant changes in the features or conditions described in R 324.201, or in requirements of these administrative rules or the act, that would require modifications of the permit.

C. Cessation: Pursuant to R 324.812, any well not being used for its permitted purpose during 12 consecutive months shall be plugged, unless the well is granted temporary abandonment (TA) status by the OGMD, or the operator has an alternative written plan on file with and approved by the OGMD.

D. Denial: A permit can be denied if the applicant is in violation of Part 615, the administrative rules under Part 615, permit conditions, orders or instructions of the Supervisor, or an order of EGLE.

E. Suspension: The Supervisor may suspend operations under a permit upon a finding that:
   a. The permit was obtained through fraud or misrepresentation resulting in a threat to public health and safety or endangerment to underground sources of drinking water. [MCL 324.61506(l), MCL 324.61506(q), and R 324.813(1)(b)];
   b. The injection or disposal operations are in violation of the provisions of the act, administrative rules, permit conditions, instructions, or orders of the Supervisor. [MCL 324.61506(l), MCL 324.61506(q), and R 324.813(1)(a)];
   c. The information or conditions upon which the permit was applied for have substantially changed since issuance resulting in a threat to public health and safety or endangerment to underground sources of drinking water. [MCL 324.61506(l), MCL 324.61506(q), and R 324.813(1)(b)];

d. The injection or disposal operations threaten the public health and safety or endanger underground sources of drinking water. [MCL 324.61506(l), MCL 324.61506(q), and R 324.813(1)(b)] Also, if the operation of a Class II well results in the migration of the injected fluids outside of the permitted injection interval or into a USDW as a result of injection;
e. The reasonable belief that a person no longer meets requirements of a statement of financial responsibility and fails to provide alternate financial assurance per R 324.210(7);
f. That a conformance bond(s) issued by a surety has been cancelled per R 324.213(2); or
g. That an owner has failed to transfer a permit per R 324.207.

F. Transfer: The OGMD shall not transfer a permit to a person who is in violation of Part 615, the administrative rules under Part 615, permit conditions, orders or instructions of the Supervisor, or an order of EGLE. In addition, the OGMD shall not transfer a permit if the current permittee is under notice because of unsatisfactory conditions at the well. Approval of the transfer of a permit requires that the acquiring entity provide the OGMD with an appropriate conformance bond pursuant to the Part 615 administrative rules and a fully executed transfer form.

G. Modification: Pursuant to R 324.206, the Supervisor may modify a permit for a Class II well for any of the following applicable situations:
a. The permittee requests a modification within the confines of Part 615;
b. There are alterations or additions to the permitted well or activity that occurred after permit issuance justifying the modification of permit conditions, and that are different from or absent in the original permit;
c. The Supervisor determines good cause exists for the modification of a compliance schedule as a result of events that the permittee has little or no control of and no other remedy is practicable; or
d. A reported judicial decision orders modification to an existing permit.

Pursuant to R 324.815, modifications to Class II well permits resulting in a substantial alteration or a major modification of a permit issued by the Supervisor will result in the initiation of a new permit application and public notice process as described in the Public Notice, Engagement, and Permit Decision section of this Program Description. A substantial alteration is one that results in the modification of one or more specific permit conditions that necessitate a more complex technical review of the permit, such as change in injection interval or change of well location. Minor modifications are described in R 324.815(2).

H. Emergency Permits: An emergency permit can be issued by the Supervisor under the provisions for the issuance of emergency orders and hearing:

R 324.1211:

> *(1) When an emergency order is issued by the supervisor, the person subject to the order shall be served with the order, either personally or by certified, return receipt mail.*
>
> *(2) An emergency hearing may be scheduled by the supervisor to consider matters of urgency or as a result of the issuance of an emergency order. Notice of hearing shall be served by certified mail, return receipt requested, not less than 10 days before the hearing date, on other interested persons as the supervisor shall consider necessary and appropriate.*

MCL 324.61516(1):

> *A rule or order shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, except emergency orders, unless public hearings are held. Except as provided in subsection (2), public hearings shall be held at such time, place, and manner and upon such notice, not less than ten days, as shall be prescribed by general order and rules adopted in conformity with this part. The supervisor may promulgate emergency rules or issue orders without a public hearing as may be necessary to implement this part. The emergency rules and orders shall remain in force and effect for no longer than 21 days, except as otherwise provided for rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.*

I. Remedial Action, Repair, or Plugging: The Supervisor has the discretion to order a permittee to perform remedial and repair work or plug a Class II well if injection from a well is an endangerment to a USDW or a threat to public health and safety. The Supervisor may utilize funds per MCL 324.61505, or Part 616, Orphan Well Fund, of the NREPA, to plug and abandon a well.

J. Maximum Injection Pressure: The Supervisor has the discretion of approving, with the USEPA concurrence, alternate formulas for calculating the maximum allowable injection pressure for Class II wells and for approving injection pressure limits based on site or area specific criteria under R 324.807.

K. Area Permits or Project Permits and Rule-Authorized Permits: All Class II wells under the USEPA Area Permits and the Rule-Authorized classification are currently authorized as single well permits by the OGMD because these wells have valid permits under Part 615. R 324.814 details how the OGMD will address Rule-Authorized wells upon transition of UIC program primacy. Upon the date of primacy, the OGMD will not issue new Area, Project, or Rule-Authorized permits for our Class II well program. Application for a Class II well must be made on an individual well basis.

L. Compliance Schedules: The State of Michigan has a mature regulatory program for injection wells, and each Class II well already has a valid Part 615 permit, is on a monitoring, reporting, and mechanical integrity test schedule, and therefore, this review is not applicable. Further, the USEPA has already evaluated existing wells and either authorized by rule, required upgrades, or given them a Class II permit, thereby assuring compliance with the SDWA regulations. As there is a valid Part 615 permit for each Class II well regulated by the USEPA and according to what has been detailed in this Program Description, the Class II wells in the State of Michigan are subject to file reviews and to operation, monitoring, and reporting requirements; therefore, no further compliance schedule or review work is required at the time the State of Michigan assumes primacy of the Class II program.

M. Process: The permitting of Class II wells is a process that involves permit application and initial application review; public notice, engagement, and permit decision; and finally, issuance of an “authorization to inject” following demonstration of internal and external mechanical integrity. Initial application review and public notice, engagement, and permit decision are completed concurrently, but are described separately below. Issuance of “authorization to inject” is completed after a permit to drill has been issued and the injection well has been constructed.

III.B Permit Application and Initial Application Review

The permitting of a Class II well begins by an applicant submitting a permit application with required information pursuant to R 324.201 and R 324.802 to the OGMD. Initial review is completed by the OGMD at the time that the OGMD receives a permit application, and the review is completed concurrently with public notice and public engagement. Time frames for review and decisions in the State of Michigan regulations do not have a provision for automatic permit issuance if review periods are exceeded.

During the initial review, an application is reviewed for its content and accuracy. The primary components of a permit application must be identified in this step; deficiencies may result in the entire application being returned to the applicant. According to OGMD permit processing procedures, the initial application review should be completed within five working days from the date of receipt of the application by geologists within the Permits and Bonding Unit (PBU) in the Lansing Central Office. This initial application review may or may not occur prior to public notification. The following items are required to be submitted and are examined by Permitting and Technical Services Section (PTSS) staff during this step:

a. A three hundred dollar ($300) application fee if required; and either one of five types of conformance bonding mechanisms, including:
    1. Cash Bond, Certificate of Deposit (CD), Letter of Credit, Surety Bond, or Statement of Financial Responsibility, pursuant to R 324.210.
    2. Single well conformance bond amounts are as follows:
        i. $20,000 for wells up to and including 2,000 feet deep, true vertical depth.
        ii. $40,000 for wells deeper than 2,000 feet, but not deeper than 4,000 feet, true vertical depth.
        iii. $50,000 for wells deeper than 4,000 feet, but not deeper than 7,500 feet, true vertical depth.
        iv. $60,000 for wells deeper than 7,500 feet, true vertical depth.
    3. Blanket conformance bond amounts are as follows:
        i. $100,000 for wells up to and including 2,000 feet deep, true vertical depth. Limited to 100 wells.
        ii. $200,000 for wells deeper than 2,000 feet, but not deeper than 4,000 feet, true vertical depth. Limited to 100 wells.
        iii. $250,000 for wells deeper than 4,000 feet, true vertical depth. No well limits.

NOTE: Under the provisions of Part 615, the OGMD can claim bond assets in order to case, plug, or repair a well. MCL 324.61519. Bond amounts are based upon the well's true vertical depth pursuant to R 324.212, since the deeper the well, the higher the potential associated costs. Regardless of conformance bonding, the well permittee retains responsibility for any environmental contamination.

b. Pursuant to R 324.802(b), applicants must provide a plat that shows the location and total depth of the proposed injection well, each oil, gas, injection, abandoned, permitted well location, and dry hole within 1,320 feet (Area of Review) of the proposed injection well location,

identifies the surface owner of record of the land on which the proposed injection well is to be located and lists each permittee of a well or permitted well location within 1,320 feet of the proposed injection well. The plat must also show all fresh water wells, irrigation wells, and public supply wells within 1,320 feet of the proposed Class II well location as detailed under R 324.802(b)(v) and R 324.201(G) and (H).

c. If an existing well is proposed to be converted to an injection well, a copy of the completion report, together with the written geologic description log or record filed pursuant to R 324.418(a) and borehole and stratum evaluation logs filed pursuant to R 324.419(1).
d. Pursuant to R 324.802(d), plugging records of all abandoned wells and casing, sealing, and completion records of all other wells within 1,320 feet of the proposed injection well location. If the wells are plugged or constructed in a manner that they could serve as a potential conduit for fluid migration as a result of the proposed injection, an applicant shall also submit a corrective action plan reflecting the steps or modifications believed necessary to prevent proposed injected fluids from migrating through inadequately plugged, sealed, or completed wells into a USDW.
e. Pursuant to R 324.802(i), identification and description of all faults, structural features, karst, mines, and lost circulation zones within 1,320 feet that can influence fluid migration, well competency, or induced seismicity. Applicant must submit a plan for mitigating risks from any of these identifiable features.
f. Pursuant to R 324.802(e), a schematic diagram of the proposed injection well that shows all of the following information:
    1. The total depth or plug-back depth of the proposed injection well.
    2. The geological formation name(s), true vertical depth, thickness, and lithology of the injection interval and confining interval.
    3. The geological name and the top and bottom depths of USDWs to be penetrated.
    4. The depths of the top and bottom of the casing or casings and cement to be used in the proposed injection well.
    5. The size of the casing and tubing and the estimated depth of the packer.

    Information confirming that injection of liquids into the proposed injection interval will not exceed the fracture pressure gradient of the injection interval. Established USEPA field values for fracture pressure gradients also may be used.
g. If potential exists for migration of fluids out of the injection interval, a corrective action plan of the steps or modifications (e.g., remedial plugging, etc.) needed to prevent migration of injection fluids outside

of the permitted injection interval or into USDWs must be provided by the applicant and reviewed by the OGMD pursuant to R 324.802(d) and (k). The plan should take the following into account:

1. The chemical composition and volume of the injected fluids;
2. Potentially affected USDWs;
3. Geology;
4. Hydrogeology;
5. The history of operation; and
6. Hydraulic connections between the injection interval and USDWs.

h. For existing Part 615 wells proposed to be converted to a Class II well, information such as well records as presented in R 324.416 or a demonstration indicating there is sufficient cementation behind the casing per R 324.411 or the results of geophysical logging as provided in R 324.804(1) that shows no potential fluid migration outside of the permitted injection interval or into a USDW as a result of injection. This is the external demonstration of mechanical integrity. Internal mechanical integrity is demonstrated by a successful Standard Annular Pressure Test (SAPT), which is required after construction or conversion and prior to authorization to inject.
i. Signature on the permit application, by the permittee or authorized agent, under R 324.201(4). Proper signatory authorization is based upon submittal of a Well Permittee Organizational Report (Form EQP 7200-13), which details the individuals authorized to prepare and/or submit information on behalf of the applicant.
j. Pursuant to R 324.201(2)(e), proof that the required direct notifications have been sent.
k. Proposed operating data, including all of the following data pursuant to R 324.802:
    1. The maximum anticipated daily injection rates and pressures;
    2. The types of fluids to be injected;
    3. A qualitative and quantitative analysis of a representative sample of fluids to injected, pursuant to R 324.802(g)(iv). A chemical analysis shall be prepared for each type of fluid to be injected showing specific conductance as an indication of the dissolved solids, specific gravity, and a determination of the concentration of the following parameters for chemical balance and indicators for comparison of water quality:
        i. Calcium
        ii. Sodium
        iii. Magnesium
        iv. Sulfide
        v. Chloride
        vi. Sulfate
        vii. Bicarbonate

viii. Carbonate
ix. Total Iron
x. Barium

NOTE: If the fluid to be injected is fresh water as defined by Part 615, then an analysis is not required.

4. The geological name of the injection interval and the vertical distance separating the top of the injection interval from the base of the lowest USDW pursuant to R 324.802.
5. The name and depth to top and bottom of the confining interval(s).
6. Anticipated fracture pressures of the injection and the confining intervals. This should include calculations and/or other substantiating data; acceptable information includes data obtained from existing wells such as Instantaneous Shut-in Pressure (ISIP) and Step Rate Testing, or other methods approved by the Supervisor. Existing USEPA field values for fracture pressure gradients established for individual fields are deemed acceptable and satisfactory pressure gradient standards and are automatically approved.

l. Pursuant to R 324.802(j), a proposed plugging and abandonment plan.

m. A general review of the surveyed well location that must include:
   1. A spot of the well location with distances to nearest section lines.
   2. The outlined 1,320-foot Area of Review.
   3. The surface and bottom-hole location of all oil, gas, disposal, dry hole, and injection wells within the 1,320-foot Area of Review pursuant to R 324.201(2)(b).
   4. Fresh water, irrigation, and public water supply wells pursuant to R 324.802(b)(v) and R 324.201(G) and H).

n. A signed and sealed survey by a licensed state of Michigan land surveyor pursuant to R 324.201(2)(a). For conversion, an existing signed and sealed survey will suffice.

o. A determination that all attachments required are present, complete, and accurate.

p. A check of the applicant's status to determine if the application should be denied further processing as the result of enforcement action by the OGMD due to "hold permit status" pursuant to R 324.205. The technical review will not be initiated if an applicant is otherwise ineligible to receive a permit. As the initial permit review is completed as described above by the Permits and Bonding Unit staff, the application materials are forwarded to the UIC Coordinator,

district geologist (supervisor), and area geologist for review. Generally, an application that is submitted in an acceptable form and satisfies all program requirements should be processed through the field staff review within 30 working days of submittal. During this review, information contained on the application is further verified from existing information on file with the OGMD or other sources. This continued review includes an examination of the following:

1. For newly-constructed Class II wells, a determination by staff that the requirements for proper well construction on new wells are met by the proposed application. All casing for newly-constructed Class II wells shall be of sufficient weight, grade, and condition to have a designed minimum internal yield of 1.2 times the greatest expected wellbore pressure to be encountered, R 324.410. The minimum hole size for a given casing shall be determined using Table 410 at R 324.410. The Supervisor may grant an exception to the hole-size requirement if it is determined that the proposal provides proper sealing of the well. The following casing for newly-constructed Class II wells is required:
    i. As specified in R 324.804(5), surface casing shall be set a minimum of 100 feet below the base of the glacial drift into competent bedrock or 100 feet below all underground sources of drinking water, whichever is deeper, for new Class II wells.
    ii. Injection casing as required to confine injection fluids to the injection interval approved by the Supervisor, R 324.801(m), R 324.804(6), and R 324.804(7); and
    iii. Additional casing and tubing per R 324.410 and R 324.804 as necessary to seal off potentially productive oil or gas zones, lost circulation zones, utilized natural brines or mineral zones, storage fields, high pressure zones, or reservoirs undergoing secondary recovery.
2. Field staff review of the schematic diagram of the proposed well that was submitted by the applicant and illustrates the following:
    i. The total depth or plug-back depth of the proposed injection well.
    ii. The geological formation name(s), true vertical depth, thickness, and lithology of the injection interval and confining interval.
    iii. The geological name and the top and bottom depths of USDWs to be penetrated.
    iv. The depths of the top and bottom of the casing or casings and cement to be used in the proposed injection well.

v. The size of the casing and tubing and the estimated depth of the packer.

3. A review of the proposed maximum injection pressures and maximum expected injection rates. Injection pressure shall be limited according to the calculation contained in R 324.807.
4. A review of anticipated maximum injection pressures and information confirming that injection of fluids into the proposed injection interval will not exceed the fracture pressure gradient and information showing that the injection will not initiate fractures through the confining interval pursuant to R 324.802(f), (g), and (k) and R 324.807.
5. A determination that injection will be through tubing and a packer, set inside casing within a specified distance above the top of the open hole or the uppermost injection perforations as determined by the Supervisor pursuant to R 324.804(2); and
6. An on-site inspection of the proposed well site.
7. Verification of USDW Protection: All information submitted by an applicant is verified by the OGMD to ensure that identifiable USDWs have, in fact, been identified. The proper identification of USDWs involves obtaining information from various sources including, but not limited to:
    i. Water samples from USDWs;
    ii. Calculation of the 10,000 milligrams per liter (mg/l) Total Dissolved Solids contour using available geophysical logs; or
    iii. A review of existing USEPA data, publications, and research studies conducted by competent authorities such as the Michigan Geological Survey, universities, the United States Geological Survey, and *The Hydrogeologic Atlas of Michigan*; and
    iv. A review of other available representative data.
8. Pursuant to R 324.802(b), the location and depth of all wells, whether active or abandoned (oil, gas, brine, mineral, dry hole, disposal or secondary recovery) within 1,320 feet of the proposed well and fresh water wells and irrigation wells pursuant to R 324.802(b).
9. A corrective action plan, if applicable, reflecting the steps or modifications needed to prevent fluid migration out of the permitted injection interval or into a USDW resulting from injection.
10. A review of materials submitted by the applicant and available geologic information in proximity to the proposed well as required in R 324.802(i) for faults, structures, or other known features that may allow vertical migration of fluids or result in induced seismicity.

The completion of the initial review, field review, and the UIC Coordinator review occurs when the UIC Coordinator, district supervisor, and/or district area geologist makes a recommendation for approval or requirement for additional information or modification to the permit. The recommendation or requirements for additional information or modification is then forwarded to the Lansing Central Office for consideration. The recommendation may include special permit conditions, a requirement that the applicant provide additional information such as integrity testing data, or remedial plugging of adjacent wells. Any applicable corrective measures must be implemented and completed as planned by the applicant and must be approved by the Supervisor or authorized representative before a permit will be issued.

Upon receipt of the field-checked application, the PTSS will conduct a final review to consider the recommendations of the district supervisor and UIC Coordinator. If additional information, modifications, or submissions from the applicant are required, staff within the PBU will notify the applicant. Upon receipt of additional requested information, modifications, or submissions, the PBU staff will confer with field office staff, the district supervisor, and the UIC Coordinator to determine if the response is satisfactory. If the applicant fails to address requested additional information, modifications, or submissions, the applicant will again be notified of deficiencies and the application may be denied. If no additional information, modifications, or submissions from the applicant are required and the public comment period (described in the next section) has concluded, the permit may be issued. The Lansing Central Office will post a notice of permit decision on the weekly permit list published by EGLE.

III.C Public Notice, Engagement, and Permit Decision

Concurrently with the permitting application review, the OGMD will send out a public notice, engage the public by providing a public comment period, hold a public hearing if prescribed in accordance with the administrative rules, and make a permit decision in accordance with the requirements of R 324.803. As part of the permit application, pursuant to R 324.802, the applicant shall provide the following notification information to the OGMD:

a. The name and address of the permittee of each oil, gas, injection well, and permitted location within 1,320 feet of the proposed well location.
b. The name and address of the last surface owner(s) of record within 1,320 feet of the proposed well location as reasonably determined by the records of the register of deeds office or equalization records.

Pursuant to R 324.803, within ten days after receipt of the permit application and notification information, the Supervisor will mail notice to each surface owner of record and well permittee within 1,320 feet of the proposed injection well and the township supervisor or municipal manager and shall post the notice on EGLE's Web site concurrently with the weekly permit list publishing. The following information will be included on all notices:

1. Date of Notice.
2. Applicant's name and address.
3. Proposed well location (Township, Range, Section, and distances from nearest road intersections).
4. Geological formation name and depth of injection zone.
5. Maximum anticipated injection pressure expressed as pounds per square inch gauge at the wellhead.
6. Maximum anticipated daily injection rate (barrels or thousand cubic feet/day).
7. A statement that comments on an application, or objections to, or a request to obtain additional information about the application must be received by the Supervisor at the offices of the Michigan Department of Environment, Great Lakes, and Energy, Oil, Gas, and Minerals Division, P.O. Box 30256, Lansing, Michigan 48909-7756, within 30 days after the Date of Notice set forth in the notice. The Supervisor shall not consider objections or comments received after said 30 days.

The Supervisor shall review all comments and objections to the proposed well received timely from interested persons as outlined in R 324.803(2). If the Supervisor determines that there is a comment relevant to the issues of waste, public health or safety, or is of substance and the commenter requests a public hearing, then the Supervisor shall provide notice of the public hearing within 20 days after the end of the comment period and hold the public hearing within 30 days after giving notice of the public hearing. The public hearing process will be governed by MCL 324.61503, commission/appeals; MCL 324.61507, waste; MCL 324.61508, administrative rules of order or procedure in hearings; MCL 324.61509, subpoena; R 324.803; and R 324.1201 through R 324.1212, as applicable. Pursuant to R 324.803(2)(e), concurrently with the issuance or denial of a Class II permit application, the Supervisor or authorized representative of the Supervisor shall post a response to the public comments on EGLE's Web site.

After the successful completion of the final review of the original application and conclusion of the public notice process, a permit to drill or convert may be issued or denied. Notice of permit to drill or convert

issuance or denial will be posted on the weekly permit list published by EGLE.

The issuance of a permit to drill or convert authorizes the drilling and construction of the well only. No well may be drilled until a permit has been issued by the OGMD pursuant to MCL 324.61506(c), R 324.201(1), R 324.201(2)(k), and R 324.802. The original or a copy of the permit must be posted at the drilling site during drilling operations. A permit to drill or convert will expire two years after issuance unless drilling operations have reached a depth of not less than 100 feet below the ground surface elevation and the drilling operation is diligently proceeding or the well is otherwise being used for its permitted purpose. However, a permit may be extended for an additional two years pursuant to R 324.208(2).

III.D Authorization to Inject

Beyond the issued permit and after the well has been constructed or converted, the permittee must conduct testing and receive an "authorization to inject" letter prior to operation of a well, R 324.806. This phase of authorization determines the adequacy and acceptability of all well construction and testing results, determines the final operating conditions for the well and the necessity, if any, of setting any special permit conditions as related to operation of the Class II well. The review will assess the internal and external mechanical integrity of the well, confirm the maximum allowable injection pressure, and address the required monitoring conditions. Following a review and analysis of the above, a decision will be made whether to issue an authorization to inject.

In consultation with district staff, PTSS staff will determine external mechanical integrity by reviewing all field notes and inspections as well a review of all records submitted pertaining to the drilling, completion, and testing of the well. This review will include reviewing data specific items such as drilled total depth, formation tops and thickness of injection and confining intervals, casing depths, cementing data, perforation data, associated service company records, and geophysical well logs.

Note: Most records that require review are by rule not required to be submitted by the permittee until a designated time period. In the event a record has not yet been submitted that requires review, authorization to inject will not be granted until such time the record has been received and has been reviewed by OGMD staff for adequacy pursuant to R 324.806.

OGMD staff will ensure that the well has effectively demonstrated internal and external mechanical integrity. Pursuant to R 324.806, a standard annular pressure test is required to be conducted for any new well or newly-converted well. Staff will review the SAPT results to determine internal mechanical integrity. In the event deficiencies are determined with either internal or external mechanical integrity, the operator will be notified and an authorization to inject will not be issued until corrective action is completed and mechanical integrity is established.

The maximum allowable injection pressure authorized by the permit will be stated in the authorization-to-inject letter. The permitted maximum allowable injection pressure may change based on completion records, step-rate test data, and/or calculations. If the maximum allowable injection pressure is changed, then a revised permit will be issued concurrently with issuance of the authorization-to-inject letter.

IV. INITIAL FILE REVIEW

The initial file review pursuant to Guidance 19 will not be completed as the requirement was intended for early adopting states, not states such as the State of Michigan where both the USEPA and EGLE have been regulating Class II wells for decades. Five-year file reviews will be conducted on an ongoing basis for each Class II well as described in Section VII.

V. TECHNICAL REQUIREMENTS

A. Mechanical Integrity:

Pursuant to R 324.804(1), all wells except those exempted by R 324.804(9) must demonstrate adequate cementation to prevent fluid migration outside of the permitted injection interval into or between a USDW as a result of injection. Wells exempted by R 324.804(9) are in existence and permitted already at the time of primacy and presumed to meet R 324.804(1). This is the demonstration of external mechanical integrity. Adequate cementation to prevent fluid migration outside of the permitted injection interval (or between) USDWs must be demonstrated by one of the following approved methods:

a. Records demonstrating adequate cementing including, but not limited to witnessing of cementation by an OGMD representative, submission of cementation records including cement tickets and/or a well completion report, or a Sonic Display log (CBL/VDL); or
b. The results of a temperature survey or noise log.
c. Other methods suggested by the permittee and approved by the Supervisor or authorized representative of the Supervisor.

R 324.806 and R 324.808 provide requirements for the internal demonstration of mechanical integrity requirement, the SAPT. The

SAPT must demonstrate that there is no significant leak in the casing, tubing, or packer. Casing, tubing, and packer integrity must be demonstrated prior to initial injection and at least once every five years by conducting an SAPT at no less than 300 pounds per square inch pressure, with no more than a 5 percent pressure change over a 30-minute period. Whenever practicable, SAPTs will be conducted in the presence of an area geologist. (Every SAPT result must be reviewed and approved by the OGMD.)

Alternate methods of demonstrating mechanical integrity will be considered with regard to their adequacy and may be authorized by the Supervisor, with USEPA concurrence.

Newly-constructed Class II wells must demonstrate mechanical integrity per R 324.806 and be constructed in accordance with R 324.804(5) and R 324.804(6) that provide for running and cementing of surface and additional strings of casing while R 324.804(2) addresses the requirements for non-corrosive fluids in the tubing-casing annulus and the packer setting. These administrative rules are used in combination to protect all USDWs by ensuring that injection of fluids is confined to the permitted injection intervals(s) approved by the Supervisor or authorized representative of the Supervisor, as follows:

1. Surface casing as required by R 324.804(5) shall be set a minimum of 100 feet below the base of the glacial drift into competent bedrock or 100 feet below all underground sources of drinking water, whichever is deeper, for new Class II wells and cemented with enough slurry to circulate to the surface. Injection casing shall have a minimum of 250 feet of cement immediately above the injection interval as described in R 324.804(6).
2. Pursuant to R 324.804(2), tubing must be set on a packer to within a specified distance above the injection interval and surrounded by a non-corrosive annular fluid.
3. Pursuant to R 324.804(3), access to the casing and tubing annulus at the surface must be provided.

Existing Part 615 wells that are converted to Class II wells after the date of primacy must demonstrate mechanical integrity per R 324.806 and will meet construction requirements if:

i. The well met the construction requirements specified by the OGMD at the time of the well's construction as evidenced by a current Part 615 permit; and
ii. The injection casing has a minimum of 250 feet of cement above the injection interval; and

iii. Injection into the well will not result in the migration of fluids outside of the permitted injection interval or into or between a USDW.

Pursuant to R 324.814, upon transition and the effective date of primacy, all existing Class II wells should have mechanical integrity if they successfully demonstrated mechanical integrity in their most recent test. These wells will be deemed to meet Part 615 and will be tested on their regular five-year schedule per R 324.808.

B. Well Operation:

Wells will be operated in accordance with Part 615 that states that wells must:

a. Confine injected fluids to the approved injection interval [R 324.804(1)]; and
b. Inject through an approved tubing and packer assembly surrounded by a noncorrosive fluid [R 324.804(2)]; and
c. Pass mechanical integrity tests as described in R 324.806 and R 324.808, and
d. Not exceed the maximum allowable injection pressure as prescribed in R 324.807.
e. Any proposed change in permit specifications, whether it is a major or minor modification, must be submitted to the OGMD prior to implementation per R 324.206 and R 324.815.

C. Cessation:

Under the provisions of R 324.812, an injection well must be plugged if it ceases to be used for its intended purpose for one year, unless the Supervisor grants a request by the permittee for temporary abandonment submitted pursuant to R 324.511. The permittee must demonstrate that waste will be prevented, and the Supervisor may require special actions and monitoring.

D. Plugging and Abandonment:

Permanent abandonment of wells is conducted in accordance with the provisions of R 324.802(j), R 324.901, and R 324.902 that specify that a permittee shall confine oil, gas, brine, and fresh water to the strata in which the oil, gas, brine, and fresh water occur by using bottom hole and surface casing cement plugs or other plugs approved by the Supervisor, as follows:

a. Bottom Hole Cement Plug:
    1. A bottom hole cement plug across the injection interval a minimum of 200 feet in length, allowed to set undisturbed for minimum of four hours, having reached a compressive strength of 100 pounds per square inch or more, and is tagged to ensure that it is still in place before setting the next plug up-hole; or

2. A mechanical bridge plug or other approved bridge plug set above the injection interval as appropriate with a minimum of 50 feet of cement placed on the bridge plug before setting the next plug up-hole.

b. Surface Casing Cement Plug:
A cement plug at the base of the surface casing using either of the following methods:

1. In static hole conditions, a cement plug set a minimum of 100 feet below the surface casing and extending a minimum of 100 feet into the surface casing; or
2. A mechanical open hole bridge plug or other approved bridge plug set a minimum of 100 feet below the surface casing with a cement plug on the open hole bridge plug extending a minimum of 100 feet into the surface casing.

NOTE: Surface casing shall not be pulled unless required by the Supervisor.

A surface plug set a minimum of 30 feet below the surface and within 5 feet of the surface shall be set pursuant to R 324.902(7) on all cased wells. The method of cement placement shall be at the discretion of the Supervisor or authorized representative of the Supervisor, although the primary method preferred is displacement or circulation. Plugging requirements are a permitting condition and will be specified in the plugging and abandonment plan submitted with the permit application and approved by the OGMD.

VI. MONITORING AND REPORTING

Permittees of Class II wells not used for secondary recovery must monitor and record the annulus pressure, injection pressure, injection rate, and cumulative volume of injected fluids on a weekly basis and must report the results to the OGMD monthly unless a lesser frequency is approved by the Supervisor pursuant to R 324.810(3). The permittee of a Class II well utilized for secondary recovery well must monitor and record the annulus pressure, injection pressure, injection rate, and monthly cumulative volume of injected fluid on a monthly basis and must report the results to the OGMD annually unless a lesser frequency is approved by the Supervisor pursuant to R 324.810(4). Manifold monitoring is allowed pursuant to R 324.810(2).

A permittee of a commercial disposal well shall submit a complete list of sources of disposed fluids on a quarterly basis on a form prescribed by the Supervisor. In addition to the annual chemical analysis, the permittee will provide the Supervisor with updated chemical composition information of the injectate to account for any new sources and receive authorization prior to disposal of those sources pursuant to R 324.810(6).

Annular pressure testing shall be conducted by the permittee as specified in R 324.808(2).

A permittee must provide a quarterly annulus liquid gain or loss report, pursuant to R 324.810(7), except for Rule Authorized Wells.

All records pertaining to an injection well must be retained by the permittee for a period of five years pursuant to R 324.810(9).

A permittee must notify the Supervisor or authorized representative of the Supervisor of any pressure test failure, significant pressure change, or other evidence of a leak in an injection well within 24 hours or as prescribed in R 324.811. Per R 324.811(3), if the permittee has been required to cease injection as a result of a test failure or other evidence of a leak, injection may not be resumed until the permittee has tested or repaired the well, or both, and received an authorization to inject.

The OGMD utilizes a Michigan-specific version of the Risk Based Data Management System (RBDMS) that was developed by the Groundwater Protection Council. The original purpose of the RBDMS was to track and monitor injection wells; it has since been adapted to apply to all oil and gas-related wells, including Class II wells. The RBDMS allows the OGMD to efficiently track Class II wells for well status and compliance with the administrative rules. The database is critical in tracking and providing data for the required annual reporting to the USEPA, and most states with delegated authority use similar systems.

VII. FIVE-YEAR FILE REVIEW

The OGMD will conduct a file review of each Class II well within a five-year cycle. The file reviews will be conducted such that an equivalent number of reviews are conducted on an annual basis. As part of the file review, the OGMD will review well construction, casing, cementing, well logs, mechanical integrity tests, monitoring reports, inspection history, and compliance history. All wells within the Area of Review will be evaluated to ensure continued protection of USDWs. If deficiencies are determined during a review, the OGMD will notify the operator to achieve any necessary corrective actions and full compliance.

VIII. COMPLIANCE AND ENFORCEMENT

A. Strategy: Enforcement authority for implementation of Part 615, including the Class II UIC Program, is granted to the OGMD under the provisions of the NREPA and the Part 615 rules, including, but not limited to the following:

MCL 324.61501 (Definitions, including “waste” and “underground waste”). MCL 324.61504 (Prohibits waste).

MCL 324.61505 (Vests the Supervisor of Wells with jurisdiction and authority over the administration and enforcement of Part 615 and jurisdiction and control over all persons and things necessary or proper to enforce effectively Part 615 and all matters relating to the prevention of waste.) The authority granted by MCL 324.61505 is broad and foundational for enforcement matters; it states that *“The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.”*

MCL 324.61506 (Requires the Supervisor of Wells to prevent waste and, to that end, specifically empowers the Supervisor to, among other things; (a) promulgate and enforces rules, issue instructions necessary to enforce the rules, and to do whatever may be necessary to enforce Part 615; (b) collect data, make inspections, studies, and investigations, to examine properties, records, and facilities as necessary for purposes of Part 615; (c) to regulate the location, drilling, casing sealing, and operating and plugging of wells related to oil and gas production, including disposal wells to prevent the pollution of, damage to, or destruction of fresh water supplies, or danger to resources, properties, or life; (d) require reports, maps, and records of all wells subject to Part 615; (i) regulate secondary recovery methods of oil and gas; (l) require immediate suspension of any operation or practice and the prompt correction of any condition that causes or threatens to cause waste; (o) promulgate rules for the classification of wells including wells used for secondary recovery or waste disposal; (p) require the filing of adequate security, surety, or cash bonds of well owners and operators to ensure compliance with Part 615; (q) require immediate suspension of drilling or other well operations if there exists a threat to public health or safety; and (r) require a complete and accurate well permit application in a form prescribed by the Supervisor.) Again, the authority given by MCL 324.61506 is broad and foundational for enforcement matters. It states, in part, that the Supervisor is specifically empowered *“(a)To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.”*

MCL 324.61506a (Requires Supervisor to notify the well owner or operator of any violations of Part 615 identified during and inspection.)

MCL 324.61507 - MCL 324.61511 (Provide for the Supervisor to conduct hearings regarding waste, to issue orders he or she considers necessary to prevent waste and specifies procedures and authorities for such hearings.)

MCL 324.61516 (Requires public hearings on proposed rules or orders but allows for issuance of emergency rules and orders without a prior hearing, effective for 21 days, as may be necessary to implement Part 615 and prevent endangerment of USDWs.)

MCL 324.61518 (Authorizes the Supervisor to bring legal action for the enforcement of Part 615, the Part 615 rules or for the prevention of the violation and provides for an Attorney General to represent the Supervisor. Note that the statutory reference to "proceed *at law* or for the enforcement of this part" [emphasis added] is an inconsequential artifact of the historical distinction between different forms of lawsuits, i.e., actions "at law" and "in equity" that has been abolished in federal and state courts in favor of a single form of action.)

MCL 324.61519 (Provides for the Supervisor to determine if the owner or operator of a well has failed to obtain a permit, construct, operate, maintain, case, plug, or repair a well in accordance with Part 615 and the Part 615 rules, to provide notice of such a determination to the well owner or operator and the surety for the well, to enter upon the property to case, plug or repair the well, and to collect the most from the surety.)

MCL 324.61520 (Imposes criminal liability on a person who abandons a well without properly plugging it.)

MCL 324.61521 (Imposes criminal liability on a person who intentionally makes a false statement or entry in a report required under Part 615.)

MCL 324.61522 (Provides that in an action brought by the Supervisor, a person who violates Part 615 or a rule or order issued under Part 615 is subject to a penalty of $1,000 for each day of violation.)

R 324.1201 - R 324.1212 (Provide for administrative hearings under Part 615 before the Supervisor, including hearings initiated through an administrative complaint filed under R 324.1210 by OGMD staff alleging violations of Part 615, and prescribing procedures for hearings and appeals.)

R 324.1301 (Provides broad authority for enforcement under the authority of MCL 324.61506) Again, this is broad authority and foundational for enforcement, R 324.1301 states:

> *The supervisor, under section 61506 of the act, may do any of the following:*
>
> *(a) Enforce all rules, issue orders, determinations, and instructions necessary to enforce the rules and regulations, and do whatever may be necessary with respect to the subject matter stated in these rules to carry out the purposes of these rules and the act, whether or not the orders, determinations, or instructions are indicated, specified, or enumerated in the act or rules.*
>
> *(b) Order the suspension of any or all components of the oil and gas operations when a violation exists. The suspension time shall continue until a correction is made and a violation no longer exists under section 61516 of the act. The supervisor may also prohibit the purchaser from taking oil, gas, or brine from the lease during the required suspension time.*
>
> *(c) Order a well plugged for a continuing violation of the act or these rules.*

With respect to questions recently raised by USEPA staff, it is important to note that the broad authority vested in EGLE to enforce Part 615 and the Part 615 rules, including but not limited to that stated in MCL 324.61506 and R 324.1301, necessarily includes the authority to enforce the conditions of permits issued under and required by Part 615 and the Part 615 rules. Such permits are an integral and crucial part of the statutory and regulatory scheme.

The enforcement process is designed to achieve the maximum rate of voluntary compliance through an incrementally increasing sanction system. Compliance and enforcement actions are conducted in accordance with the provisions of the OGMD Compliance and Enforcement Policy and Procedures 601.00 through 601.13, included as Section E. This document clearly details the processes and procedures used by the OGMD to insure compliance with the provisions of Part 615 and include sections on:

1. Compliance and Enforcement Introduction
2. Compliance and Enforcement Processes
3. Escalated Compliance and Enforcement Processes
4. Settlement Issues
5. Compliance Coordination; Tracking and Measurements
6. Coordination and Management of Multimedia Cases

In the event of a violation that threatens public health and safety or a USDW, the Supervisor can require immediate suspension of any or all components of an injection or disposal operation for up to five days, pursuant to R 324.813. If the permittee fails to correct the violation, the Supervisor may issue an emergency order without a hearing to extend the suspension for up to an additional 21 days. Unless the permittee has resolved the violation, the Supervisor shall issue an order continuing the suspension and/or requiring other corrective actions following notice and public hearing. The Supervisor also has the option of entering into an Administrative consent Agreement or other binding instrument to extend the suspension and require corrective actions. Under MCL 324.61506 and MCL 324.61516, in the event of an imminent environmental or public health risk or as necessary to enforce Part 615, the Supervisor can issue an Administrative Order that is immediately effective without a prior hearing or may enter into a Consent Agreement to address the noncompliance. MCL 324.61516 gives the Supervisor authority to suspend operations and indicates how it is done and how it must be extended by holding a hearing and issuing a subsequent order. The time line is dictated by the statute, and it is the Supervisor that has both the authority and the responsibility to hold a hearing and issue an order to extend the suspension of operations beyond the initial emergency order if warranted. The Supervisor has in practice exercised that authority, and there is no legal or practical impediment to continuing to do so when necessary.

Under MCL 324.61519, it is made clear that a notice of determination may be issued and subsequent action by the Supervisor may be taken if the owner or operator of a well does not obtain a permit or construct and operate that well consistent with the regulations and the permit. An issued permit has conditions for proper construction and operation of a well. Violation of permit conditions is addressed further in administrative rules; specifically, pertinent to Class II inject wells are R 324.813, R 324.102(j), R 324.206, R 324.211, R 324.213, R 324.215, and R 324.1210. In addition to broad statutory authority to prevent waste and the above cited rules, MCL 324.61506 and R 324.813 provide that the Supervisor may require corrective action at a Class II well, including suspension of operations, if the Supervisor determines the operations are in violation of permit conditions.

B. Unannounced inspections are conducted by each of the area geologists employed by the OGMD. The inspections may include the following:
   a. Physical inspection of well, well-related equipment, piping, pumps, and fluid containment facilities on at least an annual basis.
   b. Observation of wellhead injection and annular pressure.

In addition to on-site inspections, OGMD staff may conduct record evaluations to determine compliance with reporting requirements and adequacy of record keeping requirements. These record reviews may result in meetings with the permittee to request additional documentation or explanation of potential record deficiencies.

NOTE: Where feasible and when practicable, the OGMD will use permittee-provided gauges to measure wellhead injection and annular pressures pursuant to R 324.806 and R 324.808.

Upon a finding that a violation of Part 615 exists, the enforcement process begins and ensures that a well will be reinspected on a frequency that is based on the type of violation and associated risks until the violation is resolved and compliance reached. Any violation of Part 615 is subject to the OGMD Compliance and Enforcement Policy and Procedures. A complete overview of the compliance and enforcement process is presented on the Generalized Compliance & Enforcement Flowchart (Appendix 2).

C. Systems Comparison: Each component of the State of Michigan's compliance and enforcement system contains an action that correlates to an action utilized by the USEPA. A comparison of the actions taken by the USEPA and the State of Michigan follows:

USEPA Action	**Michigan Action**
Notice of Noncompliance	Violation Notice
Administrative Order	Administrative Consent Agreement or Order
Civil or Criminal Referral	Referrals to Michigan Department of Attorney General or Michigan Department of Natural Resources, Law Enforcement Division, Environmental Investigation Section

Although the USEPA and EGLE are bound to different guidelines regarding timing, notification, publication, administrative adjudication, and legal action, the systems are similar in terms of the intended effect for each item noted above.

In addition, the OGMD will record and provide metrics for the following compliance violations to the USEPA on an annual basis:

a. Unauthorized Injection – Any unauthorized emplacement of fluids (where formal authorization is required).

b. Loss of Mechanical Integrity – Well operation without mechanical integrity that causes the movement of fluid outside of the permitted injection interval if fluid migration has the potential for endangering a USDW.
c. Excessive Injection Pressure and Rates – Well operation at an injection pressure or rates that exceed the permitted or authorized maximum injection pressure or rate and causes the movement of fluid outside the permitted injection interval if fluid migration has the potential for endangering a USDW. Anomalous exceedances of maximum permitted rates or pressures that are explained, addressed, and did not cause migration of fluids outside of the permitted injection interval do not necessarily constitute a compliance violation.
d. Improper Plugging and Abandonment – The plugging and/or abandonment of an injection well in an unauthorized manner. This definition includes the orphaning of a well, or when there is endangerment of a USDW and there is an identifiable owner/operator.
e. Violation of a Formal Order – Any violation of a formal enforcement action, including an administrative or judicial order, consent agreement, judgment, or equivalent federal action.
f. Falsification – The knowing submission or use of any false information in a permit application, data submittal, periodic report, or special request for information about a well.
g. Failure to File Well Records – Failing to submit required notifications and records. Receipt of records filed past the deadline may be subject to a short grace period and not constitute a violation if resolved quickly.
h. Injection of a Non-Authorized Substance – Injection of any fluids not authorized pursuant to R 324.801(c) or R 324.810(6).
i. Failure to protect a USDW or confine injected fluids to the permitted injection interval – Failing to confine injected fluid to the approved injection interval or allowing the endangerment of a USDW constitutes a compliance violation that will be tracked and reported.

IX. STAFFING AND RESOURCES

A. Personnel: In the fiscal year 2018 budget, the Michigan Legislature appropriated funding for 56.5 full-time-equated (FTE) positions in the oil and gas program of the OGMD. The program has 55.5 established FTEs, although several positions are currently vacant. Of the 55.5 FTEs, 19.5 are in the Lansing Central Office and 36 are in field offices throughout the state. The Lansing Central Office staff includes about 2.5 FTEs in an Administration Section that is shared with another EGLE division.

Because the OGMD currently implements a parallel state program with the USEPA for regulation of injection wells, staff is already carrying out most of the duties that will be required when the State of Michigan is granted primacy for the Class II program. Those duties are distributed throughout OGMD staff in Lansing and the field and district offices.

A complete overview of the staff organization is presented on the OGMD organizational chart (Appendix 3).

All field operations are coordinated by the OGMD Field Operations Section (FOS) supervisor and district supervisors associated with seven district offices around the state of Michigan (Cadillac, Gaylord, Kalamazoo, Lansing, Upper Peninsula, Saginaw Bay, and Southeast Michigan District Offices). All area geologists report directly to their respective district supervisors and the FOS supervisor. Currently, Lansing Central Office is responsible for permitting within the PBU and for production and well records within the PMGU. Both Lansing Central Office units have unit supervisors and together make up the PTSS, which is managed by the PTSS manager. If Class II UIC primacy is obtained, the OGMD will hire a UIC coordinator as a specialist position for necessary internal coordination of the UIC program and to liaison with the USEPA. All positions will be fully integrated to allow the OGMD to provide a comprehensive program for the management and supervision of Michigan's petroleum resources and the protection of USDWs. It is currently anticipated that the State of Michigan's Class II UIC primacy program would be conducted by approximately seven FTE positions, which is the estimated sum of all staff involvement.

A description of all OGMD positions, including the proposed UIC Coordinator Position, follows:

Supervisor of Wells – One position – full-time; responsibility and title of the EGLE Director. Part 615 vests broad authority in the Supervisor of Wells to regulate oil and gas activities in the state of Michigan, including Class II injection wells for disposal and enhanced recovery activities related to oil and gas operations. Most practical responsibilities of the Supervisor of Wells as indicated by statute and administrative rules are delegated to the Assistant Supervisor of Wells. The Supervisor of Wells/Director of EGLE reports directly to the Governor of the state of Michigan.

Assistant Supervisor of Wells (State Administrative Manager 17) – One position – full-time. This position serves as the administrative head of the OGMD and reports to the Supervisor of Wells/Director of EGLE. Duties and responsibilities include the following: coordinates the

UIC program with the USEPA; oversees fiscal affairs; manages staff activities; attends regular meetings of the Interstate Oil and Gas Compact Commission (IOGCC) and the Groundwater Protection Council (GWPC); prepares professional assistance for staff training; supervises staff to ensure proper program operation; maintains public relations; makes presentations on the OGMD operations; conducts informal and formal hearings related to spacing, regulation exceptions, secondary recovery, and related issues; conducts routine staff meetings to monitor activity; and constructs OGMD goals with staff assistance. This person must have a bachelor's degree in either Geology or Petroleum Engineering with advanced training or a minimum of three years related experience. In addition, a working knowledge of EGLE and OGMD policy and procedures, technical and professional writing, industry practices and techniques, computer technology, business administration, communication skills, and specialized knowledge of oil and gas administrative rules is required.

State Administrative Manager (SAM) 15 – (PTSS Manager and FOS Manager) – Two positions – full-time.

PTSS Manager (SAM 15) – Manages the implementation of the OGMD central office programs for oil and gas, mineral wells, and mining. Oversees a section with 17 supervisory, professional, technical, and administrative staff, with functions of permitting, escalated enforcement, bonding, recordkeeping, oil and gas production, and administrative hearings. Coordinates activities indirectly through two first-line supervisors and directly through one staff specialist. Represents the OGMD as an associate member or committee member at organizations such as the IOGCC and the GWPC. Serves as a member of the OGMD management team, directs strategic planning, and advises the OGMD Director. Oversees staff and all activities related to the permitting, monitoring, and reporting of wells and associated facilities including Class II well operations and computer and data management operations. This person must have a bachelor's degree in either Geology or Petroleum/Mining Engineering with advanced training or a minimum of three years related experience. In addition, a working knowledge of EGLE and OGMD policy and procedures, technical and professional writing, industry practices and techniques, computer technology, business administration, communication skills, and specialized knowledge of oil and gas administrative rules is required.

FOS Manager (SAM 15) – Manages the OGMD field implementation of oil and gas, mineral wells, and mining programs. Oversees a section with 40 supervisory, professional, technical, and administrative staff, with functions of permit review, recordkeeping, oil and gas production, sand dune mining, metallic and nonmetallic mining, orphan well plugging, orphan well environmental remediation, and compliance and enforcement. Plans, coordinates, organizes, and provides controls of the section's activities indirectly through three first-line supervisors and directly through four staff specialists. Serves as a member of the OGMD management team, directs field strategic planning, and advises the OGMD Director on staff performance, workload analysis, section plans, and priorities. Makes appointments to committees and workgroups, assigns staff for special projects (coordinates with the PTSS Manager on OGMD/statewide issues), and insures OGMD's priorities are being followed. Conducts or participates in staff meetings or special meetings to address OGMD and section issues. Represents the OGMD as needed on a variety of internal and external organizations, agencies, legislators, media, and in hearings or trials. Participates and organizes OGMD's public outreach. Serves as the OGMD senior management sponsor of the Field Integration Team (FIT), chairperson of the hydraulic fracturing work group, and chairperson of the consistency committee. Drafts (or directs the drafting of) policies and procedures, administrative rules, and other OGMD internal and external directives and guidance documents. Serves as management representative on the OGMD training committee. Provides training for staff either through third parties or internally. Monitors section and program budgets and directs the acquisition of safety equipment and all other equipment and supplies for the section. This person must have a bachelor's degree in either Geology or Petroleum/Mining Engineering with advanced training or a minimum of three years related experience.

Executive Secretary (Executive Secretary 10) – One position – full-time. This person assists the SAM 17 and the SAM 15s in all areas of the division administration. Duties include organizing and scheduling for the entire professional staff; maintaining a filing system; preparing reports and correspondence; coordinating travel arrangements; assisting with the drafting and preparation of the agenda and minutes for the Oil and Gas Advisory Committee; assisting with public relations; screening calls; and performing other related duties. This person will have a working knowledge of computers and data management, all related office equipment, office procedures, communication skills, writing skills, and EGLE and OGMD policy and procedures.

Permits and Bonding Unit Supervisor (Environmental Manager 14) – One position – full-time. This position supervises three geologists, comprising the Permits and Bonding Unit. This position is responsible for managing the positions that are responsible for reviewing all types of well permit applications, including enhanced recovery and saltwater disposal wells. This unit determines specifications for well construction and Class II operations; evaluates impact of proposed wells within the area of review; compiles inventory of all Class II wells; evaluates public comments and objections to permit applications and makes recommendations; provides technical assistance to field geologists; manages data files and records; and prepares reports and presentations. This supervisor position requires a bachelor's degree in Geology or Petroleum/Mining Engineering; a working knowledge of geohydrology, geophysical logging, well construction, completion techniques, computer technology, data management, and business administration.

Petroleum and Mining Geology Unit Supervisor (Environmental Manager 14) – One position – full-time. This position supervises one petroleum engineer, one geologist, one geological technician, and one records technician in addition to overseeing student and intern workers. This position is responsible for managing the positions that are responsible for reviewing petroleum engineering and geology, including enhanced recovery and saltwater disposal wells. This unit evaluates incoming records from monitoring of Class II operations and required mechanical integrity testing. This supervisor position requires a bachelor's degree in Geology or Petroleum/Mining Engineering; a working knowledge of geohydrology, geophysical logging, well construction, completion techniques, computer technology, data management, and business administration.

Permitting Geologist (Geologist 9/10/P11/12) – Three positions – full-time. These positions review permit applications determine specifications for well construction and Class II operations; evaluate impact of proposed wells within the area of review; compile inventory of all Class II wells; evaluate public comments and objections to permit applications and make recommendations; manage data files and records; and prepare reports and presentations. These Geologist 9 - 12 positions require a bachelor's degree in Geology or Petroleum/Mining Engineering; a working knowledge of geohydrology, geophysical logging, well construction, completion techniques, computer technology, data management, and business administration.

Petroleum Engineer (Engineer Specialist 13) – One position – full-time. Serves as staff specialist for regulatory requirements of Class II injection wells, where specialized engineering expertise is applied in petroleum and reservoir engineering in the areas of hydrocarbon exploration, production methods and trend analysis, operation practices, and reservoir analysis for the OGMD. This position implements the requirements under Part 615, with respect to central production facilities, mechanical integrity tests, well testing, injection well reporting, exception to no flare, hydrocarbon production reporting and portioning, confidential well status, and reporting requirements for drilling and completion operations of oil and gas wells. This position interprets various Supervisor of Wells Orders, Supervisor of Wells Special Orders, and Supervisor of Wells Instructions; maintains literature and computer data files; enforces applicable statutes and administrative rules; provides information to individuals and constituent groups; serves on interagency and intra-agency committees; and evaluates and prepares technical reports. This position tracks mechanical integrity test due dates and reviews test data, communicating regularly with district geologists and USEPA staff.

District Supervisor (Environmental Manager 14) – Three positions – full-time. The district supervisor manages and oversees area geologists in implementing the oil and gas, mineral wells, and mining programs in the field in the respective district office. Program coverage includes Class II wells for brine disposal wells and enhanced oil recovery.

Area Geologist (Geologist 9/10/P11/12) – 22 positions – full-time. Area geologists oversee the implementation and enforcement of Part 615 and other OGMD programs in assigned field areas. Program goals include fostering orderly development of oil and gas resources while minimizing impacts to soil and water resources. Staff in these positions are responsible for regulation of oil and gas exploration and production, including underground injection for oilfield waste disposal and enhanced recovery in an assigned area; protection and cleanup/remediation of surface waters, ground waters, and soils contaminated or impacted from oil and/or gas operations; handling and resolving complex and controversial problems that arise in their assigned area at an expert level utilizing principles of good customer service; providing detailed information relating to division programs through established reporting systems. These positions make field determinations of any noncompliance with the oil and gas law; inspect well locations, surface facilities, casing operations, and drilling operations to determine compliance with permit conditions and specifications; supervise plugging

of all wells and approve plugging techniques; certify compliance with the administrative rules for abandonment; prepare reports; investigate problems and complaints and recommend corrective action; and witness the mechanical integrity testing of all wells. These positions require a bachelor's degree in Geology or Petroleum/Mining Engineering. A working knowledge of industry standards, plugging methods, well construction, and EGLE and OGMD policy and procedures is also required.

Enforcement, Bonding, and Hearing Specialist (Environmental Specialist 13) – One position – full-time. The Enforcement and Bonding Specialist has responsibility for direct statewide compliance and enforcement coordination, working on escalated enforcement cases referred by OGMD District Compliance Coordinators for violations of Part 615 and has direct statewide responsibility for the financial assurance requirements for oil, gas, and mineral wells and mining operations. This person must be able to plan, coordinate, and administer all phases of the bonding program. The position is responsible for implementing and evaluating goals, policies, procedures, and analyses related to the OGMD bond program, including maintaining and monitoring the OGMD bond information and bond activities databases and providing information and expert technical direction to the OGMD as well as the oil and gas, mineral wells, and mining industries. This position has primary responsibility as Statewide Compliance Specialist for working with the Michigan Department of Attorney General to prepare for administrative hearings pertaining to Part 615 as well as being the Statewide Bond Specialist and requires advanced knowledge of Part 615 and the Administrative Procedures Act.

Administration Section Manager (SAM 15) – One position – full-time. This position is responsible for OGMD financial and budget operations. This person maintains detailed files and records on all expenditures; processes bonds; deposits all OGMD revenue; prepares requisitions, invoices, and payments; and processes all claim vouchers and other billings. This person must have a working knowledge of the state and EGLE accounting procedures, office procedures, all office equipment, phone etiquette, grammar and spelling, letter writing, and EGLE and OGMD policy and procedures.

UIC Coordinator/Specialist (Geologist/Petroleum Engineer 13) – One position – full-time. This position is responsible for coordinating the Class II UIC primacy program as the primary point of contact with the USEPA. This person will coordinate activities related to primacy requirements such as periodic reporting, mechanical integrity test tracking, oversight of the technical review of permit applications, coordination of public notifications, and permit application hearings. This position has primary responsibility

for overall coordination of state Class II UIC program interaction with the USEPA, tracking of compliance and enforcement actions as well as maintaining significant noncompliance violation metrics, and will be responsible for management and review of the periodic USEPA oversight inspection program. This person must have a working knowledge of UIC technology and techniques, EGLE and OGMD policies and procedures, permit application processes, well construction and mechanical integrity, and departmental compliance processes. Additionally, this person must have an intimate knowledge of the requirements of a USEPA-delegated Class II UIC program, the state Program Description, state/USEPA Memorandum of Agreement (MOA), and any other documents related to the management of a Class II primacy program. This position requires advanced knowledge of Part 615 and of the Administrative Procedures Act.

B. Program Activity Tracking: Respective UIC vs. non-UIC activities will be tracked via a computer aided time system. The system will capture hours spent, relative percentages of time, and individual ratios of time related to UIC vs. non-UIC duties. UIC Program activities are anticipated to be disproportionately high as compared to non-UIC activities. This expectation is based on the technical and administrative requirements for each program.

C. Program Funding: The OGMD operates on an annual budget that is prepared and submitted to the Michigan Legislature for consideration. The state's fiscal year runs from October 1 to September 30. The operating budget of the OGMD oil and gas program is appropriated from dedicated funds. This fund, known as the Oil and Gas Regulatory Fund, receives monies deposited from the collection of permit fees, per well gas storage fees, interest on the balance in the Fund, and a surveillance fee that is set annually and is based upon the current prices for oil and gas and the projected amount of production expected during the upcoming year. On the average, annual collections meet or exceed the funds required to operate the OGMD. The Fund's goal is to maintain a balance that is capped at no more than $7 million. The Legislature also can appropriate funds from the General Fund when anticipated annual collections do not meet appropriated expenditures. The State of Michigan currently receives an ongoing General Fund appropriation of $4 million annually to support Part 615 regulation. Should federal grant money be made available, the amount of that allocation would be placed in this fund. The state also operates an orphan well plugging fund that is maintained through a $1 million allotment from the state's severance taxes.

X. AGENCY INVOLVEMENT

The OGMD will be the sole agency involved with the administration of the UIC program for Class II wells in the state of Michigan, excluding Indian Country, as defined in 18 U.S.C. § 1151. However, with respect to wells located or to be located on state or federal land, the OGMD will consult with the appropriate state or federal agency or agencies regarding the terms and conditions of a Class II permit and will provide for proper notification to such agencies with respect to the issuance of permits.

XI. WELL INVENTORY

The OGMD maintains a comprehensive inventory of Class II wells, utilizing the RBDMS. As a part of the inventory process, all data pertaining to the permitting and physical makeup of Class II wells is entered in a computer file that can be accessed randomly for the purposes of reporting. The OGMD will work with the USEPA to ensure that the Class II well inventory is accurate.

XII. EXEMPTED AQUIFERS

The UIC program is designed to protect USDWs. Although federal UIC regulations have provisions to exempt an aquifer, or a portion of an aquifer, the State of Michigan has not sought to, and is not likely to, seek to exempt any USDWs under its approved program.

XIII. USE OF DIESEL FUELS IN HYDRAULIC FRACTURING

The USEPA Guidance #84, February 2014, requires a UIC Class II permit for using diesel fuels for hydraulic fracturing operations. MCL 324.61506 gives the Supervisor of Wells broad authority to prevent waste from operations for the discovery, development, and production and handling of oil or gas. Specifically, MCL 324.61506(h) states: "*To regulate the mechanical, physical, and chemical treatment of wells*." Treating and injecting are clearly included in the definition of "Operation of oil and gas wells" in R 324.103(c). Hydraulic fracturing as a completion technique is such a treatment. R 324.102 defines an injection well to include, in part, *"a well used to inject water, gas, air, brine, or other fluids for the purpose of increasing the ultimate recovery of hydrocarbons from a reservoir*." R 324.801(c) defines Class II wells and includes wells that utilize diesel fuels as a component of hydraulic fracturing fluid. Diesel fuels are defined in R 324.801(i).

Therefore, a Class II well permit is required for hydraulically fracturing with diesel fuel under Part 615 as it is considered a Class II well. However, R 324.802(f) prohibits injection wells from injecting fluids above fracture

gradient. Therefore, the OGMD will not issue any Class II permits for the use of diesel fuels to hydraulically fracture.

XIV. REVIEW OF EXISTING WELLS

All existing Class II wells are required to demonstrate mechanical integrity within five years after the effective date of assumption of primacy of the federal UIC Program. The OGMD will continue to maintain the varying schedules of compliance for Rule Authorized Wells, Existing Wells, and Newly Converted Wells. A person who was issued a federal permit before the delegation of authority to the State of Michigan may continue to operate the well and will be subject to the existing schedule of testing and reporting. Operation of the well subjects the person to the requirements of Part 615. Any terms specified in a federal permit may be enforced by the State as if ordered by the OGMD.

XV. TRANSITION OF CARBON DIOXIDE CLASS II WELLS TO CLASS VI WELLS

The authority to regulate Class II Carbon Dioxide (CO2) Injection Wells for enhanced recovery operations is granted under Part 615. Upon the USEPA's delegation of primacy to the OGMD, the Assistant Supervisor of Wells will be the Class II Director for these wells. Wells utilized for the geologic sequestration of CO2, or long-term underground storage of CO2, are regulated as Class VI wells under USEPA jurisdiction.

If oil or gas recovery is no longer a significant aspect of a Class II permitted enhanced recovery operation, the CO2 injection well may be transitioned to Class VI jurisdiction (the USEPA Class VI Administrator) if a risk to a USDW is present from the geological sequestration of CO2. In this situation, the State of Michigan Class II Director will coordinate with the USEPA Class VI Director as appropriate to transfer jurisdiction based on cessation of enhanced recovery operations or other operational conditions where increased risk is observed in the well(s). Enhanced recovery operations involving CO2 injection can be long-term and ongoing, with CO2 being a commodity that may be injected, withdrawn, and reinjected in projects involving multiple wells or reservoirs. The April 23, 2015, USEPA memorandum regarding "*Key Principles in EPA's Underground Injection Control Program Class VI Rule Related to Transition of Class II Enhanced Oil or Gas Recovery Wells to Class VI"* has clarified jurisdiction for underground injection of CO2. A copy of this document is included herein as Appendix 4.

XVI. PUBLIC PARTICIPATION ON APPLICATION FOR PRIMACY

The OGMD provided opportunity for public participation during the development of the State of Michigan's Class II primacy program by conducting one public hearing and posting the draft application and a request for comments on EGLE's Web site. The hearing provided the public with the opportunity to directly comment on the proposed program. Input on the primacy program development was not limited to oral presentations at the hearing. Written comments were accepted and considered in the same manner as those received orally.

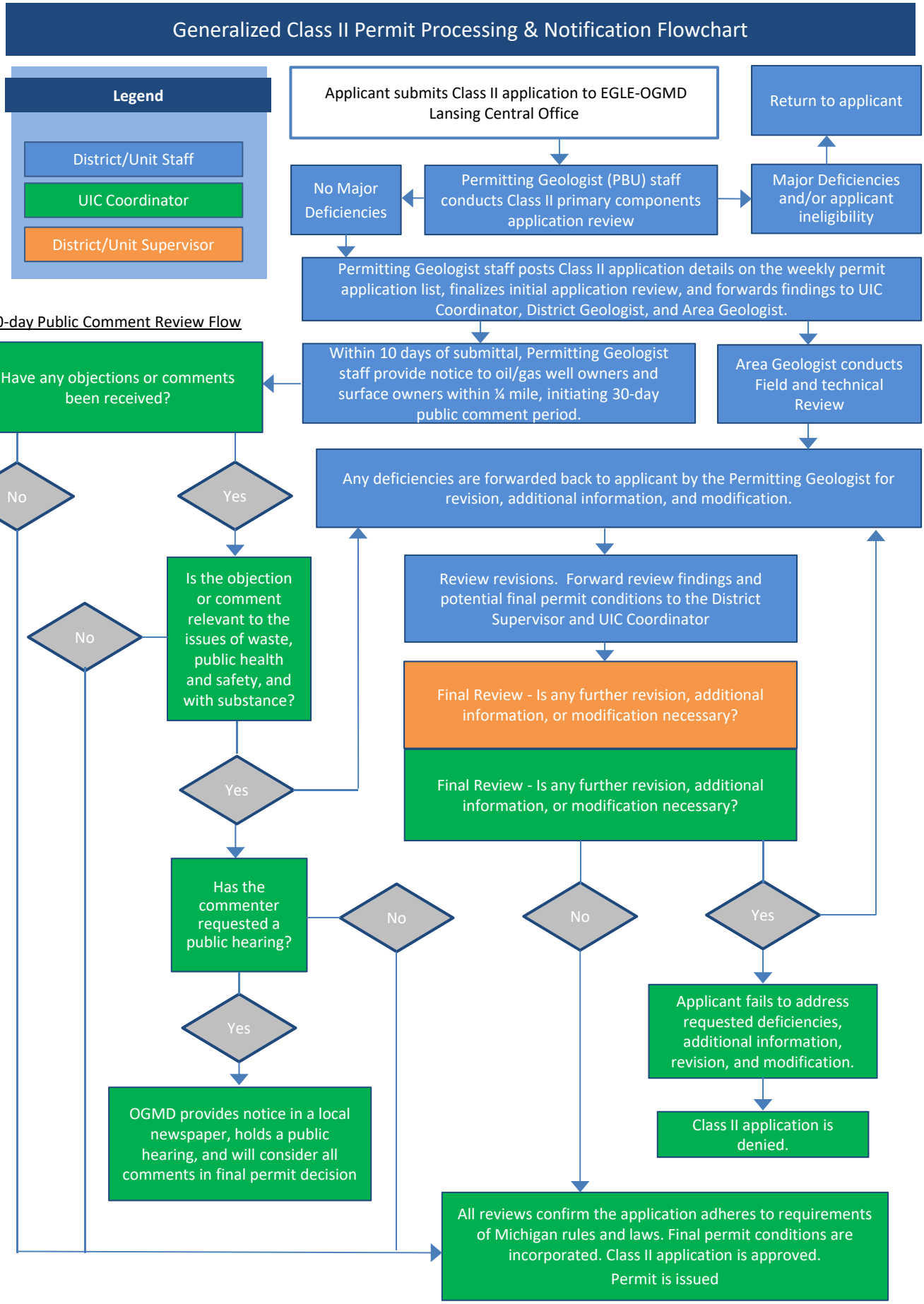
XVII. RESPONSE TO COMPLAINTS

Upon receipt of either a written or oral complaint against a permittee or authorized person associated with the drilling, operating, or plugging of a well, the OGMD will notify the area geologist to initiate an investigation into the complaint. The investigation will include a visual inspection of the well site to determine whether additional assessment or monitoring is necessary, a review of well records, referral to other state agencies as appropriate for non-UIC matters, and formal enforcement action by the OGMD as needed. A person filing a complaint is considered a potentially affected party and entitled to notification of actions taken by the OGMD with respect to enforcement action if requested.

The complaint and response process will be documented from inception to resolution by OGMD staff using the field notes application in the RBDMS database, electronic mail correspondence, and telephone logs.

Appendix 1a: Generalized Class II Permit Processing & Notification Flowchart

Generalized Class II Permit Processing & Notification Flowchart



Appendix 1b: Permit Application – Petition for Review Process Flowchart

PERMIT APPLICATION - PETITION FOR REVIEW PROCESS

Section 1315 of Part 13, Permits, of the NREPA, 1994 PA 451, as amended

Legend

- EGLE Director
- Permit Application Review Panel
- Michigan Compiled Laws citation, e.g., 324.1315

PRE-PERMIT DECISION

The applicant may submit a "Petition For Permit Application Review" to the EGLE Director that includes the issues that may be in dispute, relevant facts, data, analysis and supporting documents that support petitioner's position.

The EGLE Director decides if the issue can be resolved with or without the Permit Application Review Panel.

324.1315 (1)

Can issue be resolved without Permit Application Review Panel?

- **No**
  - EGLE Director selects Permit Application Review Panel. It is comprised of three members of the 15-member Environmental Permit Review Commission. Panel members are selected based upon relevant experience.

    324.1315(2)
  - Permit Application Review Panel members submit Disclosure of Interest form and are provided petition and supporting documentation.

    324.1315(4)
- **Yes**
  - Issue Resolved - Not to exceed 45 days after petition submittal. Permit processing continues.

    324.1315(1)

Within 45 days of petition submittal, a meeting of the Permit Application Review Panel is held. Panel members select a Chair. Representatives of the petitioner and EGLE are each given an opportunity to present their positions.

324.1315(2), (3), and (4)

Within 45 days of meeting, the Permit Application Review Panel will make a final written recommendation to the EGLE Director and the petitioner. The recommendation will include the specific rationale for the decision and may adopt, modify, or reverse, in whole or in part, the EGLE's position subject to the petition.

324.1315(5)

Within 60 days after receiving the written recommendation of the Permit Application Review Panel, the EGLE Director shall issue a decision in writing regarding the petition.

324.1315(6)

- EGLE Director agrees with recommendation of the Permit Application Review Panel

  324.1315(6)

  Panel recommendations are incorporated. Permit processing continues.

  324.1315(6)
- EGLE Director rejects recommendation of Permit Application Review Panel

  324.1315(6)

  Panel recommendations are rejected. Permit processing continues.

  324.1315(6)
- EGLE Director makes no decision

  324.1315(6)

  Panel recommendations are incorporated. Permit processing continues.

  324.1315(6)

Appendix 1c: Final Decision of a Contested Case - Petition for Review Process Flowchart

FINAL DECISION OF A CONTESTED CASE - PETITION FOR REVIEW PROCESS

Section 1317 of Part 13, Permits , of the NREPA, 1994 PA 451, as amended

Legend

- EGLE Director
- Contested Case Review Panel
- Michigan Compiled Laws citation, e.g., 324.1317

POST PERMIT DECISION/CONTESTED CASE

Should there be a contested case regarding a permit decision, an Administrative Law Judge shall preside over and make the final decision, and issue the final decision and order. Any party to the contested case, may, within 21 days of final decision, seek review of that decision by the Contested Case Review Panel by submitting a "Petition for Review of a Final Decision of a Contested Case" to the EGLE Director and notice to the hearings officer.

324.1317(1)

Was a timely petition for appeal of the final decision and order filed by a party to the contested case?

Yes

No

Within 45 days after receiving a petition, the EGLE Director convenes a Contested Case Review Panel comprised of three members of the Environmental Permit Review Commission. Panel members are based upon relevant experience. The EGLE Director shall not select any commission members who were members of a panel that previously reviewed any dispute regarding the permit.

324.1317(2)

The final decision and order of the Administrative Law Judge is the final agency action for the purposes of any applicable judicial review.

324.1317(7)

The Contested Case Review Panel members submit "Disclosure of Interest" form, and select a chairperson. The Panel review of the final decision is limited to the record (petition & supporting documents) established by the Administrative Law Judge.

324.1317(2)

After the Contested Case Review Panel is convened, no member of the panel shall communicate with any person or party in connection with the issue. The Panel may adopt, remand, modify or reverse, in whole or in part, the final decision made by the Administrative Law Judge.

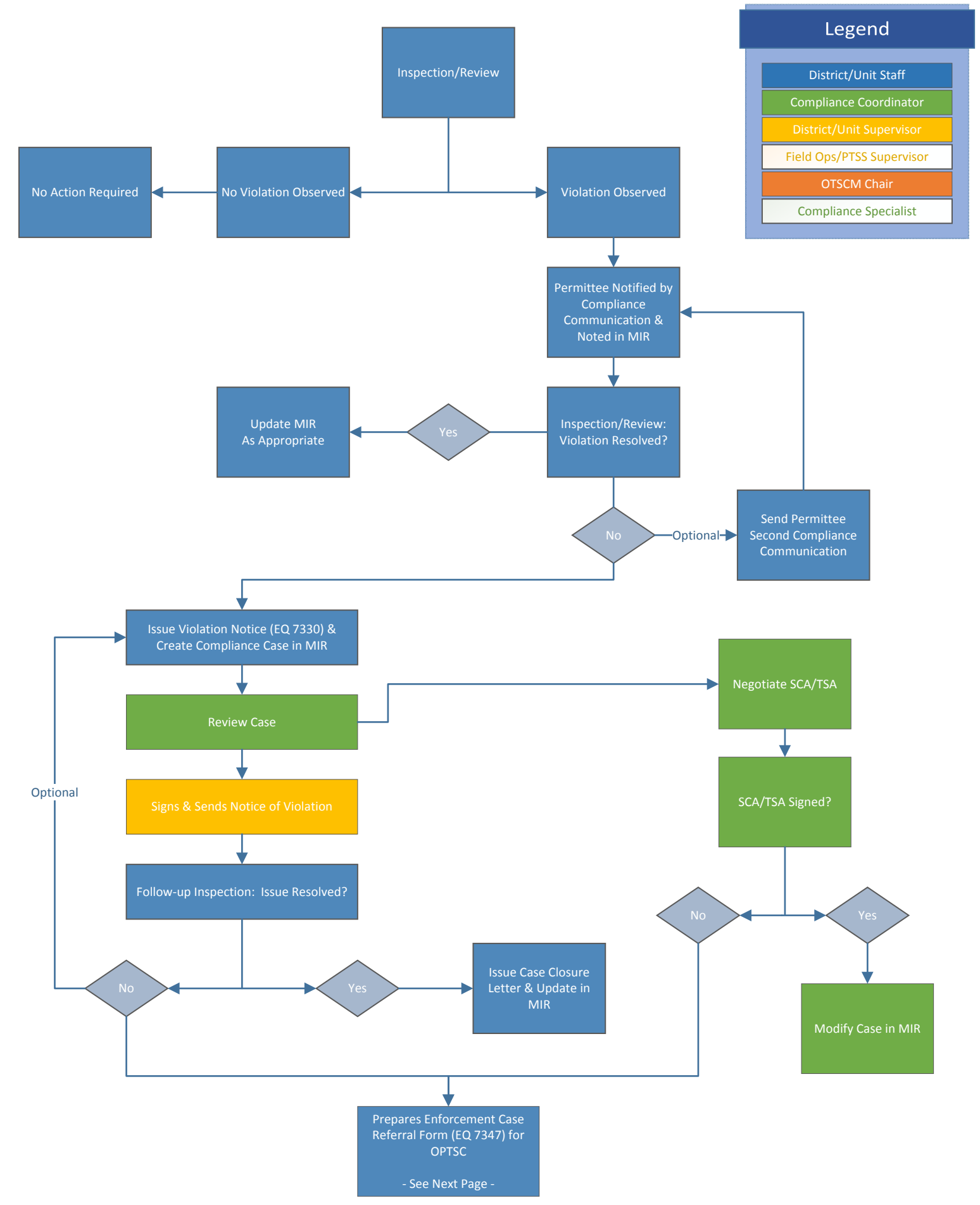
324.1317(3) and (4)

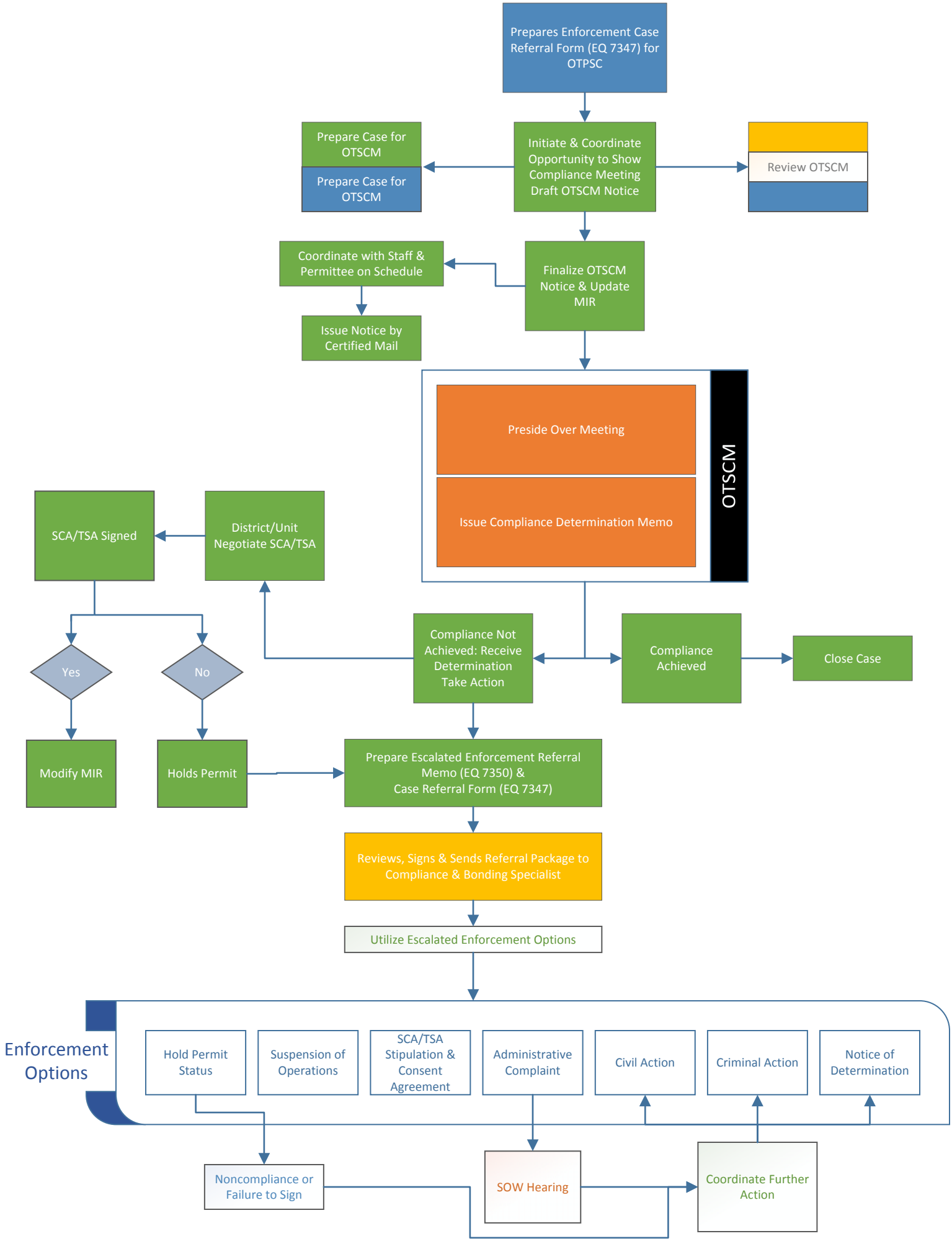
The Contested Case Review Panel shall issue an opinion that becomes the final decision and order of EGLE and is subject to judicial review as provided under the Administrative Procedures Act, 1969 PA 306, as amended. The opinion issued by the Panel must be in writing and clearly define the legal and technical principles being applied.

324.1317(4) and (6)

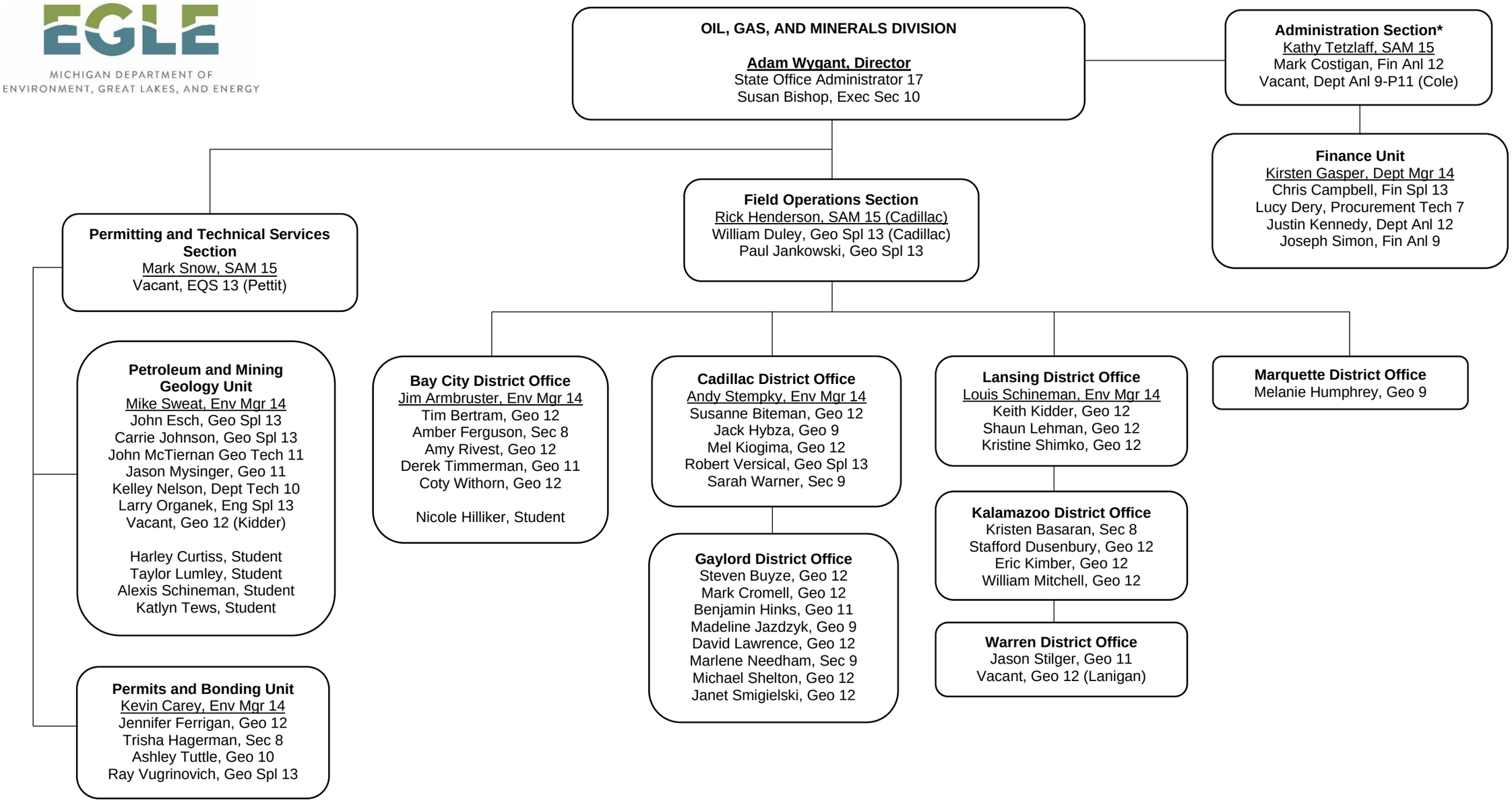
Appendix 2: Generalized Compliance & Enforcement Flowchart

Generalized Compliance & Enforcement Flowchart




Prepares Enforcement Case Referral Form (EQ 7347) for OTPSC
Initiate & Coordinate Opportunity to Show Compliance Meeting Draft OTSCM Notice
Prepare Case for OTSCM
Prepare Case for OTSCM
Review OTSCM
Finalize OTSCM Notice & Update MIR
Coordinate with Staff & Permittee on Schedule
Issue Notice by Certified Mail
OTSCM
Preside Over Meeting
Issue Compliance Determination Memo
SCA/TSA Signed
District/Unit Negotiate SCA/TSA
Compliance Not Achieved: Receive Determination Take Action
Compliance Achieved
Close Case
Yes
No
Modify MIR
Holds Permit
Prepare Escalated Enforcement Referral Memo (EQ 7350) & Case Referral Form (EQ 7347)
Reviews, Signs & Sends Referral Package to Compliance & Bonding Specialist
Utilize Escalated Enforcement Options
Enforcement Options
Hold Permit Status
Suspension of Operations
SCA/TSA Stipulation & Consent Agreement
Administrative Complaint
Civil Action
Criminal Action
Notice of Determination
Noncompliance or Failure to Sign
SOW Hearing
Coordinate Further Action

Appendix 3: EGLE, OGMD Organizational Chart



*Administration Section also supports Materials Management Division

November 3, 2019

Appendix 4: USEPA Memorandum on Transition of Class II CO_2 Wells to Class VI Jurisdiction

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 23 2015

OFFICE OF WATER

MEMORANDUM

FROM: Peter C. Grevatt, Director
Office of Ground Water and Drinking Water

TO: Regional Water Division Directors

SUBJECT: Key Principles in EPA's Underground Injection Control Program Class VI Rule Related to Transition of Class II Enhanced Oil or Gas Recovery Wells to Class VI

Most states have primary enforcement responsibility (i.e., primacy) for the Class II Underground Injection Control program for oil or gas-related injection activities, while EPA Regions currently retain direct implementation authority for the Class VI program in every state. The shared implementation of the UIC program necessitates a clear articulation and common understanding of the potential for transition of enhanced recovery wells from Class II to Class VI, consistent with EPA's Class VI Rule. This memo is intended to emphasize the key principles in EPA's UIC Class VI Rule related to the transition from Class II to Class VI for ER wells that inject carbon dioxide for long-term storage. As Regions work with states on implementation of the Class VI program, I encourage you to assist states in submitting primacy applications for all well classes, including Class VI.

EPA recognizes the importance of geologic sequestration of anthropogenic CO_2 for climate change mitigation. The UIC Class VI Rule was developed to facilitate GS and ensure protection of underground sources of drinking water from the particular risks that large scale CO_2 injection for purposes of long-term storage may pose. The following are key principles related to the transition of ER wells that store CO_2 from Class II operations to the Class VI program:

1. **Geologic storage of CO_2 can continue to be permitted under the UIC Class II program.**

   ER wells across the U.S. are currently permitted as UIC Class II wells. CO_2 storage associated with Class II wells is a common occurrence, and CO_2 can be safely stored where injected through Class II-permitted wells for the purpose of oil or gas-related recovery.

2. **Use of anthropogenic CO_2 in ER operations does not necessitate a Class VI permit.**

   ER operations can continue to be permitted as Class II wells, regardless of the source of CO_2. An owner or operator of an ER operation can switch from using a natural source to an anthropogenic source of CO_2 without triggering the need for a Class VI permit.

3. **Class VI site closure requirements are not required for Class II CO_2 injection operations.**

   A Class II well that has been used for injection of anthropogenic or non-anthropogenic CO_2 and has been operated within its permit conditions can be closed as a Class II well.

4. **ER operations that are focused on oil or gas production will be managed under the Class II program. If oil or gas recovery is no longer a significant aspect of a Class II permitted ER operation, the key factor in determining the potential need to transition a CO_2 ER operation from Class II to Class VI is the increased risk to USDWs related to significant storage of CO_2 in the reservoir, where the regulatory tools of the Class II program cannot successfully manage the risk.**

   The most direct indicator of increased risk to USDWs is increased pressure in the injection zone related to the significant storage of CO_2. Increases in pressure with the potential to impact USDWs should first be addressed using tools within the Class II program. Transition to Class VI should only be considered if the Class II tools are insufficient to manage the increased risk.[1]

5. **The Class II and Class VI directors should work together to address the potential need for transition of any individual operation from a Class II to a Class VI permit.**

   The Class II program director (in most cases a state official) will have the relevant data on pressure and volume of CO_2 injected into Class II ER operations, which will influence any transition decision. EPA encourages the Class II director to contact the Class VI director where he/she believes the risk has changed as a result of significant storage of CO_2 in the reservoir.

6. **The best implementation approach is for states to administer both the Class II and the Class VI UIC programs.**

   EPA encourages states to apply for primacy for all well classes, including Class VI. Based on our conversations with states, in most cases, states who are approved for primacy for the Class VI program are expected to administer the program through their oil and gas program.

The Office of Ground Water and Drinking Water is currently working with the U.S. Department of Energy, state associations, EPA Regions and stakeholders to finalize technical guidance focused on risk factors discussed in the Class VI Rule at 40 CFR 144.19. As we complete the final guidance, we will work to ensure that these key principles remain clear.

Please contact me or have your staff contact Ron Bergman at 202-564-3823 if we can be of assistance to you on these or other UIC program issues.

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[1] The key regulation, "Transitioning from Class II to Class VI," codified at 40 CFR 144.19, states that owners or operators that are injecting carbon dioxide ***for the primary purpose of long-term storage*** into an oil and gas reservoir must apply for and obtain a Class VI GS permit ***when there is an increased risk to USDWs compared to Class II operations***.

SECTION D

Applicable Statutes and Rules

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 615
SUPERVISOR OF WELLS

324.61501 Definitions.

Sec. 61501. Unless the context requires a different meaning, the words defined in this section have the following meanings when used in this part:

(a) "Department" means the department of environmental quality.

(b) "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(c) "Fund" means the oil and gas regulatory fund created in section 61525b.

(d) "Gas" means a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, and includes those liquids resulting from condensation.

(e) "Illegal container" means a receptacle that contains illegal oil or gas or illegal products.

(f) "Illegal conveyance" means a conveyance by or through which illegal oil or gas or illegal products are being transported.

(g) "Illegal oil or gas" means oil or gas that has been produced by an owner or producer in violation of this part, a rule promulgated under this part, or an order of the supervisor issued under this part.

(h) "Illegal product" means a product of oil or gas or any part of a product of oil or gas that was knowingly processed or derived in whole or in part from illegal oil or gas.

(i) "Market demand" means the actual demand for oil or gas from any particular pool or field for current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of oil or gas or the products of oil or gas.

(j) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and that are not the result of condensation of gas after it leaves the underground reservoir.

(k) "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(*l*) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Pool includes a productive zone of a general structure that is completely separated from any other zone in the structure, or is declared to be a pool by the supervisor of wells.

(m) "Producer" means the operator, whether owner or not, of a well or wells capable of producing oil or gas or both in paying quantities.

(n) "Product" means any commodity or thing made or manufactured from oil or gas, and all derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue treated crude oil, residuum, gas oil, naphtha, distillate, gasoline, casing-head gasoline, natural gas gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, and blends or mixtures of oil or gas or any derivatives of oil or gas whether enumerated or not.

(o) "Supervisor" or "supervisor of wells" means the department.

(p) "Tender" means a permit or certificate of clearance, approved and issued or registered under the authority of the supervisor, for the transportation of oil or gas or products.

(q) "Waste" in addition to its ordinary meaning includes all of the following:

(*i*) "Underground waste", as those words are generally understood in the oil business, and including all of the following:

(A) The inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool.

(B) Unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(*ii*) "Surface waste", as those words are generally understood in the oil business, and including all of the following:

(A) The unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially a loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells, or incident to or resulting from inefficient storage or handling of oil.

(B) The unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

(C) The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations.

(D) The drilling of unnecessary wells.

(*iii*) "Market waste", which includes the production of oil or gas in any field or pool in excess of the market demand as defined in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61502 Construction of part.

Sec. 61502. It has long been the declared policy of this state to foster conservation of natural resources so that our citizens may continue to enjoy the fruits and profits of those resources. Failure to adopt such a policy in the pioneer days of the state permitted the unwarranted slaughter and removal of magnificent timber abounding in the state, which resulted in an immeasurable loss and waste. In an effort to replace some of this loss, millions of dollars have been spent in reforestation, which could have been saved had the original timber been removed under proper conditions. In past years extensive deposits of oil and gas have been discovered that have added greatly to the natural wealth of the state and if properly conserved can bring added prosperity for many years in the future to our farmers and landowners, as well as to those engaged in the exploration and development of this great natural resource. The interests of the people demand that exploitation and waste of oil and gas be prevented so that the history of the loss of timber may not be repeated. It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503 Supervisor of wells; assistants; commission as appeal board; hearing; compensation and expenses; office.

Sec. 61503. (1) The supervisor of wells shall designate suitable assistants as are required to implement this part.

(2) The commission shall act as an appeal board regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit under this part. When a producer or owner considers an order, action, inaction, or procedure as proposed, initiated, or made by the supervisor to be burdensome, inequitable, unreasonable, or unwarranted, the producer or owner may appeal to the commission or the court for relief from the order, action, inaction, or procedure as provided in this act. The chairperson of the commission shall set a date and place to hear the appeal, which may be at a regular meeting of the commission or a special meeting of the commission called for that purpose.

(3) The supervisor and employees, in addition to their salaries, shall receive their reasonable expenses while away from their homes traveling on business connected with their duties. A member of the commission shall not receive compensation for discharging duties under this part; however, a member is entitled to reasonable expenses while traveling in the performance of a duty imposed by this part. Salaries and expenses authorized in this part shall be paid out of the state treasury in the same manner as the salaries and expenses of other officers and employees of the department are paid.

(4) The department of management and budget shall furnish suitable offices for the use of the supervisor and his or her employees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503a Gas lease; duties of lessee; monthly revenue statements and payments; initiation; deferment.

Sec. 61503a. (1) Beginning 12 months after the effective date of this section, a person who has entered into a gas lease as a lessee prior to or after the effective date of this section shall do all of the following:

(a) Starting after production begins, for a well that begins continuous gas production after the effective date of this section, or starting on the effective date of this section for a well that began continuous gas production on or before the effective date of this section, provide the lessor who has an interest in the leased property with monthly revenue statements written in plain English that provide all of the following:

(*i*) Under the heading "unit price", the price received by the lessee per 1,000 cubic feet or 1,000,000 BTUs of gas sold. The lessee shall pay to the lessor his or her proper share of the gross proceeds or value, as provided in the lease.

(*ii*) A statement of the deductions taken from the lessor's royalty, and the purpose of those deductions. The statement of the deductions shall be itemized, except that a lessee may group deductions under general categories if the lessee states that a separate itemized statement of the deductions will be furnished upon written request and states the address to which a written request for an itemized statement should be directed. This section does not prohibit a lessee from making deductions on an estimated basis for a calendar year or other 12-month accounting period if this is disclosed in the monthly revenue statement or the separate itemized statement. If an estimate is used, the lessee shall determine the actual amount and make any necessary adjustments within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may reserve an amount which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined and shall make any necessary adjustments when the actual costs have been finally determined.

(b) Starting at the end of the calendar year or other 12-month accounting period after production begins for a well that begins continuous production after the effective date of this section, or starting at the end of the calendar year or other 12-month accounting period when this section becomes effective for a well that began continuous production on or before the effective date of this section, prepare an annual accounting of gas sales from the leased property and any deductions taken from the lessor's royalty during the calendar year or other 12-month accounting period. The lessee shall complete the accounting within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may account for these on the basis of a reserve which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined, and shall prepare a supplemental accounting when the actual costs have been finally determined. The lessee shall notify the lessor of the availability of the accounting within 180 days after the end of the calendar year or other 12-month accounting period, and shall furnish a copy of the accounting upon request of the lessor within 30 days of receipt of the request. The notification as to the availability of the accounting may be made on a monthly revenue statement and need not be a separate document.

(2) Subject to section 61503b(4), the monthly revenue statements and payments under subsection (1)(a) shall be initiated promptly after the determination of the divisions of interest of the parties entitled to share in the production, unless a valid agreement between the lessee and the lessor provides otherwise. However, if the entitlement of the lessor to receive payment is in question because of lack of good and marketable record title or because of any circumstance that may expose the lessee to the risk of multiple liability or liability to a third party if the payment is made, the lessee may defer payment to that lessor until the title or other circumstance has been resolved, unless a valid agreement between the lessee and the lessor provides otherwise. If the mailing address of the lessor, or place where payment should be made, is unknown, payment may be deferred until the lessee receives that information. If the total amount of the royalties is less than $50.00 at the end of any month, payment may be deferred until the total amount reaches at least $50.00, unless a valid agreement between the lessor and the lessee provides otherwise.

History: Add. 1998, Act 127, Eff. Mar. 28, 2000.

Compiler's note: Enacting section 2 of 1998 PA 127, which provided that 1998 PA 127 would not take effect unless House Bill No. 4259 of the 89th Legislature was enacted into law, was repealed by Enacting section 1 of 1999 PA 246.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503b Postproduction costs.

Sec. 61503b. (1) A person who enters into a gas lease as a lessee after March 28, 2000 shall not deduct from the lessor's royalty any portion of postproduction costs unless the lease explicitly allows for the deduction of postproduction costs. If a lease explicitly provides for the deduction of postproduction costs, the lessee may only deduct postproduction costs for the following items, unless the lease explicitly and specifically provides for the deduction of other items:

(a) The reasonable costs of removal of carbon dioxide (CO_2), hydrogen sulfide (H_2S), molecular nitrogen (N_2), or other constituents, except water, the removal of which will enhance the value of the gas for the benefit of the lessor and lessee.

(b) Transportation costs after the point of entry into any of the following:

(*i*) An independent, nonaffiliated, third-party-owned pipeline system.

(*ii*) A pipeline system owned by a gas distribution company or any subsidiary of the gas distribution company, which is regulated by the Michigan public service commission.

(*iii*) An affiliated pipeline system, if the rates charged by the pipeline system have been approved by the Michigan public service commission, or if the rates charged are reasonable, as compared to independent pipeline systems, based on the pipeline system's location, distance, cost of service, and other pertinent factors.

(2) A lessee shall not charge postproduction costs incurred on gas produced from 1 drilling unit, pooled or communitized area, or unit area against a lessor's royalty for gas produced from another drilling unit, pooled or communitized area, or unit area. As used in this subsection, “unit area” means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in either of the following:

(a) The plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(b) An applicable agreement providing for unit operations.

(3) If a person who has entered into a gas lease as a lessee prior to or after March 28, 2000 charges the lessor for any portion of postproduction costs, the lessee shall notify the lessor in writing of the availability of the following information and if the lessor requests in writing to receive this information, the lessee shall provide the lessor, in writing, a specific itemized explanation of all postproduction costs to be assessed.

(4) A division order or other document that includes provisions that stipulate how production proceeds are distributed, received by the lessor from the lessee, shall not alter or define the terms of a lease unless voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to amend the lease. A lessee shall not precondition the payment of royalties upon the lessor signing a division order or other document that stipulates how production proceeds are distributed, except as provided in this subsection. As a condition for the payment of royalties under a lease other than a lease granted by the state of Michigan, a lessee or other payor shall be entitled to receive a signed division order from the payee containing only the following provisions, unless other provisions have been voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to waive the provisions of this subsection:

(a) The effective date of the division order.

(b) A description of the property from which the oil or gas is being produced and the type of production.

(c) The fractional or decimal interest in production, or both, claimed by the payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify the payor at least 1 month in advance of the effective date of any change in the interest in production owned by the payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold.

(d) The authorization to suspend payment to the payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by the payee.

(e) The name, address, and taxpayer identification number of the payee.

(f) A statement that the division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

History: Add. 1999, Act 246, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503c Violation of MCL 324.61503a or MCL 324.61503b; penalty; injunction or damages; separate offenses; recovery of postproduction costs and attorney fees; notice.

Sec. 61503c. (1) Notwithstanding section 61522, a person who knowingly violates section 61503a or

61503b is responsible for the payment of a civil fine of not more than $1,000.00. A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(2) The attorney general or the lessor of a gas lease with respect to his or her lease may bring an action in circuit court for injunctive relief or damages, or both, against a person who violates section 61503a or 61503b.

(3) If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b, each day the violation continues constitutes a separate offense only for 5 days; thereafter, each day the violation continues does not constitute a separate offense. If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b and such a violation affects more than 1 lessor having an interest in the same well, pooled unit, or unitized area, the violation as to all lessors constitutes only 1 offense.

(4) If a court finds that a lessee deducted postproduction costs from a lessor's royalty contrary to section 61503b(1), the lessor may recover as damages the amount of postproduction costs deducted contrary to section 61503b(1) and may also recover reasonable attorney fees incurred in bringing the action unless the lessee endeavored to cure the alleged violation pursuant to subsection (5) prior to the bringing of the action. In addition, a lessee who prevails in litigation under this subsection may recover reasonable attorney fees incurred in defending an action under this subsection, if the court finds that the position taken by the lessor in the litigation was frivolous.

(5) A person shall not bring an action under this section unless the person has first given the lessee written notice of the alleged violation of section 61503a or 61503b, with reasonably comprehensive details, and allowed a period of at least 30 days for the lessee to cure the alleged violation.

History: Add. 1999, Act 247, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61504 Waste prohibited.

Sec. 61504. A person shall not commit waste in the exploration for or in the development, production, handling, or use of oil or gas, or in the handling of any product of oil or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505 Supervisor of wells; jurisdiction; authority; enforcement of part.

Sec. 61505. The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505a Drilling permit for well beneath lake bottomlands for exploration or production of oil or gas; condition.

Sec. 61505a. Notwithstanding any other provision of this part or the rules promulgated under this part, beginning on the effective date of this section, the supervisor shall not issue a permit for drilling, or authorize the drilling of, a well beneath the lake bottomlands of the Great Lakes, the connected bays or harbors of the Great Lakes, or the connecting waterways as defined in section 32301, for the exploration or production of oil or gas unless the applicant holds a lease that was in effect prior to the effective date of the amendatory act that added this section that allows the well to be drilled.

History: Add. 2002, Act 148, Imd. Eff. Apr. 5, 2002.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506 Supervisor of wells; powers and duties generally.

Sec. 61506. The supervisor shall prevent the waste prohibited by this part. To that end, acting directly or through his or her authorized representatives, the supervisor is specifically empowered to do all of the following:

(a) To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.

(b) To collect data to make inspections, studies, and investigations; to examine properties, leases, papers, books, and records as necessary to the purposes of this part; to examine, check, and test and gauge oil and gas wells and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; and to provide for the keeping of records and making of reports, and for the checking of the accuracy of the records and reports.

(c) To require the locating, drilling, deepening, redrilling or reopening, casing, sealing, operating, and plugging of wells drilled for oil and gas or for secondary recovery projects, or wells for the disposal of salt water, brine, or other oil field wastes, to be done in such manner and by such means as to prevent the escape of oil or gas out of 1 stratum into another, or of water or brines into oil or gas strata; to prevent pollution of, damage to, or destruction of fresh water supplies, including inland lakes and streams and the Great Lakes and connecting waters, and valuable brines by oil, gas, or other waters, to prevent the escape of oil, gas, or water into workable coal or other mineral deposits; to require the disposal of salt water and brines and oily wastes produced incidental to oil and gas operations in a manner and by methods and means so that unnecessary damage or danger to or destruction of surface or underground resources, to neighboring properties or rights, or to life does not result.

(d) To require reports and maps showing locations of all wells subject to this part, and the keeping and filing of logs, well samples, and drilling, testing, and operating records or reports. All well data and samples furnished to the supervisor as required in this part, upon written request of the owner of the well, shall be held confidential for 90 days after the completion of drilling and shall not be open to public inspection except by written consent of the owner.

(e) To prevent the drowning by water of any stratum or part of the stratum capable of producing oil or gas, or both oil and gas, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, that reduces or tends to reduce the total ultimate recovery of oil or gas, or both oil or gas, from any pool.

(f) To prevent fires or explosions.

(g) To prevent blow-outs, seepage, and caving in the sense that the conditions indicated by such terms are generally understood in the oil business.

(h) To regulate the mechanical, physical, and chemical treatment of wells.

(i) To regulate the secondary recovery methods of oil and gas, including pulling or creating a vacuum and the introduction of gas, air, water, and other substances into the producing formations.

(j) To fix the spacing of wells and to regulate the production from the wells.

(k) To require the operation of wells with efficient gas-oil ratios and to establish the ratios.

(*l*) To require by written notice or citation immediate suspension of any operation or practice and the prompt correction of any condition found to exist that causes or results or threatens to cause or result in waste.

(m) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil, gas, or any product of oil or gas.

(n) To require identification of the ownership of oil and gas producing leases, properties, and wells.

(o) To promulgate rules or issue orders for the classifications of wells as oil wells or gas wells; or wells drilled, or to be drilled, for secondary recovery projects, or for the disposal of salt water, brine, or other oil or gas field wastes; or for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, or for other means of development, extraction, or production of hydrocarbons.

(p) To require the filing of an adequate surety, security, or cash bonds of owners, producers, operators, or their authorized representatives in such reasonable form, condition, term, and amount as will ensure compliance with this part and with the rules promulgated or orders issued under this part and to provide for the release of the surety, security, or cash bonds.

(q) To require the immediate suspension of drilling or other well operations if there exists a threat to public health or safety.

(r) To require a person applying for a permit to drill and operate any well regulated by this part to file a

complete and accurate written application on a form prescribed by the supervisor.

(s) To require the posting of safety signs and the installation of fences, gates, or other safety measures if there exists a threat to public health, safety, or property.

(t) To prevent regular or recurring nuisance noise or regular or recurring nuisance odor in the exploration for or development, production or handling of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

Administrative rules: R 324.101 et seq. of the Michigan Administrative Code.

324.61506a Notice of violation.

Sec. 61506a. Upon completion of an inspection under this part, the supervisor shall notify the owner or operator of the well of any violation of this or any other part of this act that is identified during the inspection.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506b Conditions prohibiting issuance of permit or authorization to drill oil or gas well; waiver; exception.

Sec. 61506b. (1) Except as provided in subsections (2) and (3), beginning on the effective date of this section, the supervisor shall not issue a permit for or authorize the drilling of an oil or gas well if both of the following apply:

(a) The well is located within 450 feet of a residential building.

(b) The residential building is located in a city or township with a population of 70,000 or more.

(2) The supervisor may grant a waiver from the requirement of subsection (1)(a) if the clerk of the city, village, or township in which the proposed well is located has been notified of the application for a permit for the proposed well and if either of the following conditions is met:

(a) The owner or owners of all residential buildings located within 450 feet of the proposed well give written consent.

(b) The supervisor determines, pursuant to a public hearing held before the waiver is granted, that the proposed well location will not cause waste and there is no reasonable alternative for the location of the well that will allow the oil and gas rights holder to develop the oil and gas.

(3) Subsection (1) does not apply to a well utilized for the injection, withdrawal, and observation of the storage of natural gas pursuant to this part.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506c Toll-free telephone number; maintenance; use.

Sec. 61506c. The department shall maintain a toll-free telephone number that a person or a representative of a local unit of government may call in order to receive information on department standards, safety requirements and educational information related to oil and gas exploration, drilling, permitting, hydrogen sulfide management, pooling, and other topics related to the extraction of oil and gas.

History: Add. 1998, Act 392, Imd. Eff. Dec. 17, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61507 Prevention of waste; procedure; hearing; rules; orders.

Sec. 61507. Upon the initiative of the supervisor or upon verified complaint of any person interested in the subject matter alleging that waste is taking place or is reasonably imminent, the supervisor shall call a hearing to determine whether or not waste is taking place or is reasonably imminent, and what action should be taken to prevent that waste. If the supervisor determines it appropriate, the supervisor shall hold a hearing and shall promptly make findings and recommendations. The supervisor shall consider those findings and

recommendations and shall promulgate rules or issue orders as he or she considers necessary to prevent waste which he or she finds to exist or to be reasonably imminent.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61508 Rules of order or procedure in hearings or other proceedings; entering in book; copy of rule or order as evidence; availability of writings to public.

Sec. 61508. (1) The supervisor shall prescribe rules of order or procedure in hearings or other proceedings before the supervisor under this part. Rules promulgated or orders issued by the supervisor shall be entered in full in a book to be kept for that purpose by the supervisor. A copy of a rule or order, certified by the supervisor, shall be received in evidence in the courts of this state with the same effect as the original.

(2) A writing prepared, owned, used, in the possession of, or retained by the supervisor in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61509 Hearings; subpoena; witnesses and production of books; incriminating testimony.

Sec. 61509. The supervisor may compel by subpoena the attendance of witnesses and the production of books, papers, records, or articles necessary in any proceeding before the supervisor or the commission. A person shall not be excused from obeying a subpoena issued in a hearing or proceeding brought under this part on the ground or for the reason that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject that person to a penalty or forfeiture. However, this section does not require a person to produce books, papers, or records or to testify in response to any inquiry that is not pertinent to a question lawfully before the supervisor, commission, or court for determination under this part. Incriminating evidence, documentary or otherwise, shall not be used against a witness who testifies as required in this section in a prosecution or action for forfeiture. A person who testifies as required in this section is not exempt from prosecution and punishment for perjury in so testifying.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61510 Failure to comply with subpoena; refusal to testify; attachment; contempt; fees and mileage of witnesses.

Sec. 61510. (1) If a person fails or refuses to comply with a subpoena issued by the supervisor, or if a witness refuses to testify as to any matters regarding which he or she may be lawfully interrogated, any circuit court in this state, or any circuit court judge, on application of the supervisor, may issue an attachment for the person and compel that person to comply with the subpoena and to attend a hearing before the supervisor and produce documents, and testify upon matters, as may be lawfully required, and the court or judge has the power to punish that person for contempt in the same manner as if the person had disobeyed the subpoena of the court or refused to testify in that court.

(2) A witness summoned by subpoena or by written request of the supervisor and attending a hearing called by the supervisor is entitled to the same fees and mileage as are or may be provided by law for attending the circuit court in a civil matter or proceeding. The fees and mileage of witnesses subpoenaed at the instance of the supervisor shall be paid out of the general funds of the state treasury upon proper voucher approved by the supervisor. The fees and mileage of witnesses subpoenaed at the instance of any other interested party shall be paid by that party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61511 False swearing as perjury; penalty.

Sec. 61511. If a person who is required to give an oath under this part, or by any rule promulgated or order issued by the supervisor, willfully swears falsely in regard to any matter or thing respecting which the oath is required, or willfully makes any false affidavit required or authorized by this part, or by any rule promulgated or order issued by the supervisor, that person is guilty of perjury, punishable by imprisonment for not more than 5 years or less than 6 months.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61512 Allocation or distribution of allowable production in well, field, or pool; basis.

Sec. 61512. If, to prevent waste, the supervisor limits the amount of oil or gas to be produced from any well, pool, or field in this state, the supervisor shall allocate or distribute the allowable production in the field or pool. The supervisor shall make such a determination or distribution in the field or pool on a reasonable basis, giving, if reasonable, under all circumstances, to each small well of settled production in the pool or field an allowable production that will prevent a general or premature abandonment of the wells in the pool or field.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513 Proration or distribution of allowable production among wells; basis; drilling unit; unnecessary wells; pooling of properties; location of well; exceptions; minimum allowable production; allowable production pursuant to rules or orders.

Sec. 61513. (1) When, to prevent waste, the total allowable production for any oil or gas field or pool in the state is fixed in an amount less than that which the field or pool could produce if no restriction were imposed, the supervisor shall prorate or distribute on a reasonable basis the allowable production among the producing wells in the field or pool, to prevent or minimize reasonably avoidable drainage from each developed area which is not equalized by counter drainage. The rules or orders of the supervisor, so far as it is practicable to do so, shall afford the owner of each property in a pool the opportunity to produce his or her just and equitable share of the oil or gas in the pool, being an amount, so far as can be practicably determined and obtained without waste, and without reducing the bottom hole pressure materially below the average for the pool, substantially in the proportion that the quantity of the recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for this purpose to use his or her just and equitable share of the reservoir energy. A well in a pool producing from an average depth of 1,000 feet or less, on the basis of a full drilling unit as may be established under this section, shall be given a base allowable production of at least 100 barrels of oil per well per week; for a well in a pool producing from an average depth greater than 1,000 feet, the base allowable production shall be increased 10 barrels per well per week for each addition 100 feet of depth greater than 1,000 feet, if the allowable production is or can be made without surface or underground waste.

(2) To prevent the drilling of unnecessary wells, the supervisor may establish a drilling unit for each pool. A drilling unit, as described in this subsection, is the maximum area that may be efficiently and economically drained by 1 well. A drilling unit constitutes a developed area if a well is located on the drilling unit that is capable of producing the economically recoverable oil or gas under the unit. Each well permitted to be drilled upon any drilling unit shall be located in the approximate center of the drilling unit, or at such other location on the drilling unit as may be necessary to conform to a uniform well spacing pattern as adopted and promulgated by the supervisor after due notice and public hearing, as provided in this part.

(3) The drilling of unnecessary wells is hereby declared waste because unnecessary wells create fire and other hazards conducive to waste, and unnecessarily increase the production cost of oil and gas to the operator, and therefore also unnecessarily increase the cost of the products to the ultimate consumer.

(4) The pooling of properties or parts of properties is permitted, and, if not agreed upon, the supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool. The owner of

any tract that is smaller than the drilling unit established for the field shall not be deprived of the right to drill on and produce from that tract, if the drilling and production can be done without waste. In this case, the allowable production from that tract, as compared with the allowable production if that tract were a full unit, shall be in the ratio of the area of the tract to the area of a full unit, except as a smaller ratio may be required to maintain average bottom hole pressures in the pool, to reduce the production of salt water, or to reduce an excessive gas-oil ratio. All orders requiring pooling described in this subsection shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pooling plan the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool as provided in this subsection, and without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed tract that is not equalized by counter drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by voluntary agreement or by a pooling order shall be considered as if it had been produced from the tract by a well drilled on the tract.

(5) Each well permitted to be drilled upon a drilling unit or tract shall be drilled at a location that conforms to the uniform well spacing pattern, except as may be reasonably necessary where after notice and hearing the supervisor finds any of the following:

(a) That the unit is partly outside the pool or that, for some other reason, a well at the location would be unproductive.

(b) That the owner or owners of a tract or tracts covering that part of the drilling unit or tract on which the well would be located if it conformed to the uniform well spacing pattern refuses to permit drilling at the regular location.

(c) That topographical or other conditions are such as to make drilling at the regular location unduly burdensome or imminently threatening to water or other natural resources, to property, or to life.

(6) If an exception under subsection (5) is granted, the supervisor shall take such action as will offset any advantage that the person securing the exception may have over other producers in the pool by reason of the drilling of the well as an exception, and so that drainage from the developed areas to the tract with respect to the exception granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil or gas in the pool as the share is set forth in this part, and to that end the rules and orders of the supervisor shall be such as will prevent or minimize reasonably avoidable drainage from each developed area that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(7) Minimum allowable production for some wells and pools may be advisable from time to time, especially with respect to wells and pools already drilled on May 3, 1939, when former Act No. 61 of the Public Acts of 1939 took effect, so that the production will repay reasonable lifting costs and thus prevent premature abandonment of wells and resulting wastes.

(8) After the effective date of any rule promulgated or order issued by the supervisor as provided in this part establishing the allowable production, a person shall not produce more than the allowable production applicable to that person, his or her wells, leases, or properties, and the allowable production shall be produced pursuant to the applicable rules or orders.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513a Pooling of properties not required.

Sec. 61513a. The supervisor shall not require the pooling of state owned properties or parts of properties under section 61513 if the state provides for the orderly development of state owned hydrocarbon resources through an oil and gas leasing program and the supervisor determines the owner of each tract is afforded the opportunity to recover and receive his or her just and equitable share of the hydrocarbon resources in the pool.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61514 Certificates of clearance or tenders; issuance.

Sec. 61514. The supervisor may issue certificates of clearance or tenders if required to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61515 Handling or disposition of illegal oil or gas; penalty.

Sec. 61515. A person shall not sell, purchase, acquire, transport, refine, process, or otherwise handle or dispose of any illegal oil or gas or any illegal product of oil or gas. A penalty or forfeiture shall not be imposed as a result of an act described in this section until certificates of clearance or tenders are required by the supervisor as provided in section 61514.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61516 Rule or order; public hearings required; emergency rules or orders without public hearing; requirements for public hearings held pertaining to pooling of properties.

Sec. 61516. (1) A rule or order shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, except emergency orders, unless public hearings are held. Except as provided in subsection (2), public hearings shall be held at such time, place, and manner and upon such notice, not less than 10 days, as shall be prescribed by general order and rules adopted in conformity with this part. The supervisor may promulgate emergency rules or issue orders without a public hearing as may be necessary to implement this part. The emergency rules and orders shall remain in force and effect for no longer than 21 days, except as otherwise provided for rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) A public hearing held pursuant to this section pertaining to the pooling of properties or parts of properties under section 61513(4) shall be held at a place as determined by this subsection. At the time that the supervisor provides for notice of the public hearing, the supervisor shall provide notice of the right to request a change in location of the public hearing. A public hearing shall be held in the county in which the oil and gas rights are located if the majority of the owners of oil or gas rights that are subject to being pooled file with the supervisor a written request to hold the hearing in that county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61517 Actions against department or commission; jurisdiction of Ingham county circuit court; injunction or restraining order; actions pertaining to pooling of properties.

Sec. 61517. (1) Except as provided in subsection (2), the circuit court of Ingham county has exclusive jurisdiction over all suits brought against the department, the supervisor, or any agent or employee of the department or supervisor, by or on account of any matter or thing arising under this part. A temporary restraining order or injunction shall not be granted in any suit described in this section except after due notice and for good cause shown.

(2) A suit brought against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be brought in the circuit court for the county in which the oil or gas rights are located or in the circuit court of Ingham county. A suit brought in the circuit court of Ingham county against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be removed to the circuit court for the county in which the oil or gas rights are located upon petition by a majority of the owners of the oil and gas rights who are subject to the order. Additionally, if all of the owners of the oil and gas interests being pooled reside in a county in Michigan other than the county in which the oil and gas rights are located, the suit may be brought in, or removed to, the circuit court for the county in which the owners reside. A petition for removal under this subsection shall be filed within 28 days after filing and service of the complaint in circuit court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61518 Enforcement of part and rules; representation by attorney general; complaint; proceedings; powers of supervisor; exception.

Sec. 61518. (1) The supervisor may proceed at law or for the enforcement of this part and a rule promulgated under this part or for the prevention of the violation of this part or a rule promulgated under this part, and the attorney general shall represent the supervisor in an action brought under this part. The supervisor or an assistant appointed by the supervisor may file a complaint and cause proceedings to be commenced against a person for a violation of this part without the sanction of the prosecuting attorney of the county in which the proceeding is commenced. The supervisor or an assistant of the supervisor may appear for the people in a court of competent jurisdiction in a case for a violation of this part or a rule promulgated under this part, and prosecute the violation in the same manner and with the same authority as the prosecuting attorney of a county in which the proceeding is commenced, and may sign vouchers for the payment of fees and do all other things required in the same manner and with the same authority as the prosecuting attorney.

(2) Subsection (1) does not apply to a violation of this part that is subject to the penalty prescribed pursuant to section 61522(3) or (4).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61519 Failure of owner or operator to obtain permit or to construct, operate, maintain, case, plug, or repair well; notice of determination; liability; claims.

Sec. 61519. If the supervisor determines that the owner or operator of a well subject to this part has failed or neglected to properly obtain a permit, construct, operate, maintain, case, plug, or repair the well in accordance with this part or the rules promulgated under this part, the supervisor shall give notice of this determination, in writing, to the owner and operator and to the surety executing the bond filed with the supervisor by the owner or operator in connection with the issuance of the permit authorizing the drilling of a well. This notice of determination may be served upon the owner or operator and surety in person or by registered mail. If the owner or operator cannot be found in the state, the mailing of the notice of determination to the owner or operator at his or her last known post office address by registered mail constitutes service of the notice of determination. If the owner or operator, or surety, fails or neglects to properly case, plug, or repair the well described in the notice of determination within 30 days of the date of service or mailing of the notice, the supervisor may enter into and upon any private or public property on which the well is located and upon and across any private or public property necessary to reach the well, and case, plug, or repair the well, and the owner or operator and surety are jointly and severally liable for all expenses incurred by the supervisor. The supervisor, acting for and in behalf of the state, shall certify in writing to the owner or operator and surety the claim of the state in the same manner provided in this section for the service of the notice of determination, and shall list thereon the items of expense incurred in casing, plugging, or repairing the well. The claim shall be paid by the owner or operator, or surety, within 30 days, and if not paid within that time the supervisor, acting for and in behalf of the state, may bring suit against the owner or operator, or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in the county of Ingham.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61520 Abandoning well without properly plugging; violation of part or rule; penalty; liability of owner; "owner" and "operator" defined.

Sec. 61520. (1) A person who abandons a well without properly plugging the well as provided in this part or the rules promulgated under this part, or, except as provided in section 61522(3) or (4), who violates this part or a rule promulgated under this part, whether as principal, agent, servant, or employee, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00 and costs of prosecution, or both. This section does not impose liability upon the owner of land upon which a well is located, unless the property owner is the owner or part owner of the well.

(2) The words "owner" and "operator", as used in this section and section 61519 mean a person who, by the terms of this part and the rules promulgated under this part, is responsible for the plugging of a well.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61521 Unlawful acts; penalties.

Sec. 61521. (1) A person who, for the purpose of evading this part or of evading a rule promulgated or an order issued under this part, intentionally makes or causes to be made false entry or statement of fact in a report required by this part or by a rule promulgated or an order issued under this part, or who, for that purpose, makes or causes to be made false entry in an account, record, or memorandum kept by a person in connection with this part, or of a rule promulgated or an order issued under this part; or who, for that purpose, omits to make, or causes to be omitted, full, true, and correct entries in the accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of that person as may be required by the supervisor under authority given in this part or by any rule promulgated or any order issued under this part; is guilty of a felony, punishable by imprisonment for not more than 3 years, or a fine of not more than $3,000.00, or both.

(2) A person who for the purpose of evading this part or a rule promulgated or an order issued under this part removes from the jurisdiction of the state, or mutilates, alters, or by other means falsifies a book, record, or other paper pertaining to transactions regulated by this part is subject to the penalties prescribed in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61522 Violations of part, rule, or order; penalties.

Sec. 61522. (1) Unless a penalty is otherwise provided for in this part, a person who violates this part or a rule or order promulgated or issued under this part is subject to a penalty of not more than $1,000.00. Each day the violation continues constitutes a separate offense. The penalty shall be recovered by an action brought by the supervisor.

(2) A person aiding in the violation of this part or a rule or order promulgated or issued under this part is subject to the same penalties as are prescribed in this section for the person who committed the violation.

(3) If the supervisor arbitrarily and capriciously violates section 61508(2), the supervisor is subject to the penalties prescribed in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61523 Confiscation of illegal oil or gas, oil or gas products, conveyances, and containers; notice; seizure; sale; intervention.

Sec. 61523. All illegal oil or gas, products derived from illegal oil or gas, conveyances used in the transportation of illegal oil or gas or oil or gas products, and containers used in their storage, except railroad tank cars and pipelines, are subject to confiscation, and the supervisor may seize such illegal oil or gas, oil or gas products, conveyances, and containers. The supervisor shall immediately upon such seizure institute a proceeding in rem to confiscate the oil or gas, oil or gas products, conveyances, and containers in the circuit court of the county in which the seizure was made or in the circuit court of Ingham county. Upon commencement of these proceedings, notice shall be given to all known interested persons in the manner as directed by the court. The court, upon finding that the oil or gas, oil or gas products, conveyances, or containers seized are illegal, shall order those items to be sold under the terms and conditions as it directs. Any person claiming an interest in any oil or gas, oil or gas product, conveyance, or container that is seized has the right to intervene in the proceedings, and the rights of that person shall be determined by the court as justice may require.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61524 Fee for monitoring, surveillance, enforcement, and administration of part.

Sec. 61524. (1) For the purposes of monitoring, surveillance, enforcement, and administration of this part, a fee not in excess of 1%, based upon the gross cash market value, is levied upon oil and gas produced in this state. The fee shall be collected by the revenue division of the department of treasury in the same manner, at the same time, and subject to the provisions of the tax levied by 1929 PA 48, MCL 205.301 to 205.317.

(2) The fee shall be computed as follows:

(a) The director of the department of management and budget, on or before November 1, shall certify to the department of treasury the amount appropriated for the fiscal year for the purposes of monitoring, surveillance, enforcement, and administration of this part.

(b) The department shall estimate the total production and gross cash market value of all oil and gas that will be produced in this state during the fiscal year ending September 30, and shall certify its estimate to the department of treasury on or before November 1.

(c) Within 30 days after the effective date of the 1998 amendments to this section and on or before December 1 of each succeeding year, the department of treasury shall determine the fee as follows:

(*i*) If the fund balance is less than $7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be 1% of the gross cash market value of oil and gas produced, or an amount calculated to cause the fund to accumulate to $7,000,000.00 at the end of the current fiscal year, whichever is less.

(*ii*) If the fund balance is equal to or exceeds $7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be the ratio, to the nearest 1/100 of 1%, that the appropriation bears to the total gross cash market value of the oil and gas that will be produced in this state as estimated by the department as provided in subdivision (b).

(*iii*) Any money accumulated in the fund in excess of $7,000,000.00 as of the end of the fiscal year shall be deducted from the following year's appropriation in determining an amount to be certified by the director of the department of management and budget to the department of treasury for computing the annual fee provided for in this section.

(d) The percentage determined pursuant to subdivision (c) shall not exceed 1% and shall be the fee beginning the first of the following month and will continue to be the fee for the next 12 months and until a different fee is determined. However, the fee shall be 1% beginning the first day of the second month after the effective date of the 1998 amendments to this section and will continue to be the fee for the remainder of that calendar year.

(3) The proceeds of the fee provided for in this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525 Permit to drill well; application; bond; posting; fee; issuance; disposition of fees; availability of information pertaining to applications; information provided to city, village, or township.

Sec. 61525. (1) A person shall not drill or begin the drilling of any well for oil or gas, for secondary recovery, or a well for the disposal of salt water, or brine produced in association with oil or gas operations or other oil field wastes, or wells for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, except as authorized by a permit to drill and operate the well issued by the supervisor of wells pursuant to part 13 and unless the person files with the supervisor a bond as provided in section 61506. The permittee shall post the permit in a conspicuous place at the location of the well as provided in the rules and requirements or orders issued or promulgated by the supervisor. An application for a permit shall be accompanied by a fee of $300.00. A permit to drill and operate shall not be issued to an owner or his or her authorized representative who does not comply with the rules and requirements or orders issued or promulgated by the supervisor. A permit shall not be issued to an owner or his or her authorized representative who has not complied with or is in violation of this part or any of the rules, requirements, or orders issued or promulgated by the supervisor or the department.

(2) The supervisor shall forward all fees received under this section to the state treasurer for deposit in the fund.

(3) The supervisor shall make available to any person, upon request, not less often than weekly, the

following information pertaining to applications for permits to drill and operate:

(a) Name and address of the applicant.

(b) Location of proposed well.

(c) Well name and number.

(d) Proposed depth of the well.

(e) Proposed formation.

(f) Surface owner.

(g) Whether hydrogen sulfide gas is expected.

(4) The supervisor shall provide the information under subsection (3) to the county in which an oil or gas well is proposed to be located and to the city, village, or township in which the oil or gas well is proposed to be located if that city, village, or township has a population of 70,000 or more. A city, village, township, or county in which an oil or gas well is proposed to be located may provide written comments and recommendations to the supervisor pertaining to applications for permits to drill and operate. The supervisor shall consider all such comments and recommendations in reviewing the application.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525a Annual well regulatory fee; report.

Sec. 61525a. The owner or operator of a well used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been used for its permitted purpose at any time during the calendar year immediately prior to the time the fee is due is subject to a $20.00 annual well regulatory fee. The owner or operator of a well described in this section shall file an annual report by January 31 of each year stating the number of wells used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been utilized for its permitted purpose during the previous calendar year. The report shall include a list of wells identified by permit number, permit name, and gas storage field name on a form provided by the supervisor, or such other form which may be acceptable to the supervisor. The annual well regulatory fee described in this section is due not more than 30 days after the supervisor sends notice to the owner or operator of the amount due. The supervisor shall forward all fees collected under this section to the state treasurer for deposit into the fund.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525b Oil and gas regulatory fund; creation; disposition of money or other assets; lapse; expenditures; annual report.

Sec. 61525b. (1) The oil and gas regulatory fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for monitoring, surveillance, enforcement, and administration of this part.

(5) The department shall annually submit a report to the legislature that itemizes the expenditure of money in the fund. The report shall include, at a minimum, all of the following:

(a) The amount of money received and the amount of money expended.

(b) The number of full-time equivalent positions funded with money in the fund.

(c) The number of on-site inspections conducted by the department in implementing this part.

(d) The number of violations identified in enforcing this part, their locations, and a description of the nature of the violations.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61526 Part cumulative; conflicting provisions repealed; exception.

Sec. 61526. This part is cumulative of all existing laws on the subject matter, but, in case of conflict, this part shall control and shall repeal the conflicting provisions, except for the authority given the public service commission in sections 7 and 8 of Act No. 9 of the Public Acts of 1929, being sections 483.107 and 483.108 of the Michigan Compiled Laws, as authorized by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61527 Applicability of part.

Sec. 61527. This part does not apply to drill holes for the exploration for and the extraction of iron, copper, or brine; to water wells; to mine and quarry drill and blast holes; to coal test holes; or to seismograph or other geophysical exploration test holes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

DEPARTMENT OF ENVIRONMENTAL QUALITY

OIL, GAS, AND MINERALS DIVISION

OIL AND GAS OPERATIONS

(By authority conferred on the supervisor of wells and the director of the department of environmental quality by section 61506 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.61506, sections 9 and 251 of the executive organization act of 1965, 1965 PA 380, MCL 16.109 and 16.351, and Executive Reorganization Order No. 1991-22, MCL 299.13).

PART 1. GENERAL PROVISIONS

R 324.101 Application of rules.

Rule 101. These rules govern oil and gas operations in the state of Michigan and supersede all rules and regulations issued under the authority of Act No. 61 of the Public Acts of 1939, as amended, being §319.1 et seq. of the Michigan Compiled Laws, except for special well spacing and proration orders and determinations that have application to specifically designated areas throughout Michigan.

History: 1996 AACS.

R 324.102 Definitions; A to M.

Rule 102. As used in these rules:

(a) "Act" means the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(b) "ANSI" means the American National Standards Institute.

(c) "API" means the American Petroleum Institute.

(d) Aquifer means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(e) "Authorized representative of the supervisor" means a department of environmental quality employee who is charged with the responsibility for implementation of the act or these rules.

(f) "Blowout prevention equipment" means a casinghead control device designed to control the flow of fluids from the well bore by closing around the drill pipe or production tubing or completely sealing the hole in the absence of drill pipe or production tubing.

(g) "Bottom hole" means the terminus of a wellbore.

(h) "Brine" means all nonpotable water resulting, obtained, or produced from the exploration, drilling, or production of oil or gas, or both.

(i) "Central production facility" means production equipment that has been consolidated at a central location that provides for the commingling of oil or gas production, or both, from 2 or more wells or production units of diverse ownership or from 2 or more prorated wells or production units.

(j) “Conformance bond” means a surety bond that has been executed by a surety company authorized to do business in this state, cash, certificates of deposit, letters of credit, or other securities that are filed by a person and accepted by the supervisor to ensure compliance with the act, these rules, permit conditions, instructions, orders of the supervisor, or an order of the department of environmental quality.

(k) “Directionally drilled well,” means a well purposely deviated from the vertical using controlled angles to reach an objective location.

(l) “Drilling completion” means the time when a well has reached its permitted depth or the supervisor has determined drilling has ceased.

(m) “Drilling operations” means all of the physical and mechanical aspects of constructing a well for the exploration or production of oil or gas, or both, for injection of fluids associated with the production of oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas derived from oil or gas, and includes all of the following:

(i) Moving drilling equipment onto the drill site.

(ii) Penetration of the ground by the drill bit and drilling of the well bore.

(iii) Casing and sealing of the well bore.

(iv) Construction of well sites and access roads.

(n) “Drilling unit” means the area prescribed by an applicable well spacing rule or order for the granting of a permit for the drilling and operation of an oil or gas well, or both.

(o) “Facility piping” means piping that connects any of the following:

(i) Compressors.

(ii) Flares.

(iii) Loadouts.

(iv) Separators.

(v) Storage tanks.

(vi) Transfer pumps.

(vii) Treatment equipment.

(viii) Vents.

(p) “Fence” means a structure that is designed to deter access and consists of not less than 2 strands of barbed wire, 1 strand being approximately 18 inches above the ground and the other strand being approximately 42 inches above the ground, secured to supporting posts or means an equivalent structure that deters access.

(q) “Final completion” means the time when locating, drilling, deepening, converting, operating, producing, reworking, plugging, and proper site restoration have been performed on a well in a manner approved by the supervisor, including the filing of the mandatory records, and when the conformance bond has been released.

(r) “Flow line” means piping that connects a well or wells to a surface facility.

(s) “Fresh water” means water that contains less than 1000 milligrams per liter of total dissolved solids.

(t) “Gas storage” means the use of a depleted oil or gas pool, salt cavern, or other porous strata utilized for the purpose of injecting and withdrawing gas from the depleted oil or gas pool, salt cavern, or other porous strata.

(u) “Gathering line” means a pipeline that transports natural gas from a surface facility to a transmission pipeline.

(v) “Geologist” means a person who is certified as a geologist by a credible geological professional association or who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of geology acquired by professional education and practical experience, is qualified to engage in the practice of the science of geology.

(w) “Groundwater” means water below the land surface in the zone of saturation.

(x) “Injection well” means a well used to dispose of, into underground strata, waste fluids produced incidental to oil and gas operations or a well used to inject water, gas, air, brine, or other fluids for the purpose of increasing the ultimate recovery of hydrocarbons from a reservoir or for the storage of hydrocarbons.

(y) “Instruction” means a written statement of general applicability, that is issued by the supervisor, conforms with the act and rules promulgated under the act, and clarifies or explains the applicability of the act or rules to commonly recurring facts or circumstances.

(z) **“**Mineral water” means water that contains 1000 milligrams per liter or more of total dissolved solids.

(aa) “Multiple zone completion” means a well constructed and operated to separately produce oil or gas, or both, from more than 1 reservoir through 1 well bore.

History: 1996 AACS; 2001 AACS; 2002 AACS; 2015 AACS; 2019 AACS.

R 324.103 Definitions; N to Z.

Rule 103. As used in these rules:

(a) “Nuisance odor” means an emission of any gas, vapor, fume, or mist, or combination thereof, from a well or its associated surface facilities, in whatever quantities, that causes, either alone or in reaction with other air contaminants, injurious effects to human health or safety; unreasonable injurious effects to animal life, plant life of significant value, or property; or unreasonable interference with the comfortable enjoyment of life or property.

(b) “Oil and gas operations” means permitting activities required under R 324.201, drilling operations, well completion operations, operation of oil and gas wells, plugging operations, and site restoration.

(c) “Operation of oil and gas wells” means the process of producing oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas, including all of the following:

(i) Production, pumping, and flowing.
(ii) Processing.
(iii) Gathering.
(iv) Compressing.
(v) Treating.
(vi) Transporting.
(vii) Conditioning.
(viii) Brine removal and disposal.
(ix) Separating.
(x) Storing.
(xi) Injecting.

(xii) Testing.

(xiii) Reporting.

(xiv) Maintenance and use of surface facilities.

(xv) Secondary recovery.

(d) "Organization report" means a listing of all corporate officers, directors, incorporators, partners, or shareholders who have the authority to make, or are responsible for making, operational decisions, including the siting, drilling, operating, producing, reworking, and plugging of wells.

(e) "Permit" means a permit to drill and operate an oil or gas well, or both, or an injection well, including associated surface facilities and flow lines.

(f) "Plugging operations" means the sealing of the fluids in the strata penetrated by an oil or gas well, or both, upon abandonment of the well or a portion of the well bore, so that the fluid from one stratum will not escape into another or to the surface.

(g) "Ppm" means parts per million by volume.

(h) "Producing interval" means any section of a wellbore that is open to, or intended to be open to, a formation or part of a formation that is intended to produce or is capable of producing oil or gas, or both, after well completion operations. The section of the wellbore may be open to the formation or part of the formation by any means, and may include but is not limited to, a section of a wellbore that is either uncased or has perforated casing.

(i) "Psi" means pounds per square inch.

(j) "Psig" means pounds per square inch gauge.

(k) "Secondary recovery" means the introduction or utilization of fluid or energy into or within a pool for the purpose of increasing the ultimate recovery of hydrocarbons from the pool.

(l) "Shut-in" means an action by a permittee to close down a producing well, a well capable of producing, or an injection well temporarily for any of the following reasons:

(i) Repair.

(ii) Cleaning out.

(iii) Building up reservoir pressure.

(iv) Planning for secondary recovery.

(v) Other injection projects.

(vi) While awaiting connection of a sales line.

(vii) Lack of a market.

(m) "Site restoration" means all of the following:

(i) The filling and leveling of all cellars, pits, and excavations.

(ii) The removal or elimination of all debris.

(iii) The elimination of all conditions that may create a fire or pollution hazard.

(iv) The minimization of erosion.

(v) The restoration of the well site as nearly as practicable to the original land contour or to a condition approved by the supervisor.

(n) "Structure used for public or private occupancy," means a residential dwelling or place of business, place of worship, school, hospital, government building, or other building where people are usually present at least 4 hours per day.

(o) “Supervisor” means the director of the department of environmental quality or his or her assistants as approved by the director of the department of environmental quality.

(p) “Surface casing” means the casing string or strings used primarily for protecting fresh water or mineralized water resources from potential contamination during the drilling and operation of an oil or gas well, or both.

(q) “Surface facility” means a facility used in the injection of fluids or in the production, processing, or treatment of oil or gas, or both, including any of the following:

(i) Pumping equipment.

(ii) Fluid disposal equipment.

(iii) Facility piping.

(iv) Load outs.

(v) Separators.

(vi) Storage tanks.

(vii) Treatment equipment.

(viii) Compressors.

(r) “Surface water” means a body of water, and the associated sediments, which has a top surface that is exposed to the atmosphere and is not solely for wastewater conveyance, treatment, or control. Surface water may be any of the following:

(i) A Great Lake or its connecting waters.

(ii) An inland lake or pond.

(iii) A river or stream, including intermittent streams.

(iv) An impoundment.

(v) An open drain.

(vi) A wetland.

(s) “Underground source of drinking water” means fresh water or mineral water within an aquifer or portion of an aquifer that satisfies either of the following criteria:

(i) The aquifer or portion thereof supplies a public water system.

(ii) The aquifer or portion thereof contains a sufficient quantity of ground water to supply a public water system and meets either of the following criteria:

(A) The aquifer or portion thereof currently supplies drinking water for human consumption.

(B) The aquifer or portion thereof contains ground water that has fewer than 10,000 milligrams per liter total dissolved solids.

(t) “Well completion” means the time when a well has been tested and found to be incapable of producing hydrocarbons in commercial quantities and has been plugged or has been found capable of producing commercial quantities of hydrocarbons or when the well has been equipped to perform the service for which it was intended.

(u) “Well completion operations” means work performed in an oil or gas well, or both, after the well has been drilled to its permitted depth and the production string of casing has been set, including perforating, artificial stimulation, and production testing.

(v) “Well location” means the surface location of a well.

(w) "Zoned residential” means a geographic area that was zoned by a local unit of government before January 8, 1993, as an area designated principally for permanent or recreational residences.

History: 1996 AACS; 2002 AACS; 2015 AACS; 2018 AACS.

R 324.104 Terms defined in act.

Rule 104. Unless the context requires a different meaning, the trade words and other words defined in the act have the same meanings when used in these rules.

History: 1996 AACS.

R 324.199 Rescission.

Rule 199. (1) R 299.251 to R 299.258 of the Michigan Administrative Code, appearing on pages 1415 to 1417 of the 1979 Michigan Administrative Code, are rescinded.

(2) R 299.1101 to R 299.1807, R 299.1809, R 299.1810, and R 299.1901 to R 299.2101 of the Michigan Administrative Code, appearing on pages 1466 to 1495 of the 1979 Michigan Administrative Code, and pages 206 to 217 of the 1987 Annual Supplement to the Code, are rescinded.

History: 1996 AACS.

PART 2. PERMITS TO DRILL AND OPERATE

R 324.201 Application for permit to drill and operate requirements; issuance of permit.

Rule 201. (1) Until a person has complied with the requirements of subrule (2) of this rule, a person shall not begin the drilling or operation of a well for any of the following:

(a) Oil or gas, or both.

(b) Injection for secondary recovery.

(c) Injection for the disposal of brine, oil or gas field waste, or other fluids incidental to the drilling, producing, or treating of wells for oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas derived from oil or gas.

(d) Injection or withdrawal for the storage of natural dry gas or oil well gas.

(e) Injection or withdrawal for the storage of liquid hydrocarbons or liquefied petroleum gas.

(2) A permit applicant shall comply with all of the following permit application requirements:

(a) The exact well location shall be surveyed by a surveyor licensed in this state, a readily visible stake or marker shall be set at the well location, and a flagged route shall be established to the well location.

(b) The survey required by subdivision (a) of this subrule shall include a plat that shows all of the following:

(i) The correct well location and bottom hole location description.

(ii) A flagged route or explanation of how the well location may be reached.

(iii) Footages from the nearest section, quarter section, and drilling unit lines.

(iv) Information relative to the approximate distances and directions from the stake or marker to special hazards or conditions, including all of the following:

(A) Surface waters and other environmentally sensitive areas within 1,320 feet of the proposed well. Environmentally sensitive areas are identified by the department pursuant to applicable state and federal laws and regulations.

(B) Floodplains associated with surface waters within 1,320 feet of the proposed well.

(C) Wetlands, as identified by the provisions of sections 30301 to 30323 of the act, within 1,320 feet of the proposed well.

(D) Natural rivers, as identified by the provisions of sections 30501 to 30515 of the act, within 1,320 feet of the proposed well.

(E) Critical dune areas, as designated by the provisions of sections 35301 to 35326 of the act, within 1,320 feet of the proposed well.

(F) Threatened or endangered species, as identified by the provisions of sections 36501 to 36507 of the act, within 1,320 feet of the proposed well.

(G) All buildings, recorded fresh water wells and reasonably identifiable fresh water wells utilized for human consumption, public roads, pipelines, and power lines that lie within 600 feet of the proposed well location.

(H) All public water supply wells identified as type I and IIa that lie within 2,000 feet of the proposed well location and type IIb and III that lie within 800 feet of the proposed well location, as defined in 1976 PA 399, MCL 325.1001 to 325.1023.

(I) Identification of the existing local zoning designation of the surface location of the well.

(c) If the applicant intends to utilize high volume hydraulic fracturing, the application shall include a list showing the specific identity and associated CAS number of each chemical constituent the applicant anticipates will be added to the primary carrier fluid, except that the specific identities and CAS numbers of trade secret chemicals may be withheld under the provisions of paragraph (i) of this rule.

(i) If the specific identity of a chemical constituent and its associated CAS number are a trade secret, the applicant may withhold the specific identity of the chemical constituent and its associated CAS number, but shall list the chemical family associated with the chemical constituent, or provide a similar description, and provide a statement that a claim of trade secret protection has been made by the entity entitled to make such a claim.

(ii) Listing of a chemical constituent under the requirements of this subdivision does not preclude a permittee from utilizing other chemical constituents in a high volume hydraulic fracturing operation; however, the chemical constituents actually used shall be submitted under the requirements of rule 1406 of these rules.

(d) One signed and sealed copy of the survey, on a form prescribed by the supervisor, shall be filed with an application for a permit to drill and operate or e-filed using a procedure approved by the supervisor.

(e) A person applying to drill and operate a well shall completely and accurately fill out, sign, and file a written application for a permit to drill on a form prescribed by the supervisor or e-filed using a procedure approved by the supervisor. The application shall be submitted to the supervisor at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing,

Michigan 48909, and a copy of the first page of the permit application shall be mailed to the clerk of the county and the surface owner of record of the land on which the well location is to be located within 7 days of submitting the permit application by first-class United States mail addressed to the surface owner's last known address as evidenced by the current property tax roll records.

(f) When the proposed well location is in or adjacent to any areas described in subdivision (b)(iv)(A) or (B) of this subrule, a person shall file for and obtain all applicable permits from the department of environmental quality before developing the well site or access to the well site or before drilling of the well. The person shall also file for and obtain any additional permits that may be required before the installation of flow lines or production equipment or before operating the well.

(g) A person shall file an environmental impact assessment as instructed by the supervisor.

(h) A person shall file an organization report if a current organization report is not on file with the supervisor.

(i) A person shall file a conformance bond or statement of financial responsibility pursuant to R 324.210.

(j) A person shall pay the fee as specified by statute. A fee filed with an application shall not be applied to a subsequent application. The fee shall be returned if a permit is not issued.

(k) A person shall provide additional information as required in R 324.802 with an application for a permit to drill and operate an injection well or to convert a previously drilled well to an injection well.

(l) A person shall receive and post the permit in a conspicuous place at the well location. The permit shall remain posted at the well location until well completion.

(3) A person who desires to directionally drill a well shall apply for and obtain a permit to drill and operate as provided in this rule. The application to drill a directionally drilled well shall include, in addition to the information specified in subrule (2) of this rule, all of the following information:

(a) The depth at which deviation from vertical is planned.

(b) The angle and path of each deviation.

(c) The proposed horizontal distance and direction from the well location to the bottom hole.

(d) The well's measured and true vertical depths.

(4) The supervisor shall process a permit application for a well and issue or deny a permit to drill and operate pursuant to section 61525 of the act. Pursuant to R 324.205, the supervisor shall not issue a permit to a person or an authorized representative of a person if the person is not eligible for a permit.

History: 1996 AACS; 2015 AACS; 2018 AACS.

R 324.202 Directional redrilling.

Rule 202. (1) A permittee of a well who desires to directionally redrill an existing well to a different bottom hole location shall file an application for a new permit. The application shall set forth, in detail, the new bottom hole location and identify the plug-back depth of the existing well and shall be filed under R 324.201(3). The directional

redrilling shall not be commenced until the application has been approved by the supervisor or authorized representative of the supervisor, except as provided in subrule (2) of this rule. A new permit and an additional fee shall be required.

(2) A permittee of a well who desires to directionally redrill an existing permitted drilling well to a different bottom hole location with the drilling rig then on location shall obtain approval from the supervisor or authorized representative of the supervisor. Approval to redrill shall be obtained by contacting the authorized representative of the supervisor in person or by telephone and providing pertinent details of the proposed directional redrilling. Approval may be granted immediately if all of the following provisions are complied with:

(a) The existing drilled hole is plugged back before starting the new directional hole under the provisions of these rules.

(b) The permittee provides an adequate description of the proposed directional redrill, including the depth, angle, and path of the deviation, and the bottom hole location.

(c) The well has adequate bonding or a statement of financial responsibility has been filed under R 324.210.

(3) If approval to directionally redrill is granted, a permittee of a well shall obtain a new permit and pay an additional fee. The application for a new permit and additional fee shall be filed within 10 days at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909. In addition to other enforcement actions, failure to comply with this subrule shall be cause for immediate suspension of any or all components of the oil and gas operations on the well.

(4) A well log and plugging record shall be filed on the plugged-back hole under these rules.

History: 1996 AACS; 2002 AACS; 2015 AACS.

R 324.203 Lost holes.

Rule 203. (1) A permittee of a well shall obtain approval to skid a rig or move to start a new hole when a hole has been lost. A new permit or additional fee is not required if the new well location is within 165 feet of the lost hole and the drilling unit is not changed.

(2) A permittee of a well may obtain approval for skidding a rig or moving to a new well location because of a lost hole from the authorized representative of the supervisor in person or by telephone. Approval may be granted immediately if all of the following provisions are complied with:

(a) The lost hole shall be plugged before starting the replacement hole under the provisions of these rules.

(b) The new well location shall be made at a safe distance from the lost hole.

(c) The permittee provides an adequate description of the new bottom hole location.

(d) The new well location shall not create surface waste.

(e) An amended application with corrected attachments and supplements shall be filed within 5 business days at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909. In

addition to other enforcement actions, failure to comply with this subrule shall be cause for suspension of any or all components of the oil and gas operations on the well.

(f) A well log and well plugging record shall be filed on all lost holes under the provisions of these rules.

History: 1996 AACS; 2002 AACS; 2015 AACS.

R 324.204 Permits for oil and gas storage by conversion of operation.

Rule 204. If a well or underground operation developed for a non-oil and gas use is converted for the storage of oil or gas or any of the natural hydrocarbons produced from oil or gas, then the well or underground operation shall be classified as an oil or gas storage operation and shall be subject to the provisions of these rules.

History: 1996 AACS.

R 324.205 Eligibility for permit.

Rule 205. The supervisor shall not issue or transfer a permit, other than as provided by R 324.206(7) and (8), to a person who has been determined to be in violation of any of the following:

(a) The act.
(b) These rules.
(c) Permit conditions.
(d) Instructions.
(e) Orders of the supervisor.
(f) An order of the department of environmental quality.

History: 1996 AACS.

R 324.206 Modification of permits; deepening permits; change of ownership.

Rule 206. (1) A permit shall not be transferred to a location outside of the drilling unit.

(2) A permittee of a well who has not initiated drilling of a well shall not do either of the following:

(a) Change the well location within the drilling unit without the prior approval of the supervisor or authorized representative of the supervisor. To receive approval, a permittee shall return the permit to the Lansing office of the supervisor together with a revised application with corrected attachments and supplements. If the permittee requests a change in the well location greater than 165 feet from the permitted location, then a new permit and an additional fee are required. If the permittee requests a change in the well location to a location less than 165 feet from the permitted location, then the change will require a revised permit and no additional fee. A change of location for an injection well, regardless of distance, requires a new permit and an additional fee. Drilling shall not begin until the new permit or revised permit has been issued by the supervisor or authorized representative of the supervisor and posted at the drilling site.

(b) Change the method of drilling, casing and sealing programs, or other conditions of the permit without the prior approval of the supervisor or authorized representative of the supervisor. To receive approval, the permittee shall return the permit to the Lansing office of the supervisor together with a revised application with corrected attachments and supplements. If the permittee only requests a modification of the existing permit conditions, then an additional fee is not required. Drilling shall not begin until the revised permit has been approved by the supervisor or authorized representative of the supervisor and posted at the drilling site.

(3) A permittee of a well who begins the drilling of a well and encounters drilling problems or other drilling conditions that necessitate a change shall not do either of the following:

(a) Change the well location within the drilling unit, other than as provided by R 324.203, without the prior approval of the supervisor or authorized representative of the supervisor. To receive approval to change the well location, the permittee shall return the permit to the Lansing office of the supervisor together with a revised application with corrected attachments and supplements. Drilling shall not begin at the new location until the revised permit has been issued by the supervisor or authorized representative of the supervisor.

(b) Change the method of drilling, casing and sealing programs, or other conditions of the permit without the prior approval of the supervisor or authorized representative of the supervisor. To receive approval to modify an existing permit condition only, the permittee shall contact the supervisor or authorized representative of the supervisor by letter, telephone, or visit and explain the drilling circumstances and request the necessary changes to the permit. The supervisor or authorized representative of the supervisor may give verbal approval to modify the permit with conditions for additional reporting requirements by the permittee. If approval to modify an existing permit is granted, then the revised permit and corrected attachments and supplements shall be filed, within 10 days, at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909. An additional permit fee is not required.

(4) A permittee of a well who desires to deepen a well below the permitted stratigraphic or producing horizon where well completion has occurred shall file an application for a deepening permit. The application shall set forth, in detail, the new proposed total depth and the plan for casing and sealing off the oil, gas, brine, or fresh water strata to be found, or expected to be found, in the deepening operation. The deepening operation shall not be commenced until the application has been approved by the supervisor or authorized representative of the supervisor. A deepening permit and an additional fee are required.

(5) A permittee of a well who desires to continue the drilling of a well below the permitted depth, but within the permitted stratigraphic or producing horizon where drilling completion or well completion has occurred, shall file an application for change of well status pursuant to R 324.511. The application shall set forth, in detail, the new proposed total depth and the plan for casing and sealing off the oil, gas, brine, or fresh water strata found, or expected to be found, when drilling is continued. The approval of the change of well status shall serve to revise the permit to reflect the new permitted depth. The continuation of drilling shall not be commenced until the application for

change of well status has been approved by the supervisor or authorized representative of the supervisor. To obtain approval to continue the drilling below the permitted depth, but within the permitted stratigraphic or producing horizon with the drilling rig then on location, the permittee shall contact the supervisor or authorized representative of the supervisor by letter, telephone, or visit and explain the circumstances for the request to continue the drilling. The supervisor or authorized representative may give verbal approval to continue the drilling below the permitted depth, but within the permitted stratigraphic or producing horizon. If approval to continue the drilling is granted, then the permittee shall file the application for change of well status pursuant to R 324.511, within 10 days of approval, at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909. An additional permit fee is not required.

(6) If a permittee of a well conveys his or her rights as an owner of a well to another person, or ceases to be the authorized representative of the owner of a well, before final completion, then a request for the transfer of the permit to the acquiring person shall be submitted by the acquiring person to the supervisor at the offices of the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, on forms as prescribed by the supervisor. The transfer of the permit may be approved upon receipt of a properly completed request, including the signatures of the permittee of record and the acquiring person, and upon the filing by the acquiring person of the conformance bond or a statement of financial responsibility as required by R 324.210. Pending the transfer of the existing permit, the acquiring person shall not operate the well. The acquiring person shall file an organization report pursuant to R 324.201(2)(h).

(7) A permit for a well shall not be transferred to a person who has been determined to be in violation of any of the following until the permittee has corrected the violation or the supervisor has accepted a compliance schedule and a written agreement has been reached to correct the violations:

(a) The act.

(b) These rules.

(c) Permit conditions.

(d) Instructions.

(e) Orders of the supervisor.

(f) An order of the department of environmental quality.

An additional conformance bond covering the period of the compliance schedule may be required. The conformance bond is in addition to the conformance bonds filed pursuant to R 324.212(a) or (b).

(8) If the permittee of a well is under notice because of unsatisfactory conditions at the well site involved in the transfer, then the permit for a well shall not be transferred to a person until the permittee has completed the necessary corrective actions or the acquiring person has entered into a written agreement to correct all of the unsatisfactory conditions.

History: 1996 AACS; 2015 AACS; 2018 AACS.

R 324.207 Suspension of oil and gas operations due to failure to transfer permit.

Rule 207. If a permittee of a well conveys his or her rights as an owner of a well to another person, or ceases to be the authorized representative of the owner of a well, and a request for transfer of the permit under R 324.206(6) has not been approved, then, in addition to other enforcement actions, failure to comply shall be cause for immediate suspension of any or all components of the oil and gas operations on the well, including the removal or sale of oil, gas, or brine.

History: 1996 AACS; 2002 AACS.

R 324.208 Termination of permit.

Rule 208. (1) Subject to subrule (2) of this rule, a permit issued pursuant to R 324.201(4), or transferred pursuant to R 324.206(6) or rules that were in effect before the effective date of these rules, shall terminate 2 years after the date of issuance, unless the drilling operation has reached a depth of not less than 100 feet below the ground surface elevation and the drilling operation is diligently proceeding or the well is otherwise being used for its permitted purpose.

(2) If a permit is subject to termination under this rule, the permittee may submit a written request to the supervisor to extend the permit at least 30 days before the scheduled termination date. Upon receipt of a request, the supervisor may extend the permit for a period of up to 2 additional years provided there have been no significant changes in the features or conditions described in R 324.201, or in requirements of these rules or the act, that would require modifications of the permit.

(3) Terminated permits may not be reactivated or transferred and the permit fee shall not be refunded.

History: 1996 AACS; 2018 AACS.

R 324.209 Temporary abandonment status.

Rule 209. (1) A permittee of a well that has not been used for its permitted purpose during 12 consecutive months shall plug the well, unless the well is granted temporary abandonment status. Temporary abandonment status shall be allowed only upon written application to, and approval of, the supervisor or authorized representative of the supervisor.

(2) The term of the initial temporary abandonment status shall not be more than 12 months, unless the well is shut-in awaiting the connection of a sales line. For a well that is shut-in awaiting connection of a sales line, the term of the initial temporary abandonment status shall be up to and including 60 months.

(3) Extensions for temporary abandonment status beyond the initial term provided in subrule (2) of this rule may be granted by the supervisor if, after application by the permittee, the supervisor determines that waste shall be prevented. When approving the extensions, the supervisor may require special actions and monitoring by the permittee to ensure the prevention of waste.

History: 1996 AACS.

R 324.210 Conformance bond or statement of financial responsibility requirements.

Rule 210. (1) A person who files an application for a permit to drill and operate a well under R 324.201, or who acquires a well under R 324.206(6), shall file a conformance bond with the supervisor on a form prescribed by the supervisor or shall submit a statement of financial responsibility under subrule (2) of this rule.

(2) A statement of financial responsibility shall consist of all of the following:

(a) A written statement which is signed by the person, which lists data that show that the person meets the criteria specified in subrule (3) of this rule, and which states that the data are derived from an independently audited year-end financial statement.

(b) A copy of an independent certified public accountant's report on examination of the person's financial statements for the latest completed fiscal year.

(c) A special report from the person's independent certified public accountant stating that the accountant has compared the data listed in the statement provided under subdivision (a) of this subrule with the amounts in the corresponding year-end financial statement and that nothing came to the attention of the accountant which caused the accountant to believe that the financial records should be adjusted.

(3) When a person submits a statement of financial responsibility instead of a conformance bond, a person shall meet the criteria of either subdivision (a) or (b) of this subrule, as follows:

(a) A person required to file the statement of financial responsibility shall have all of the following:

(i) Two of the following 3 ratios:

(A) A ratio of total liabilities to net worth of less than 2.0.

(B) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities of more than 0.1.

(C) A ratio of current assets to current liabilities of more than 1.5. Projected oil and gas reserves may be utilized in determining current assets only to the extent that the value of the reserves exceeds the projected costs of development and production.

(ii) Net working capital and tangible net worth each of which is not less than 3 times the amount of the conformance bond provided in R 324.212, if the person had elected to file a conformance bond.

(iii) Total assets in this state that are not less than 3 times the amount of the conformance bond provided in R 324.212, if the person had elected to file a conformance bond. Projected oil and gas reserves may be utilized in determining current assets only to the extent that the value of the reserves exceeds the projected costs of development and production.

(iv) A written statement from a certified public accountant which states that no matter came to the attention of the accountant which caused him or her to believe that the financial records should be adjusted.

(b) A person required to file a statement of financial responsibility shall have all of the following:

(i) A current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.

(ii) A tangible net worth of not less than $2,000,000.00.

(iii) Total assets in this state that are not less than 3 times the amount of the conformance bond provided in R 324.212, if the person had elected to file a conformance bond. Projected oil and gas reserves may be utilized in determining current assets only to the extent that the value of the reserves exceeds the projected costs of development and production.

(4) A person shall submit a statement of financial responsibility to the supervisor not less than 60 days before the date the financial assurance is scheduled to take effect.

(5) After the initial submission of a statement of financial responsibility, the person shall send an updated statement of financial responsibility to the supervisor within 90 days after the close of each succeeding fiscal year.

(6) If a person no longer meets the requirements of subrule (3) of this rule, he or she shall send notice to the supervisor of the intent to establish alternate financial assurance by filing a conformance bond as specified in subrule (1) of this rule. The notice shall be sent, by certified mail, within 90 days after the end of the fiscal year for which the year-end review of the financial records shows that the person no longer meets the requirements. The person shall provide the alternate financial assurance within 120 days after the end of the fiscal year.

(7) The supervisor may, based on a reasonable belief that the person no longer meets the requirements of subrule (3) of this rule, require a report at any time from the person in addition to the information required by subrule (3) of this rule. If the supervisor finds, on the basis of a review of the report or other information, that the person no longer meets the requirements of subrule (3) of this rule, then the supervisor or authorized representative of the supervisor shall notify and inform the person. Within 30 days of the notification, the person shall provide alternate financial assurance by filing a conformance bond as specified in subrule (1) of this rule or shall bring the well to final completion. Failure to comply with this subrule shall be cause for immediate suspension of any or all components of the oil and gas operations on the well.

(8) The supervisor may require additional conformance bonds to ensure compliance with orders of the supervisor, excluding proration, statutory pooling, or spacing orders. The conformance bond shall be in addition to the conformance bonds filed under R 324.212(a), (b), or (c) and shall be required only if the supervisor determines that the existing conformance bond is not adequate to cover the estimated cost of plugging the well and conducting site restoration or other obligations of the permittee under the order. A person is not required to file additional conformance bonds under this subrule if the person has filed a blanket conformance bond or bonds in an aggregate amount of $250,000.00 or more, under R 324.212(d). Subject to the provisions of R 324.213, the additional conformance bond shall be released when the permittee has complied with all provisions of the orders of the supervisor.

(9) Conformance bonds that were in effect before the effective date of these rules shall remain in effect under the conditions upon which they were filed and accepted by the supervisor. However, in place of conformance bonds that were in effect before the effective date of these rules, a permittee may file conformance bonds or submit a statement of financial responsibility under these rules for wells permitted under the act before the effective date of these rules.

History: 1996 AACS; 2002 AACS; 2015 AACS.

R 324.211 Liability on conformance bond.

Rule 211. (1) The liability on the conformance bond is conditioned upon compliance with the act, these rules, permit conditions, instructions, or orders of the supervisor. Subject to the provisions in R 324.213, liability shall cover all oil and gas operations of the permittee as follows:

(a) Through transfer of the permit for the subject well under R 324.206(6).

(b) Through final completion approved by the supervisor of the subject well.

(c) Otherwise as approved by the supervisor.

(2) The supervisor shall look to the conformance bond for immediate compliance with, and fulfillment of, the full conditions of the act, these rules, permit conditions, instructions, or orders of the supervisor. All expenses incurred by the supervisor in achieving compliance with, and fulfillment of, all conditions of the act, these rules, permit conditions, instructions, or orders of the supervisor shall be paid by the permittee or the surety or from cash or securities on deposit. The claim shall be paid within 30 days of notification to the permittee or surety that expenses have been incurred by the supervisor. If the claim is not paid within 30 days, the supervisor, acting for and on behalf of the state, may bring suit for the payment of the claim.

History: 1996 AACS; 2002 AACS.

R 324.212 Conformance bond amounts.

Rule 212. A person who drills or operates a well shall file a conformance bond with the supervisor for the following amounts, as applicable:

(a) Single well conformance bonds shall be filed in the following amounts, as applicable:

(i) $20,000.00 for wells up to and including 2,000 feet deep, true vertical depth.

(ii) $40,000.00 for wells deeper than 2,000 feet, but not deeper than 4,000 feet, true vertical depth.

(iii) $50,000.00 for wells deeper than 4,000 feet, but not deeper than 7,500 feet, true vertical depth.

(iv) $60,000.00 for wells deeper than 7,500 feet, true vertical depth.

(b) A person may file single well conformance bonds in an amount equal to 1/2 of the amount specified in subdivision (a) of this rule for wells where well completion operations have not commenced. A person shall not file single well conformance bonds under this subdivision for more than 5 wells. A person shall file single well conformance bonds in the full amount specified in subdivision (a) of this rule or file a blanket conformance bond as specified in subdivision (c) of this rule or submit a statement of financial responsibility pursuant to R 324.210 before the commencement of well completion operations on any well.

(c) Blanket conformance bonds may be filed as an alternative to single well conformance bonds. If a blanket conformance bond is utilized, then the permittee shall provide the supervisor with a list of wells covered by the blanket conformance bond. A maximum of 100 wells may be covered by a blanket conformance bond. If the permittee

has more than 100 wells in a category, then the additional wells may be covered by single well conformance bonds or additional blanket conformance bonds. Blanket conformance bonds shall be filed in the following amounts, as applicable:

(i) $100,000.00 for wells up to and including 2,000 feet deep, true vertical depth.

(ii) $200,000.00 for wells deeper than 2,000 feet, but not deeper than 4,000 feet, true vertical depth.

(iii) $250,000.00 for wells deeper than 4,000 feet, true vertical depth.

(d) A person shall not be required to file a blanket conformance bond or bonds in an aggregate amount of more than $250,000.00. When the aggregate amount of the conformance bonds is $250,000.00, the permittee may file 1 blanket conformance bond of $250,000.00 to cover all of his or her wells.

History: 1996 AACS; 2018 AACS.

R 324.213 Cancellation of conformance bonds issued by a surety.

Rule 213. (1) A surety company may cancel a conformance bond acquired under these rules upon 90 days' notice to the supervisor of the effective date of cancellation. However, the surety company shall retain liability for all violations of the act, these rules, permit conditions, instructions, or orders of the supervisor that occurred during the time the conformance bond was in effect.

(2) Forty days before the effective date of cancellation, as provided in subrule (1) of this rule, a permittee shall secure a conformance bond from another surety company authorized to do business in the state of Michigan, deposit cash or other securities, or bring the well to final completion. Failure to comply with this subrule shall be cause for the immediate suspension of any or all components of the oil and gas operations on the well.

(3) A surety company shall remain liable until the violations have been corrected and the corrections are accepted by the supervisor forall violations of the act, these rules, permit conditions, instructions, or orders of the supervisor that occurred at the well during the time the conformance bond was in effect before the effective date of cancellation.

History: 1996 AACS; 2002 AACS.

R 324.214 Limitation of additional liability of blanket conformance bonds.

Rule 214. A surety company may refuse to accept liability for additional wells under a blanket conformance bond by giving 10 days' notice by registered mail to the supervisor. Subject to the provisions of R 324.213, the blanket conformance bond shall continue in full force and effect as to all other wells covered by the blanket conformance bond for which permits were granted or transferred to the permittee before the effective date of the notice.

History: 1996 AACS.

R 324.215 Release of conformance bonds; release of well from blanket conformance bond.

Rule 215. (1) A conformance bond shall be released or a well shall be released from a blanket conformance bond, subject to the provisions of R 324.213, by the supervisor or authorized representative of the supervisor if a permittee disposes of the well and the permit for the well has been transferred to a new person pursuant to R 324.206(6) or if the well has been plugged and proper site restoration has been performed pursuant to R 324.1003, including the filing of the mandatory records.

(2) The release of the conformance bond or the release of a well from a blanket conformance bond does not release a permittee from liability for any violations of the act, these rules, permit conditions, instructions, or orders of the supervisor which occurred during the time the conformance bond was in effect and which have not been corrected and accepted by the supervisor.

(3) A conformance bond filed to comply with a permit that has become terminated shall be released if there is final completion.

History: 1996 AACS.

R 324.216 Notice of release of conformance bond or release of well from blanket conformance bond.

Rule 216. (1) The supervisor or authorized representative of the supervisor shall advise the surety company and the permittee when the conformance bond has been released or a well has been released from a blanket conformance bond.

(2) The supervisor or authorized representative of the supervisor shall return cash to the permittee or securities to the institution that provided the bonding instrument when the conformance bond has been released.

History: 1996 AACS.

PART 3. SPACING AND LOCATION OF WELLS

R 324.301 Drilling unit; well location; exceptions.

Rule 301. (1) The following provisions specify requirements for the location and spacing of wells to be drilled for oil or gas, or for wells for oil and gas where a change of well status or stimulation of the well will result in changes to the producing interval, except for injection wells and wells to be drilled in gas storage reservoirs, liquid petroleum gas storage reservoirs, unitized areas, and other specifically designated areas or geological formations where special spacing orders, rules, or determinations are in effect:

(a) The drilling unit for wells for oil or gas shall be a legal subdivision of 40 acres, more or less, defined as a governmental surveyed quarter-quarter section of land. The drilling unit shall conform to 1 of the quarter-quarters of a governmental surveyed section of land, with allowances being made for the differences in the size and shape of sections as indicated by official governmental survey plats.

(b) The producing interval of a well for oil or gas shall be not less than 330 feet from the drilling unit boundary.

(c) For purposes of interpreting requirements for the location and spacing of wells under these rules, the producing interval location of a well that is not intentionally drilled directionally or horizontally shall be presumed to be directly beneath the well location.

(d) A permit may be issued on a drilling unit that is not totally leased, pooled, or communitized subject to the following conditions:

(i) The application for permit shall be accompanied by a certified statement establishing that a good faith effort had been made to obtain the lease or leases or to obtain a communitization agreement to form a full drilling unit and that such effort failed.

(ii) No portion of the well bore shall transect any tract prior to such time as the tract is leased, pooled, or communitized.

(iii) The permittee of the well shall not construct or operate any portion of the well, drill pad, access road, pipeline, or other drilling operations or well completion operations subject to the permit on any tract that is not leased unless the permittee has obtained the necessary rights to construct or operate under a surface access agreement or other applicable instrument.

(iv) Before the well is placed on regular production, a pooled drilling unit shall be formed by voluntary agreement or statutory pooling pursuant to R 324.304.

(2) The well surface location and associated surface facilities for wells drilled and constructed after September 20, 1996 shall be located not less than 300 feet from existing recorded fresh water wells and reasonably identifiable fresh water wells utilized for human consumption and existing structures used for public or private occupancy.

(3) The well separators, storage tanks, and treatment equipment installed or constructed after September 20, 1996 shall be located not less than 2,000 feet from type I and IIa public water supply wells and not less than 800 feet from type IIb and III public water supply wells, as defined in the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(4) Exceptions to the location and spacing of wells may be granted in the following instances:

(a) The supervisor or authorized representative of the supervisor issues a permit for an off-pattern or nonconforming drilling unit well after a hearing to determine the need or desirability of issuing the permit. The wells shall be subject to the restricted or adjusted allowables that the supervisor considers necessary to ensure that the owners shall be afforded the opportunity to produce their just and equitable share of the oil and gas from the reservoir and to prevent waste.

(b) The supervisor or authorized representative of the supervisor issues a permit for a well where the surface location is closer than 300 feet from all existing recorded fresh water wells and reasonably identifiable fresh water wells utilized for human consumption and existing structures used for public or private occupancy upon presentation, to the supervisor, of written consent signed by the owner or owners of all existing fresh water wells and reasonably identifiable fresh water wells utilized for human consumption and existing structures used for public or private occupancy.

(c) The supervisor determines the well surface location or location of associated surface facilities will prevent waste, protect environmental values, and not compromise public safety after a hearing pursuant to part 12 of these rules.

(d) The supervisor approves an application to pool or communitize tracts or mineral interests pursuant to R 324.303(2).

History: 1996 AACS; 2015 AACS.

R 324.302 Adoption of special spacing orders.

Rule 302. The development of an oil or gas field may warrant the adoption of drilling units and well spacing patterns other than as specified in R 324.301(1). An interested person may request, or the supervisor may schedule, a hearing pursuant to part 12 of these rules to consider the need or desirability of adopting a special spacing order to apply to a designated area, field, pool, or geological strata. The drilling unit established by the special spacing order may be smaller or larger than the basic 40-acre unit pursuant to R 324.301(1)(a).

History: 1996 AACS; 2015 AACS.

R 324.303 Voluntary pooling.

Rule 303. (1) The lessees or lessors, or both, of separate tracts or mineral interests that lie partially or wholly within an established drilling unit or larger area may pool or communitize the tracts or interests to form full drilling units or multiples of full drilling units and to develop the units pursuant to the provisions of these rules and the applicable orders of the supervisor.

(2) Persons who pool or communitize the tracts or interests may submit an application to the supervisor to abrogate spacing within the pooled or communitized area. The application shall include a certified copy of the pooling or communitization agreement and the plans for exploration or development. The supervisor may approve the application if all of the following conditions are satisfied:

(a) Waste is prevented.

(b) The drilling of unnecessary wells is prevented.

(c) A producing interval of a well is not located closer than 330 feet from the pooled or communitized area boundary.

(3) The lessees and lessors of separate tracts or mineral interests that lie partially or wholly within an area encompassing 2 or more full drilling units may voluntarily pool the tracts or interests to form a development unit for the purpose of receiving a permit for a well as an exception to R 324.301(1) or special spacing orders adopted pursuant to R 324.302, if the producing interval location of the well is found by the supervisor to ensure each producer is afforded the opportunity to use his or her just and equitable share of the reservoir energy and to prevent waste, including the drilling of unnecessary wells.

History: 1996 AACS; 2015 AACS.

R 324.304 Statutory pooling.

Rule 304. The supervisor may require the pooling of tracts or mineral interests within a drilling unit when the owners of the tracts or mineral interests have not agreed,

or do not agree, upon the pooling of the interests to form full drilling units pursuant to these rules and the applicable spacing orders. The statutory pooling shall be done on a basis which ensures that each owner of an interest within a drilling unit is afforded the opportunity to receive his or her just and equitable share of the production from the unit. Statutory pooling shall be adopted by the supervisor only after a hearing pursuant to part 12 of these rules.

History: 1996 AACS; 2015 AACS.

PART 4. DRILLING AND WELL CONSTRUCTION

R 324.401 Preventing waste.

Rule 401. A person who drills a well or wells as described in R 324.201(1) shall use every reasonable precaution to prevent waste.

History: 1996 AACS.

R 324.402 Drilling notification.

Rule 402. Not less than 5 days before preparing the location and not less than 48 hours before moving drilling equipment on location, the permittee shall notify the supervisor or authorized representative of the supervisor and the surface owner when well construction is to begin. Notice may be given verbally or by first-class United States mail.

History: 1996 AACS.

R 324.403 Construction of water wells used for drilling or surface facilities.

Rule 403. (1) A water well that is drilled and used for drinking water purposes during the drilling of the well or retained after drilling completion or final completion must be drilled pursuant to rules promulgated under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(2) A water well that is not to be retained after drilling completion or final completion must be completed and abandoned as instructed by the supervisor and must meet all of the following minimum requirements:

(a) The well must be located not less than 50 feet from drilling mud pits, pipe racks, salt and mud mixing sites, and the wellhead.

(b) The water used in the drilling fluid must be chlorinated fresh water that is free of contamination in concentrations that may cause disease or harmful physiological effects.

(c) The well must be grouted pursuant to the well construction and grouting rules contained in the well construction code promulgated under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(d) Geologic records must be filed with the supervisor on a form prescribed by the supervisor.

(e) The wellhead, including annulus, must be sealed and a check valve must be installed in the surface discharge line to prevent contaminants from entering the well.

(f) The well must be abandoned and plugged pursuant to the plugging and abandonment rules contained in the well construction code promulgated under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

History: 1996 AACS; 2019 AACS.

R 324.404 Use of surface water for drilling prohibited; exception.

Rule 404. Surface water shall not be used for drilling fluid, except for emergency situations to protect the public health and safety.

History: 1996 AACS.

R 324.405 Drilling fluids generally.

Rule 405. The drilling fluid used for drilling wells described in R 324.201(1) must be capable of sealing off and protecting each oil, gas, brine, or fresh water stratum above the stratigraphic or producing horizon and controlling subsurface pressures. The water or brines used in the drilling fluid must be from a source approved by the supervisor or authorized representative of the supervisor, used pursuant to approved safe drilling practice, and tested as instructed by the supervisor, except that the water used in the drilling fluid for the drilling of the hole for the surface casing must be fresh water that is free of contamination in concentrations that may cause disease or harmful physiological effects.

History: 1996 AACS; 2019 AACS.

R 324.406 Blowout prevention equipment.

Rule 406. (1) All wells shall be equipped with the following equipment:

(a) A double ram blowout preventer, including pipe and blind rams, and an annular-type blowout preventer or other equivalent control system as approved by the supervisor or authorized representative of the supervisor.

(b) Accessible controls both on the rig floor and at a safe remote location.

(c) A kelly valve.

(d) A drill pipe safety valve.

(e) A flow line of the proper size and working pressure.

(f) Blowout prevention equipment that has a rated working pressure which equals or exceeds the maximum anticipated surface pressure of the well.

(2) The blowout preventers shall be installed above ground level. The entire control equipment shall be in good working condition at all times. All outlets, fittings, and connections on the casing, blowout preventers, choke manifold, and auxiliary wellhead equipment that may be subjected to wellhead pressure shall be of a material and construction that will withstand the anticipated pressure. The lines from outlets on

or below the blowout preventers shall be securely installed, anchored, and protected from damage.

(3) Blowout preventers, accumulators, and pumps shall be certified as operable under the product manufacturer's minimum operational specifications.

Certification shall include the proper operation of the closing unit valving, the pressure gauges, and the manufacturer's recommended accumulator fluids. Certification shall be obtained through an independent company that tests blowout preventers, stacks, and casings. Certification shall be required annually and shall be posted on the rig floor. In addition to the primary closing system, including an accumulator system, the blowout preventers shall have a secondary system. A combination of any 2 of the following secondary closing systems is acceptable:

(a) Electric-operated pump.

(b) Air-operated pump.

(c) Hand-operated pump.

(d) Nitrogen-operated pump.

Extensions that have hand wheels are not mandatory. Blowout preventer rams shall be of a proper size for the drill pipe being used or production casing being run in the well or shall be variable-type rams that are of the proper size range.

(4) Blowout prevention equipment shall be tested to a pressure commensurate with the expected formation pressure, but not less than 1,000 psig at surface for not less than 20 minutes, before drilling the plug on the surface casing, intermediate casing, and the production casing and before encountering all high-pressure formations and at other intervals as approved or requested by the supervisor. When requested, an authorized representative of the supervisor shall be notified before the commencement of a test. A record of each test, including test pressures, times, failures, and each mechanical test of the casings, blowout preventers, surface connections, surface fittings, and auxiliary wellhead equipment shall be entered in the logbook, signed by the driller, and kept available for inspection by the supervisor or authorized representative of the supervisor.

(5) A trip tank, or an accurate drilling fluid monitoring system, and a gas buster and flare system shall be in place when penetrating the A2 carbonate or any known or suspected overpressurized formations. Permission to change or modify the requirements specified in this subrule may be granted by submitting a written request to the supervisor or authorized representative of the supervisor. The requirements may be changed or modified only after submission of a written request and receipt of written approval from the supervisor or authorized representative of the supervisor.

(6) An exception to all or part of this rule may be granted by the supervisor or authorized representative of the supervisor when drilling in shallow low-pressure formations. The supervisor or authorized representative of the supervisor may grant an exception upon receipt of an application for a permit that is accompanied by a written request and supportive data.

History: 1996 AACS.

R 324.407 Drilling mud pits.

Rule 407. (1) The supervisor shall prohibit the use of a drilling mud pit if it is determined that the mud pit causes waste.

(2) Drill cuttings, muds, and fluids shall be confined by a pit, tank, or container which is of proper size and construction and which is located as approved by the supervisor or authorized representative of the supervisor.

(3) Only tanks shall be utilized while drilling a well that is located in an area zoned residential before January 8, 1993. The supervisor may grant an exception if the applicant or permittee makes a request for an exception as part of the written application for a permit. The supervisor may grant an exception if an applicant or permittee satisfactorily demonstrates that a municipal water system is utilized or required to be utilized.

(4) Drilling mud pits shall be located and plotted as instructed by the supervisor. Before construction of the mud pit, a permittee shall demonstrate to the supervisor or authorized representative of the supervisor that there is not less than 4 feet of vertical isolation between the bottom of the pit and the uppermost groundwater level. The bottom of the liner shall not be installed within the observed groundwater level as determined while excavating the pit. If groundwater is encountered during or before construction of the pit, then the permittee shall select 1 of the following options and obtain the approval for the option from the supervisor or authorized representative of the supervisor:

(a) The pit shall be designed and constructed so the bottom of the pit is not less than 4 feet above the groundwater level.

(b) The pit shall be designed and constructed so the bottom of the pit is above the groundwater level, but less than 4 feet above the groundwater level, and during encapsulation the pit contents shall be solidified using a method approved by the supervisor.

(c) The pit shall be relocated at the well site as approved by the supervisor or authorized representative of the supervisor.

(d) Tanks shall be used, and drilling muds disposed of, at an approved off-site location.

(5) Drilling mud pits shall be constructed as instructed by the supervisor and shall be in compliance with both of the following minimum requirements:

(a) Pits shall be constructed with rounded corners and side slopes of not less than 20 degrees measured from the vertical.

(b) The bottom and sides of the pit shall be free of objects that could penetrate the liner.

(6) Drilling mud pits shall be lined as instructed by the supervisor and shall be in compliance with all of the following minimum requirements:

(a) Pits shall be lined with 20-mil virgin polyvinyl chloride liners as approved by the supervisor or with other liners that meet or exceed the 20-mil virgin polyvinyl chloride liner requirement.

(b) Ample liner material shall be installed in a manner to allow for sags and material loading to reduce stress on the liner and allow for a minimum 10-foot flat apron on all sides, including enough liner material to underlay the drilling mud tank, salt washer, and shale shaker.

(c) The bottom of the lined pit shall be weighted with earthen material or water before anchoring the ends of the liner on the surface or placing drilling muds in the pit.

(d) Ripping, tearing, puncturing, or other destruction of a liner that may cause loss of fluids is prohibited.

(e) Liner field seams are prohibited, except for liner field seams that result from failures in the liner due to abrasion or accidental perforation, which shall be immediately repaired in the field using the manufacturer's recommended procedures.

(7) Drilling mud pits shall be utilized as instructed by the supervisor and shall be in compliance with all of the following minimum requirements:

(a) Solid salt cuttings shall not be released to inground drilling mud pits. Solid salt cuttings obtained while drilling below the base of the Detroit River Anhydrite to the top of the Amherstburg formation and while drilling through the formations in the Salina Group shall be collected in a container at the shale shaker and either diverted to a device that will result in the dissolving of the solid salt cuttings and the proper disposal of the resultant brine pursuant to R 324.703 or removed from the drilling site to a licensed disposal facility.

(b) Twenty-four months after the effective date of these rules, only the following may be placed in a lined pit:

(i) Water-based drilling muds generated or utilized while drilling above the base of the Detroit River Anhydrite.

(ii) Drilling fluids generated or utilized while drilling above the base of the Detroit River Anhydrite.

(iii) Cuttings obtained while drilling above the base of the Detroit River Anhydrite.

(iv) Cuttings and the solid fraction of drilling muds generated or utilized while drilling below the base of the Detroit River Anhydrite, other than drill cuttings prohibited by subdivision (a) of this subrule, if the cuttings and the solid fraction of drilling muds do not contain free liquids as determined by the United States environmental protection agency, paint filter liquids test, method 9095, September 1986 edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained without charge as of the time of adoption of these rules from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, or from the United States Environmental Protection Agency, Office of Research and Development, 26 West Martin Luther King Boulevard, Cincinnati, Ohio 45268. A permittee shall provide the necessary equipment at the site of the drilling rig to perform the paint filter liquids test.

(v) Water-based drilling muds and entrained cuttings, other than drill cuttings prohibited by subdivision (a) of this subrule, which are generated or utilized while drilling below the base of the Detroit River Anhydrite, which contain weighting materials or lost circulation materials, and which cannot reasonably be treated to eliminate free liquids as determined by the paint filter liquids test identified in paragraph (iv) of this subdivision, if approved by the supervisor or authorized representative of the supervisor.

(vi) Native soils.

(vii) Cementing materials.

(viii) Stiffening or solidification materials approved by the supervisor.

(c) During the initial 24 months after the effective date of these rules, only the following may be placed in a lined pit:

(i) Water-based drilling muds.

(ii) Drilling fluids.

(iii) Cuttings that are not prohibited by subdivision (a) of this subrule.

(iv) Native soils.

(v) Cementing materials.

(vi) Stiffening or solidification materials approved by the supervisor.

(d) Machine oil, refuse, completion and test fluids, liquid hydrocarbons, or other materials may not be placed in a lined pit.

(e) A permittee of a well shall, before encapsulation, test the fluids and cuttings remaining in the pit to determine the concentrations of benzene, ethylbenzene, toluene, and xylene and provide certification to the supervisor or authorized representative of the supervisor of the test results, except that a permittee is not required to test the fluids and cuttings remaining in the pit for benzene, ethylbenzene, toluene, and xylene if the well was drilled with water from a source approved by the supervisor and if, during the drilling operation, liquid hydrocarbons were not encountered.

(8) If a drilling mud pit is not closed immediately after reaching drilling completion, then a permittee of a well shall fence the perimeter of the drilling mud pit as soon as practical after drilling completion, but not later than 30 days after drilling completion, to prevent public access.

(9) A permittee of a well shall close a drilling mud pit as instructed by the supervisor and be in compliance with all of the following minimum requirements:

(a) All free liquids above the solids in the pit shall be removed to the maximum extent practical and disposed of in an approved disposal well or used in a manner approved by the supervisor.

(b) All drilling mud pits shall be stiffened before encapsulation, except as provided in subrule (4)(b) of this rule. Earthen materials shall be mixed with the pit contents to stiffen the pit contents sufficiently to provide physical stability and support for the pit cover. An alternative pit stiffening process approved by the supervisor may be used at the option of a permittee or if required by the supervisor.

(c) The drilling mud pit shall be carefully encapsulated and buried as soon as practical after drilling completion, but not more than 6 months after drilling completion.

(d) Apron edges of the liner shall be folded over the pit proper.

(e) The drilling mud pit shall be totally covered with a separate piece of material that meets or exceeds the specifications of a 20-mil virgin polyvinyl chloride cover as approved by the supervisor. The cover shall extend beyond the outer edges of the pit to cover and entirely encapsulate the pit and shall be sloped to provide surface drainage away from the pit.

(f) The drilling mud pit shall be buried not less than 4 feet below the original ground grade level.

History: 1996 AACS; 2015 AACS.

R 324.408 Surface casing.

Rule 408. (1) Surface casing shall be set a minimum of 100 feet below the base of the glacial drift into competent bedrock and 100 feet below all fresh water strata.

(2) Surface casing shall be cemented pursuant to R 324.411 and shall be circulated to the surface. If the cement falls back or fails to circulate to the surface, then

the open annulus space shall be sealed with cement or other equivalent materials approved by the supervisor or authorized representative of the supervisor before resuming drilling.

History: 1996 AACS.

R 324.409 Wells drilled with cable tools.

Rule 409. Wells drilled with cable tools shall have the innermost string of casing equipped with a high-pressure master gate valve, flow line assembly, control head with oil saver, bottle with hydraulic lubricator, or other combination of equipment approved by the supervisor or authorized representative of the supervisor. All of the equipment shall be anchored to the surface casing or another casing string before drilling into or through a stratum known to contain or likely to contain oil or gas. The wellhead

equipment and casing to be installed to keep a well under control shall be pressure-tested commensurate to formation pressures, shall be in good working order when installed, shall be maintained in good working order throughout its use on the well, and shall be capable of being equipped with a bottle or lubricator, or both, when this method of control is necessary. The annulus shall be sealed with a bradenhead or other approved equipment that has a connection and valve for monitoring.

History: 1996 AACS.

R 324.410 Casing other than surface casing.

Rule 410. (1) A person who drills a well or causes a well to be drilled pursuant to R 324.201 or rules that were in effect before the effective date of these rules shall case the well in a manner approved by the supervisor to prevent waste.

(2) In addition to the surface casing, the supervisor may require or order a string of casing to be run to seal off any of the following:

(a) A potentially productive oil or gas zone, or both.

(b) A lost circulation zone.

(c) A utilized natural brine or mineral zone.

(d) A storage field.

(e) A high-pressure zone.

(f) A reservoir undergoing secondary recovery.

(3) All casing, except for casing set pursuant to R 324.413, shall be of sufficient weight, grade, and condition to have a designed minimum internal yield of 1.2 times the greatest expected well bore pressure to be encountered.

(4) For the purpose of proper sealing of wells and the prevention of waste, the minimum hole size for a given casing shall be as shown in table 410:

Table 410
Minimum Hole Size

Casing size	Minimum hole size

outside diameter (O.D.)-inches	outside diameter - inches
Up to 7 O.D.	Casing O.D. + 1 1/2
More than 7 O.D.	Casing O.D. + 2
More than 10 3/4 O.D.	Casing O.D. + 3

An exception to the minimum hole size as shown in table 410 may be granted by the supervisor or authorized representative of the supervisor, upon a written request by the permittee or applicant, if it is determined that the proposal provides proper sealing of the well. The supervisor or authorized representative of the supervisor may require a larger hole size for the surface hole than the size shown in table 410 in order to prevent waste.

History: 1996 AACS.

R 324.411 Cementing.

Rule 411. Well casing shall be cemented by the pump and plug method or by a method approved by the supervisor and allowed to set undisturbed at static balance with the casing in tension, with surface pressure released, and with no backflow until the tail-in slurry reaches 500 psi compressive strength, but for not less than 12 hours; however, if backflow occurs, then the surface pressure shall not be released. The cement mixture shall be of a composition and volume approved by the supervisor or authorized representative of the supervisor. The casing shall be pressure-tested before the cement plugs are drilled or the casing perforated. The pressure at the top of the cement shall be equal to the expected operating pressure of the well; however, the test pressure shall not exceed the API specification for hydrostatic test pressure for new casing, API specification 5CT, specification for casing and tubing, July 2011, ninth edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $237.00 each, and from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, at a cost as of the time of adoption of these rules of $237.00 each.

History: 1996 AACS; 2015 AACS.

R 324.412 Stripping of casing.

Rule 412. (1) A permittee of a well shall not pull or strip a string of casing from a well, except under the following circumstances:

(a) When provision is made for the removal of casing in the casing and sealing program specified in the application for permission to drill and operate.

(b) When casing is pulled and reset in the same stratum to obtain a satisfactory casing seat.

(c) When a well is being plugged back or is being plugged to the surface under the change of well status provided in R 324.511 or the plugging instructions set forth in R 324.902.

(2) A permittee of a well shall seal the annular space left open and the stratum exposed by the approved pulling and stripping of casing in a manner approved by the supervisor or authorized representative of the supervisor.

History: 1996 AACS.

R 324.413 Drilling to strata beneath gas storage reservoirs.

Rule 413. Except when special orders have been adopted for specific reservoirs, areas, or practices, all of the following provisions about drilling to strata beneath gas storage reservoirs shall apply:

(a) The applicant shall send a copy of the entire drilling permit application and all revisions to the gas storage operator when the application and revisions are submitted to the supervisor. The gas storage operator shall have 10 business days to provide written comments to the supervisor.

(b) Drilling operations shall proceed through gas storage zones only when the gas storage reservoir pressure exerts a pressure gradient of not more than 0.50 psig per foot of true vertical depth to the top of the gas storage zone.

(c) Drilling rigs for wells drilled through gas storage reservoirs shall use rotary tools and shall have blowout prevention equipment pursuant to R 324.406. Complete operational checks of the well control appliances shall be made every 8 hours, with the well control system initially checked by pressure testing and checked again before drilling into the gas storage reservoir. The 8-hour checks shall be recorded in the daily driller's log.

(d) Surface casing and any other protective casing string required above the gas storage reservoir shall be new casing manufactured in compliance with the API specifications for casing and tubing as adopted by reference in R 324.411, the properties and design of which have been approved by the supervisor or authorized representative of the supervisor. Surface casing and any other protective casing string shall be designed to withstand the required test pressures as set forth in R 324.410(3). Surface casing shall be set pursuant to R 324.408. Surface casing shall be cemented to the surface and not disturbed for a period of 18 hours after completion of cementing. Cement shall attain a minimum compressive strength of 500 psi before disturbing the casing or resuming drilling. Surface casing, other protective casing strings, and blowout preventers shall be tested pursuant to R 324.406(4) before drilling out the cement, unless otherwise specified by the supervisor or authorized representative of the supervisor.

(e) Drilling fluid shall be circulated and conditioned at a point not less than 100 feet above the gas storage reservoir and shall be maintained with the following characteristics until the gas storage reservoir is cased off:

(i) Drilling fluid density shall be sufficient to provide a hydrostatic pressure of not less than 100 psig above the anticipated bottom hole pressure of the gas storage reservoir.

(ii) When drilling through the storage reservoir, the drilling fluid shall have a maximum fluid loss of 15 cubic centimeters or less as specified by the API standard procedure for testing drilling fluids, API RP 13B-1, entitled "Recommended Practice for Field Testing Water-Based Drilling Fluids," March, 2009, fourth edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $165.00 each, and from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, at a cost as of the time of adoption of these rules of $165.00 each.

(f) Hole size shall be large enough to allow the running of a separate intermediate casing, which shall be set through each gas storage reservoir. The casing shall be new and conform to the API specification and performance properties for casing, tubing, and drill pipe, API BULL 5C3, entitled "Bulletin on Formulas and Calculations for Casing, Tubing, Drill Pipe, and Line Pipe Properties, October 1, 1994," sixth edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $206.00 each, and from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, at a cost as of the time of adoption of these rules of $206.00 each. The gas storage operator shall be allowed to review the intermediate casing design and cementing program before implementation. Intermediate casing shall be set in competent stratum approximately 100 feet below the base of the gas storage reservoir or set as required by the supervisor or authorized representative of the supervisor. Intermediate casing shall be designed for the maximum gas storage reservoir operating pressure using a minimum collapse design factor of 1.125, a minimum burst design factor of 1.25, and a minimum tension design safety factor of 1.6. The minimum hole size for a given size casing shall be pursuant to R 324.410(4). The hole shall be properly conditioned before running casing by circulating the drilling fluid at a rate equal to the drilling circulating rate and by utilizing a circulating time equivalent of not less than twice the hole displacement. Casing shall be equipped with a sufficient number of centralizers and scratchers to ensure good cement distribution and shall include centralizers above and below the gas storage reservoir. All centralizers shall conform to the API for casing centralizers, API specification 10D, entitled "Specification for Bow-Spring Casing Centralizers," March 6, 2002, sixth edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $89.00 each, and from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, at a cost as of the time of adoption of these rules of $89.00 each. Casing shall include float equipment that will prevent movement after the cementing operation is completed. If conditions allow, casing shall be rotated or reciprocated slowly during cementing. The mill varnish shall be removed from the casing

shoe to a point 100 feet above the storage reservoir. An acceptable spacer that is at least as dense as the drilling fluid shall precede the cement to aid in removing the drilling fluid. Cement mix water shall be tested before the cementing operation to ensure compatibility with the cement. The casing shall be cemented using a sufficient cement volume to circulate cement to the surface. Multistage cementing operations and external casing packers may be used only with the approval of the supervisor or authorized representative of the supervisor. Cemented casing shall not be disturbed for a period of 18 hours. Cement shall also attain a minimum compressive strength of 500 psi based on cement tables before disturbing the casing or resuming drilling. Absent backflow, the internal casing pressure shall be relieved after the cementing operation. Intermediate casing and the blowout preventers shall be tested to a pressure of not less than 1,500 psig at the surface or as otherwise specified by the supervisor or authorized representative of the supervisor, and the pressure shall be held for not less than 20 minutes before drilling out the cement.

(g) When additional intermediate casing is run inside the innermost storage zone casing, below the base of the Detroit river group, the intermediate casing string and cementing shall be pursuant to these rules and the orders and instructions issued by the supervisor.

(h) A centralized cement bond evaluation log or equivalent test approved by the supervisor shall be performed on the storage zone casing before running subsequent casing or plugging the hole, but not sooner than 48 hours after cementing the storage zone intermediate casing. A description of problems occurring while running or cementing casing shall be recorded in the daily driller's log. If unsatisfactory conditions are indicated, including unsatisfactory cement bonding, gas to the surface in the cellar area, or gas pressure on the surface or intermediate casing string annulus, and additional testing does not provide sufficient proof the unsatisfactory condition does not exist, then the permittee shall initiate remedial action before additional casing is installed.

(i) Wellhead equipment and assemblies shall conform to the API specification for wellhead equipment, and shall include slip and seal assemblies for all casings, unless an exception is approved by the supervisor or authorized representative of the supervisor. The API specification for wellhead equipment is specification 6A, entitled “Specification for Wellhead and Christmas Tree Equipment,” October, 2010, twentieth edition, which is adopted by reference in these rules. Copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $260.00 each, and from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, at a cost as of the time of adoption of these rules of $260.00 each. The wellhead shall be assembled to allow the monitoring of the pressure of each annulus at the surface.

(j) The permittee shall notify the gas storage operator before moving personnel or equipment, or both, onto the well location to ensure all of the following:

(i) That the proposed well location does not endanger gas storage facilities or storage operations.

(ii) That the movement of drilling rigs, related trucks, and equipment does not endanger gas storage facilities or storage operations.

(iii) That the gas storage operator is allowed to witness drilling operations that impact the gas storage reservoir.

History: 1996 AACS; 2015 AACS.

R 324.414 Requests for exceptions to R 324.406 through R 324.413.

Rule 414. If a permittee of a well demonstrates alternative methods that are in compliance with the requirements of these rules, then the request for an exception to the provisions of R 324.406 through R 324.413 and the rationale for the alternate methods shall be included in the application for permission to drill or shall be submitted in writing to the supervisor.

History: 1996 AACS.

R 324.415 Elevations; well depth measurements.

Rule 415. (1) Drilling reference elevations of the kelly bushing or rig floor and a described point on the production casing shall be measured, recorded, and filed pursuant to R 324.418.

(2) The depth of the top of key geologic strata shall be accurately determined and shall be entered in the drilling log book and become a part of the record and log of the well. Additional requirements for directional drilled wells are contained in R 324.421.

History: 1996 AACS.

R 324.416 Well records; service company records; confidentiality.

Rule 416. (1) A person who drills, deepens, changes well status, or completes a well under R 324.201, R 324.420, R 324.511, or rules that were in effect before the effective date of these rules shall keep and preserve at the well, during drilling, deepening, changes in well status, or completion operations, accurate records recording all geologic strata penetrated, casing and cement used, and other information as may be required by the supervisor in connection with the drilling of the well.

(2) When requested by the supervisor or authorized representative of the supervisor, a permittee of a well shall file a copy of service company records, including records of all of the following:

(a) Mudding, cementing, and squeeze operations.

(b) Acidizing.

(c) Perforating.

(d) Fracturing.

(e) Shooting.

(f) Temperature surveys.

(g) Bond logs.

(h) Caliper surveys.

(i) Wireline borehole and strata evaluation logs.

The supervisor may request the records directly from the service company.

(3) A permittee of a well shall make all records and information available to the supervisor or authorized representative of the supervisor at all times. A permittee shall protect the records from damage or destruction due to a preventable cause. All well data and samples provided to the supervisor or authorized representative of the supervisor as required by these rules shall be held confidential commencing with the receipt of a written request of the permittee and shall remain confidential for 90 days after drilling completion. Information on volumes, concentrations, and times of releases, spills, or leaks of gas, brine, crude oil, oil or gas field waste, or products and chemicals used in association with oil and gas exploration, production, disposal, or development is not subject to confidentiality.

History: 1996 AACS; 2001 AACS.

R 324.417 Samples of drill cuttings and cores.

Rule 417. (1) A person who drills a well pursuant to R 324.201 or rules that were in effect before the effective date of these rules shall take and preserve, for the duration of the drilling, properly identified samples of the drill cuttings taken from the base of the drift to the total depth.

(2) A permittee of a well shall take and preserve drift samples when specifically requested by the supervisor or authorized representative of the supervisor. The samples shall be available to the supervisor upon request.

(3) When requested before the commencement of drilling, a permittee of a well shall deliver 1 complete set of drill cutting samples, washed and dried, to the supervisor within 90 days after drilling completion. Samples not requested may be disposed of in a manner approved by the supervisor upon drilling completion.

(4) When a permittee of a well obtains whole cores or core samples during the drilling of a well, the permittee shall provide the supervisor with a minimum of 90 days' notification of his or her intention to dispose of or destroy the whole cores or core samples. When requested by the supervisor, pursuant to the notification, the permittee shall deliver the whole cores or core samples to the supervisor within 90 days of the request.

History: 1996 AACS.

R 324.418 Filing of well records.

Rule 418. A permittee of a well who drills a well shall file all of the following records with the supervisor:

(a) Within 60 days after drilling completion, a complete written geologic description log or record of the well, certified by the permittee, on forms prescribed by the supervisor, including all of the following information:

(i) Elevations pursuant to R 324.415.

(ii) Depth to, and thickness of, water-bearing sands and gravels in the glacial drift as determined by a geologist, including fill-up and volumes of the water, if available.

(iii) The measured and true vertical depth to geologic strata penetrated, and accurate and complete lithologic descriptions, including color, hardness, and the character of the rock as determined by a geologist.

(iv) A record of all shows of oil or gas, or both, encountered.

(v) A record of all lost circulation zones encountered.

(vi) A record of all hole sizes, casings, and liners used, including the size, weight, grade, amount, and depth set for each casing string.

(vii) The amount of cement used and the calculated elevation of the top of the cement, unless the supervisor or authorized representative of the supervisor requests the elevation to be measured.

(viii) Data on all drill stem tests. The minimum education and experience requirements for a geologist to determine the information required in this subrule are graduation from a university or college that has an accredited 4-year curriculum in a geological science, receipt of a 4-year degree in a geological science, and 2 years of practical experience providing geological services, including consultation, investigation, evaluation, planning, or responsible supervision of geological activities requiring the application of geologic principles and techniques.

(b) Within 60 days after well completion operations, data on all perforating, acidizing, fracturing, shooting, and testing, except that information on chemical additives used in a high volume hydraulic fracturing operation shall be submitted as required under R 324.1406.

(c) Within 60 days of plugging the well, all of the following information:

(i) Accurate and complete descriptions of cores.

(ii) Data on all bridge plugs set, make and type of plug, depth set, whether left in place or removed, and details of plug-back operations below the bridge plug.

(iii) The amount of casing stripped from the well.

History: 1996 AACS; 2015 AACS.

R 324.419 Borehole and strata evaluation logging.

Rule 419. (1) A permittee of a well shall file a copy of all borehole and geologic strata evaluation logs or other logs with the supervisor within 30 days after conducting the logging run.

(2) Upon the request of the supervisor or authorized representative of the supervisor, a logging service company shall provide a listing of all borehole and geologic strata evaluation logs or other logs run.

History: 1996 AACS.

R 324.420 Continuation of drilling; deepening operations.

Rule 420. (1) A permittee of a well who desires to continue the drilling of a well below the permitted depth, but within the permitted stratigraphic or producing horizon where drilling completion has occurred, shall file an application for change of well status pursuant to R 324.511.

(2) A permittee of a well who desires to deepen a well below the permitted stratigraphic or producing horizon where well completion has occurred shall file an application for a deepening permit pursuant to R 324.206(4).

(3) A permittee of a well shall save samples of the drill cuttings and cores during the continuation of drilling or deepening operations pursuant to R 324.417.

(4) A permittee of a well shall file records of the continuation of drilling or deepening operations with the supervisor pursuant to R 324.418, R 324.419, and R 324.511.

History: 1996 AACS.

R 324.421 Survey of directionally drilled well.

Rule 421. A permittee of a well shall conduct a directional well survey on each directionally drilled well, with actual survey points taken at a maximum of 100-foot intervals from the point of deviation to total depth and including the end point of the borehole or at an interval as approved by the supervisor or authorized representative of the supervisor. However, for a well that is to be plugged and abandoned immediately upon drilling completion, the supervisor shall approve survey points at more than 100-foot intervals, but not more than 500-foot intervals. All information obtained during and after the survey shall be available to the supervisor or authorized representative of the supervisor. A permittee shall file a certified copy of the survey with the supervisor within 30 days after drilling completion. A well shall not be produced until the survey has been filed with the supervisor.

History: 1996 AACS.

R 324.422 Sealing of cellars and rat and mouse holes.

Rule 422. (1) A permittee of a well shall seal and set into the earth rat and mouse hole casings and cellars in a manner to prevent the migration of the drilling fluid and other foreign fluids into the groundwater.

(2) Immediately after drilling completion, a permittee of a well shall fill rat and mouse holes on all rotary-drilled wells solidly from bottom to top with cement or other suitable material approved by the supervisor.

History: 1996 AACS.

PART 5. COMPLETION AND OPERATION

R 324.501 Responsibility for oil and gas operations.

Rule 501. A permittee of a well is responsible for the oil and gas operations of his or her well.

History: 1996 AACS; 2002 AACS.

R 324.502 Oil, brine, or associated oil or gas field waste; storage.

Rule 502. A permittee of a well shall not store or retain oil, brine, or associated oil or gas field waste in earthen reservoirs or open receptacles.

History: 1996 AACS.

R 324.503 Well completion operations.

Rule 503. (1) A permittee of a well shall use proper well control measures to avoid an uncontrolled flowing of the well. All fluids from well completion operations, including flowback fluid, acid, load water, chemicals, and associated hydrocarbons, shall be produced or swabbed back to approved containers. A permittee of a well shall not use earthen pits or reservoirs to contain fluids produced from the well.

(2) A permittee shall notify the supervisor or authorized representative of the supervisor when a well completion operation starts.

History: 1996 AACS; 2015 AACS.

R 324.504 Well sites and surface facilities.

Rule 504. (1) A person shall use every reasonable precaution to stop and prevent waste. All wells, surface facilities, gathering lines, and flow lines shall be constructed and operated so that the materials contained in the facilities do not cause waste. An oil and gas operation shall not be commenced or continued at a location where it is likely that a substance may escape in a quantity sufficient to pollute the air, soil, surface waters, or groundwaters or to cause unnecessary endangerment of public health, safety,

or welfare until the permittee has complied with the methods and means to prevent pollution or eliminate the unnecessary endangerment of public health, safety, or welfare as specified by the supervisor.

(2) The surface facilities shall be located not less than 300 feet from all of the following:

(a) Existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption.

(b) Existing structures used for public or private occupancy.

(c) Existing areas maintained for public recreation.

(d) The edge of the traveled portion of an existing interstate, United States, or state highway. Pump jacks are exempt from this requirement.

(3) Surface facilities may be located closer than 300 feet from existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption and existing structures used for public or private occupancy under either of the following conditions:

(a) Upon presentation to the supervisor of a written consent signed by the owner or owners of all existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption and existing structures used for public or private occupancy.

(b) After a hearing under part 12 of these rules, the supervisor determines that the surface facility location will prevent waste, protect environmental values, and not compromise public safety.

(4) A permittee of a well shall not begin the installation of a surface facility or flow line without approval of the supervisor or authorized representative of the supervisor. A permittee shall make a written request for approval to construct and operate or to substantially reconstruct and operate a surface facility or flow line and shall file the request with the supervisor. The request may be filed with the application for a permit to drill and operate a well. The request shall have a detailed description and plan of the proposed facility, which shall include all of the following information:

(a) An environmental impact assessment if the surface facility is located more than 300 feet from the well or wells it serves.

(b) The location of the proposed surface facility or flow line.

(c) Identification of the well or wells to be connected to the surface facility or flow line.

(d) Reasonable and necessary measures to protect environmental values associated with existing adjacent land uses, including berming, screening, and access road location.

(e) Information relative to the approximate distances and directions from the surface facility or flow line to special hazards or conditions identified in R 324.201(2)(b)(iv).

(5) Upon receipt of a written request for approval to construct and operate or to substantially reconstruct and operate a surface facility or flow line under subrule (4) of this rule, other than a request to construct and operate a surface facility or flow line made as part of an application for permit to drill and operate a well, the supervisor or authorized representative of the supervisor shall have up to 30 days to review the request to determine if the request is accurate and complete. If the request is determined to be inaccurate or incomplete, the supervisor or authorized representative of the supervisor shall provide, within the 30?day period, to the person making the request, a notice that the request is inaccurate or incomplete and what changes or additional information shall be submitted. Upon receipt of the requested information, the supervisor or authorized representative of the supervisor shall have up to an additional 15 days to review the information to determine if the request is accurate and complete. Upon completion of the review process, the supervisor or authorized representative of the supervisor shall approve or deny the request within 10 business days. A request shall be approved if the supervisor determines that construction and operation of the proposed surface facility or flow line will prevent waste, protect environmental values, and not compromise public safety. Upon approval by the supervisor or authorized representative of the supervisor, a request made under this rule shall become part of, and subject to, the provisions of the permit to drill and operate the well or wells served by the surface facility.

(6) A person or permittee of a well shall not install a gathering line, carrying gas with more than 300 ppm hydrogen sulfide or a flow line or facility piping carrying gas from a class I H2S well and that is subject to a maximum working pressure of more than 125 psig that does not meet the construction requirements in R 324.1130.

(7) Surface facilities constructed after November 15, 1989, shall have secondary containment under R 324.1002.

(8) If discharges to the air, surface waters, or groundwater of the state are likely to occur at a surface facility, then a permittee shall apply for and obtain all necessary state and federal discharge permits before operating the surface facility.

History: 1996 AACS; 2001 AACS; 2002 AACS.

R 324.505 Pump jacks in residential areas.

Rule 505. In areas zoned residential before January 8, 1993, if pumps or pump jacks are installed after the effective date of these rules, then a permittee of a well shall comply with the following conditions:

(a) Electrically driven pumps shall be utilized or, if judged impractical by the supervisor, pumps may be driven by other power sources that have hospital-type mufflers or the equivalent.

(b) Pump jacks within 600 feet of structures used for public or private occupancy shall be fenced to prevent public access.

History: 1996 AACS.

R 324.506 Flare stacks and surface facilities in residential areas.

Rule 506. (1) In areas zoned residential before January 8, 1993, a permittee of an oil or gas well, or both, which contains 300 ppm or more of hydrogen sulfide and which reaches drilling completion after March 1, 1987, shall not locate surface facilities and associated flare stacks within a residentially zoned area, unless either of the following provisions is satisfied:

(a) The supervisor receives written notice from the local government that has zoning jurisdiction that the local government does not object to the location of the facility within the residentially zoned area.

(b) The applicant or permittee is granted a variance from the supervisor pursuant to a hearing before the supervisor. The petitioner shall notify the local governmental body of the hearing and has the burden of demonstrating to the supervisor that the planned surface facility and associated flare stacks would have minimum impacts upon existing or proposed structures used for public or private occupancy.

(2) The supervisor may grant an exception to permit flaring in a residentially zoned area for testing the production characteristics of a well for a period of not more than 15 days, unless a longer period is authorized by the supervisor. The permittee shall submit a written application to the supervisor for the exception detailing the time period of, and the equipment to be used for, the testing.

(3) If the oil or gas well, or both, reached drilling completion between March 1, 1987, and January 8, 1993, and the area was not zoned residential at the time the well reached drilling completion, the well is not subject to this rule.

History: 1996 AACS.

R 324.507 Tubing.

Rule 507. A permittee of a well shall tube a producible oil and gas well.A permittee of a well shall test and produce all oil through the tubing.Injection wells utilized for gas storage are exempt from this rule.

History: 1996 AACS.

R 324.508 Multiple zone completions.

Rule 508. The supervisor or authorized representative of the supervisor may allow multiple zone completions upon written application to, and approval by, the supervisor.

History: 1996 AACS.

R 324.509 Commingling of oil and gas.

Rule 509. The supervisor or authorized representative of the supervisor may allow commingling in the well bore of oil and gas from 2 or more pools upon written application to, and approval by, the supervisor.

History: 1996 AACS.

R 324.510 Central production facility.

Rule 510. (1) A permittee of a well shall not begin the operation of a central production facility without the approval of the supervisor or authorized representative of the supervisor. A permittee of a well shall make a written request for approval to operate a central production facility and shall file the request with the supervisor. The supervisor or authorized representative of the supervisor shall approve or deny the request within 30 days of receipt. The request shall have a detailed description and plan of the proposed facility, which shall include all of the following information:

(a) The location of the proposed central production facility.

(b) Identification of the wells or production units to be connected to the central production facility.

(c) Identification of the fluid streams that will be commingled.

(d) A schematic of the flow schemes, including the location of all of the following:

(i) Individual gas, oil, condensate, and water meters.

(ii) Facility and sales gas, oil, condensate, and water meters.

(iii) Fuel use and artificial lift meters.

(iv) On-site surface equipment.

(e) The method proposed for measurement or allocation of fluid volumes, if individual and facility meters are not used. The method proposed for measurement may include allocation of production to each well using a molal balance scheme.

(f) Identification of the type and model of the gas, oil, condensate, and water meters that are proposed.

(g) Quality assurance procedures, including calibration and proofing, that will be implemented to maintain the accuracy of the meters.

(h) The procedure or method proposed for allocation of each commingled fluid stream.

(i) If production from production units or unitized areas is included in the central production facility, a copy of the pooling or communitization agreement filed pursuant to R 324.303(2) or the unitization agreement developed pursuant to sections 61701 to 61738 of the act.

(2) A permittee of a well shall obtain the approval of the supervisor or authorized representative of the supervisor before implementing a subsequent addition, alteration, or change to the central production facility that affects flow measurement or reporting methods.

(3) A permittee of a well shall submit monthly reports of meter readings, metered production, and allocated production on forms approved by the supervisor.

History: 1996 AACS.

R 324.511 Change of well status.

Rule 511. (1) A permittee of a well who desires to change the status of a well by an oil and gas operation, including temporary abandonment or high volume hydraulic fracturing, except as allowed by R 324.704 and additional acid or other stimulation treatment, shall file an application for change of well status with the supervisor. The application shall set forth, in detail, the kind of oil and gas operation to be accomplished and the plan for protecting all oil, gas, brine, or fresh water strata the well has penetrated. In addition, an application to change the status of a well by utilizing high volume hydraulic fracturing shall include the information specified in rule 201(2)(c) of these rules. A permittee shall not begin the oil and gas operation until he or she has received approval from the supervisor or authorized representative of the supervisor and provided notification to the supervisor or authorized representative of the supervisor of the date the oil and gas operation will commence.

(2) A permittee of a well who changes the status of a well shall file, with the supervisor, within 60 days, a complete change of well status record on forms prescribed by the supervisor, except that a record shall not be filed when the change of well status operation is for temporary abandonment purposes.

History: 1996 AACS; 2002 AACS; 2015 AACS.

PART 6. PRODUCTION AND PRORATION

R 324.601 Proration of oil and gas wells and fields.

Rule 601. (1) The supervisor may prorate production from wells or fields, or both, to conserve reservoir energy, to maximize oil and gas recovery, to ensure that the owners shall be afforded the opportunity to produce their just and equitable share of the oil and gas from the reservoir, and to prevent waste by setting allowable

production rates. The prorated allowables shall be established by order of the supervisor after a hearing pursuant to part 12 of these rules.

(2) The proration order shall specify the maximum amount of oil or gas, or both, that may be produced in a 24-hour day.

History: 1996 AACS.

R 324.602 Tolerance from regularly calculated production.

Rule 602. (1) A permittee of a well shall be allowed to make up underproduction of oil and gas if the underproduction is not more than 3 days' allowable production from each well for a calendar month. The underproduction of oil and gas from each well shall be adjusted by the permittee during the next calendar month.

(2) If in a reservoir under multiple ownership an emergency condition arises which is beyond the control of the permittee of the well and which prevents the permittee from producing his or her regularly scheduled allowable production or prevents the purchaser from running his or her regularly scheduled amounts of oil or gas during a calendar month and the underproduction is more than 3 days' allowable production, then the permittee may apply in writing to the supervisor for permission to make up the underages. The supervisor or authorized representative of the supervisor may grant the request if reservoir waste does not occur.

(3) In a well that has produced over its daily oil allowable by more than 3 days or its daily gas allowable by more than 30 days, the permittee of the well shall cease producing the well or further limit the oil or gas production as approved by the supervisor or authorized representative of the supervisor until the overage is made up.

History: 1996 AACS.

R 324.603 Transfer of allowables between wells prohibited.

Rule 603. A permittee of a well shall not produce oil or gas from a well above the allowables pursuant to R 324.602 to make up for the failure of another well or wells to produce a full allowable or allowables.

History: 1996 AACS.

R 324.604 Well hookups to tanks or separators, or both, for prorated wells.

Rule 604. A permittee of a well shall ensure that well is hooked up or connected to separators or stock tanks, or both, so that the well's oil, gas, and brine production entrained in the oil or gas may be segregated from all other wells and so that individual measurements of daily oil, gas, and brine production of each well may be made. Exceptions to this rule may be granted if the supervisor or authorized representative of the supervisor approves an alternative measurement and allocation method pursuant to R 324.510.

History: 1996 AACS.

R 324.605 Capacity tests for prorated wells.

Rule 605. (1) The supervisor or authorized representative of the supervisor may require capacity tests, including test requirements and reporting on wells subject to proration. The supervisor may amend or abrogate a previously adopted test requirement, or set up new test requirements, when necessary to adapt to changing field conditions.

(2) A wide open capacity test of a well shall not be made if the test will create waste or result in the coning of gas or water. All gauges and tests shall be made by methods and at times that will result in a determination of the true productive capacity of the wells under normal operating conditions. Reports submitted to the supervisor or authorized representative of the supervisor shall be certified by the permittee or an authorized representative of the permittee.

History: 1996 AACS.

R 324.606 Production tests for newly completed or change of status wells subject to proration.

Rule 606. A permittee of a well shall conduct production tests, not to exceed the prorated allowable, on a newly completed well. On a previously tested well, when a change of well status or the stimulation of the well may have resulted in changes in producing capacity, the tests shall be commenced within 10 days after well completion, change of well status, or production stimulation treatments. A permittee shall report the results of all production tests to the supervisor or authorized representative of the supervisor within 30 days after completion of the tests and shall certify the results on forms prescribed by the supervisor.

History: 1996 AACS.

R 324.607 Special capacity tests.

Rule 607. (1) The supervisor or authorized representative of the supervisor may, at any time, require the permittee of a well, either with or without previous notice, to perform a special producing capacity test or supply production data for a well or wells. The supervisor or authorized representative of the supervisor may witness, direct, or make measurements during the test, subject to proper safety supervision by the permittee.

(2) A producer who wishes to gather data to determine the maximum efficiency rate of a well may conduct tests as approved by the supervisor or authorized representative of the supervisor.

History: 1996 AACS.

R 324.608 Responsibility for regulating production.

Rule 608. A permittee of a well shall be responsible for controlling production from wells so that an individual well does not produce more oil or gas than allowed.

History: 1996 AACS.

R 324.609 Reservoir evaluation tests.

Rule 609. The supervisor or authorized representative of the supervisor may require that subsurface pressures, gas-oil ratios, and other tests on wells be conducted and submitted at least once per year so that reservoir data may be maintained.

History: 1996 AACS.

R 324.610 Reports of oil and gas produced, purchased, or transported.

Rule 610. A person who is producing, purchasing, or transporting oil or gas in a field shall be required by the supervisor or authorized representative of the supervisor to report, within 45 days after the end of the month of production, the amount of oil or gas, or both, produced, purchased, or transported during the calendar month of production, unless an extension of time or an exemption from monthly reporting is granted by the supervisor. The reports shall be certified by the person who is producing, purchasing, or transporting oil or gas in a field on forms prescribed by, or acceptable to, the supervisor or authorized representative of the supervisor.

History: 1996 AACS.

R 324.611 Petition for change in field allowables.

Rule 611. A permittee of a well who believes proration allowables have ceased to prevent waste may petition the supervisor for a change in field allowables. The petition shall include all of the information specified in part 12 of these rules. The supervisor shall schedule a meeting to consider the petition. The permittee shall furnish a copy of the notice of the meeting to all owners of record, operators, lessees, and lessors of the oil and gas mineral interests underlying the lands directly affected by the proposed action. If the proposed action is contested by an interested party, then a hearing is required pursuant to part 12 of these rules. After a review and evaluation of the data presented, either administratively or by hearing, the supervisor shall issue an order of determination.

History: 1996 AACS.

R 324.612 Secondary oil recovery projects; hearings; records.

Rule 612. (1) A person desiring to inject water, gas, or other fluid into a producing formation or use other technology for the purpose of increasing the ultimate recovery of

hydrocarbons from a reservoir shall file a petition for hearing pursuant to part 12 of these rules.

(2) The operator of a secondary recovery project shall keep accurate records of all oil, gas, and brine produced, volumes of fluids injected, and injection pressures. The operator shall file reports of the data and other data as may be required with the supervisor at regular intervals, as specified.

History: 1996 AACS.

R 324.613 Production from directionally drilled wells.

Rule 613. (1) An allowable production rate shall not be assigned or production permitted from a directionally drilled well until a certified well survey has been furnished by the permittee of a well to the supervisor. A directionally drilled well with a producing interval that is contrary to the established boundary setback of the drilling unit or pooled or communitized area shall be limited or restricted in the same manner as provided for regularly drilled wells located contrary to the boundary setback of the drilling unit or pooled or communitized area.

(2) The production from directionally drilled wells that can be produced contrary to the established boundary setback of the drilling unit or pooled or communitized area shall be limited or restricted in the same manner pursuant to R 324.301(4)(a) for regularly drilled wells located contrary to the applicable boundary setback of the drilling unit or pooled or communitized area. A permittee of a well shall not conduct production testing from a directionally drilled well until a certified well survey has been furnished to, and approved by, the supervisor or authorized representative of the supervisor pursuant to R 324.421. Injection wells utilized for gas storage are exempt from this subrule.

History: 1996 AACS; 2015 AACS.

PART 7. DISPOSAL OF OIL OR GAS FIELD WASTE, OR BOTH

R 324.701 Prevention of pollution, contamination, or damage.

Rule 701. The storage, transportation, or disposal of brine, crude oil, or oil or gas field waste that results in, or that the supervisor determines may result in, pollution is prohibited. A permittee of a well shall ensure that wastes are stored, transported, and disposed of in a manner approved by the supervisor and consistent with all applicable state and federal laws and regulations.

History: 1996 AACS.

R 324.702 Pit disposal prohibited; exception.

Rule 702. Except as provided in R 324.407(2), a permittee of a well shall not dispose of oil or gas field waste, or both, in earthen pits.

History: 1996 AACS.

R 324.703 Disposal of oil or gas field fluid wastes, or both.

Rule 703. A permittee of a well shall inject oil or gas field fluid wastes, or both, into an approved underground formation through an approved Class II well in a manner that prevents waste. The injection interval shall be isolated from underground sources of drinking water by a confining interval.

History: 1996 AACS; 2018 AACS.

R 324.704 Use of annular space for disposal prohibited; temporary exception.

Rule 704. A permittee of any well, including Class II wells, shall not dispose of fluid wastes in the annular space between strings of casing. The supervisor may grant a temporary exception to the prohibition if the supervisor determines that annular disposal will not damage underground sources of drinking water, oil, gas, or other minerals.

History: 1996 AACS; 2018 AACS.

R 324.705 Disposition of brine.

Rule 705. (1) A permittee of a well is responsible for the proper disposal of all brines produced in association with oil or gas production, or both, or brines accumulated in drilling mud pits or tanks and shall ensure that waste, as defined in section 61501(q) of the act, will not occur. A permittee may convey or transfer brines for other purposes if the brines are in compliance with the conditions provided in subrule (3) of this rule. A permittee shall be required to maintain records on the disposition of all brines pursuant to subrule (4) of this rule, and a permittee shall not have continuing liability relative to the transport or application of the brines after the brines are properly conveyed or transferred.

(2) Upon the effective date of these rules, a permittee of a well shall not use brines produced in association with drilling for oil and gas, or both, and accumulated in drilling mud pits for ice or dust control purposes.

(3) Twelve months after the effective date of these rules, a permittee shall dispose of all brines as provided in R 324.703 or shall use the brines in a manner approved by the supervisor; however, some brines may be conveyed or transferred and used for ice and dust control and road stabilization if all of the following conditions are satisfied:

(a) Brines shall not be used for ice and dust control and road stabilization if the brines are obtained from wells containing more than 20 ppm hydrogen sulfide in the gas stream, unless it can be shown that there is less than a 500-ppm-hydrogen sulfide concentration present in the brine.

(b) The brines shall contain a 20,000-milligrams-per-liter or more concentration of calcium.

(c) The brines shall contain less than a 1,000-micrograms-per-liter concentration of each of the following aromatic hydrocarbons:

(i) Benzene.

(ii) Ethylbenzene.

(iii) Toluene.

(iv) Xylene.

(d) Only brines that have been approved by the supervisor or authorized representative of the supervisor may be exempt from the disposal requirements of R 324.703. For a permittee to obtain approval to exempt brine from the disposal requirements of R 324.703, all of the following conditions shall be satisfied:

(i) The brine shall be tested annually within 90 days of January 1 of each year by the person seeking authorization to utilize the brine for other purposes. The brine shall be tested using any of the following procedures:

(A) Method 200.7 ICP-AES, entitled "Method for Trace Element Analysis of Water and Wastes, Methods for Chemical Analysis of Water and Wastes," March 1983 edition.

(B) Method 6010A, entitled "Inductively Coupled Plasma, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 1984 edition 3.

(C) Method 602, entitled "Purgeable Aromatics, Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 C.F.R. part 136, appendix A, revised July 1990.

(D) Method 8020A, "Aromatic Volatile Organics by Gas Chromatography, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 1984 edition 3.

(E) Method 8240A, entitled "Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry: Packed Column Technique, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 1984 edition 3.

(F) Method 8260A, entitled "Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry: Capillary Column Technique," 1984 edition 3.

(G) Method 325.3, entitled "Chloride (Colorimetric, Automated Ferricyanide), Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 C.F.R. part 136, appendix A, revised July 1990.

(H) Method 4500-CLE, entitled "Chloride, Methods for the Determination of Organic Compounds in Drinking Water" and supplement I, December 1988 and July 1990 editions.

The testing methods are adopted by reference in these rules and copies are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained without charge from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, or from the United States Environmental Protection Agency, Office of Research and Development, 26 West Martin Luther King Boulevard, Cincinnati, Ohio 45268.

(ii) The sample of brine used for analysis shall be obtained from the point of loading of the storage tank where the brine is first separated from the production stream.

(iii) A chemical analysis of each brine source showing the concentrations of all of the following shall be submitted to the supervisor or authorized representative of the supervisor within 30 days of the completion of the analysis:

(A) Chloride.

(B) Hydrogen sulfide.

(C) Calcium.

(D) Benzene.

(E) Ethylbenzene.

(F) Toluene.

(G) Xylene.

(iv) The chemical analysis shall include all of the following information:

(A) The well name.

(B) Permit number.

(C) Permittee.

(D) Location of the individual well.

(E) If the brine is obtained from a tank battery or central production facility, the name, number, permittee, and location of the tank battery or central production facility.

(4) A permittee of a well shall maintain records for 2 years on the disposition of all brines produced in association with oil or gas production, or both. The records shall indicate dates, volumes, recipient, transporter, destination, and proof of delivery. If the person authorized to utilize the brine for other purposes receives the brine at an unattended loading site, then the person shall provide the permittee with a signed record describing the date, volume, time, destination, and proof of delivery. A permittee of a well shall make the records available for inspection by the supervisor or authorized representative of the supervisor at all times. A permittee of a well shall protect the records from damage or destruction due to preventable cause.

(5) A permittee of a well shall ensure that brine that is in compliance with the conditions listed in subrule (3) of this rule is also in compliance with all applicable state and federal laws and regulations.

History: 1996 AACS; 2015 AACS.

Editor's Note: An obvious error in R 324.705 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in *Annual Administrative Code Supplement*, 2015. The memorandum requesting the correction was published in *Michigan Register*, 2018 MR 10.

PART 8. INJECTION WELLS

R 324.801 Definitions.

Rule 801. As used in these rules:

(a) "Administrator" means the administrator of the USEPA.

(b) "Area of review" means that area within a fixed radius of 1320 feet around an injection well.

(c) "Class II Well" means a well that does either of the following:

(i) Injects fluids under any of the following conditions:

(A) That are brought to the surface in connection with oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(B) For enhanced recovery of oil or natural gas.

(C) For storage of hydrocarbons that are liquid at standard temperature and pressure.

(ii) Utilizes diesel fuel as a component of hydraulic fracturing fluid.

(d) "Class II well operator" means the person having secured a permit for any of the following:

(i) A new Class II well.

(ii) An existing Class II well.

(iii) A conversion of an existing well to a Class II well.

(iv) A rule authorized well in operation before the effective date of primacy.

(e) "Commercial disposal well" means a Class II well that is permitted to accept wastes other than those generated by the owner or operator of the well.

(f) "Confining interval" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection interval.

(g) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(h) "Date of primacy" means the effective date of the administrator's approval of the Michigan underground injection control program for Class II wells pursuant to section 1425 of the safe drinking water act of 1974, 42 USC 300h-4.

(i) "Diesel fuel(s)" means fluids that are associated with 5 specific Chemical Abstracts Services Registry Numbers (68334-30-5, 68476-34-6, 68476-30-2, 68476-31-3, and 8008-20-6).

(j)"Endangerment to an underground source of drinking water" means that an injection operation may result in the presence of any contaminant in an underground source of drinking water, that supplies or may reasonably be expected to supply any public water system, and the presence of that contaminant may result in violation of any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(k) "Enhanced Oil Recovery" or "Enhanced Recovery" means secondary recovery.

(l) "Existing Class II well" means a Class II well that has been approved, constructed, or converted before the date of primacy.

(m) "Injection casing" means the long string of casing set into, through, or just above the injection interval, in which the packer and tubing may be set.

(n) "Injection interval" means the geological formation or group of formations or part of a formation receiving fluids through an injection well. There must be a confining interval above the injection interval.

(o) "Karst" means a type of topography that is formed over limestone, dolomite, or gypsum by solution of the rock and is characterized by closed depressions or sinkholes, caves, and underground drainage.

(p) "Mechanical integrity" means a well condition that exists if there is no significant leakage in the well's casing, tubing, or packer and if there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(q) "New Class II well" means a Class II well that is constructed or converted under part 615 after date of primacy.

(r) "Oil or Gas Field Fluid Wastes" means liquid wastes resulting, obtained, or produced from the exploration, drilling, or production of oil or gas, or both.

(s) "Part 615" means part 615 of the act, MCL 324.61501 to 324.61527.

(t) "Rule authorized well" means a Class II well that was classified or treated**,** or both**,** by the USEPA as an authorized by rule well on or after January 1, 1984.

(u) "USEPA" means the United States Environmental Protection Agency.

(v) "Waste" as defined in section 61501(q)(i) to (iii) of the act, MCL 324.61501, includes endangerment to an underground source of drinking water.

History: 1996 AACS; 2015 AACS; 2018 AACS; 2019 AACS.

R 324.802 Application for permit to drill, convert, and operate injection well.

Rule 802. In addition to requirements in R 324.201, the following additional information shall be submitted with an application for a permit to drill and operate an injection well or to convert a previously drilled well to an injection well:

(a) Notification information including the following:

(i) The name and address of the permittee of each oil, gas, and injection well and permitted location or locations within 1,320 feet of the proposed injection well location.

(ii) The name and address of the last surface owner or owners of record within 1,320 feet of a proposed Class II well location as reasonably determined by the records of the register of deeds office or equalization records.

(b) Required plat pursuant to R 324.201, that also shows the following:

(i) The location and total depth of the proposed injection well.

(ii) Each oil, gas, injection, and abandoned well and permitted location or locations within 1,320 feet of the proposed injection well location, including dry holes and wells that have been plugged and abandoned.

(iii) The surface owner or owners of record of the land on which the proposed injection well is to be located.

(iv) Each permittee of a well or permitted well location within 1,320 feet of the proposed injection well.

(v) Fresh water, irrigation, and public water supply wells within 1,320 feet of the proposed injection well.

(c) If a well is proposed to be converted to an injection well, all requirements of R 324.201(1) and R 324.201(2) apply, and the applicant must submit a copy of the completion report, together with the written geologic description log or record filed pursuant to R 324.418(a) and borehole and stratum evaluation logs filed pursuant to R 324.419(1). Pursuant to R 324.204 any well to be converted for liquid hydrocarbon storage is a proposed Class II well and subject to this subdivision.

(d) Plugging records of all abandoned wells and casing, sealing, and completion records of all other wells within 1,320 feet of the proposed injection well location. An applicant shall also submit a plan reflecting the steps or modifications believed necessary to prevent proposed injected fluids from migrating into an underground source of drinking water through inadequately plugged, sealed, or completed wells.

(e) A schematic diagram of the proposed injection well that shows all of the following information:

(i) The total depth or plug-back depth of the proposed injection well.

(ii) The geological formation name or names, true vertical depth, thickness, and lithology of the injection interval, and the confining interval.

(iii) The geological formation name or names and the top and bottom depths of all underground sources of drinking water to be penetrated.

(iv) The depths of the top and bottom of the casing or casings and cement to be used in the proposed injection well.

(v) The size of the casing and tubing and the estimated depth of the packer if applicable.

(f) Information showing that injection of fluids into the proposed injection interval will not exceed the injection interval fracture pressure gradient and information showing that injection into the injection interval will not initiate new fractures or propagate existing fractures in the overlying confining interval.

(g) For Class II wells, proposed operating data, including all of the following:

(i) The maximum anticipated daily injection rate expressed as barrels per day or thousand cubic feet per day.

(ii) The types of fluids to be injected. Hydraulic fracturing utilizing diesel fuels in the hydraulic fracturing fluid is subject to Class II regulations. Notwithstanding the provisions of R 324.1406(2), the use of diesel fuels in a proposed hydraulic fracturing fluid is not protected from disclosure.

(iii) Maximum anticipated injection pressure, expressed as psig at the well head, and calculations used to derive that value.

(iv) A qualitative and quantitative analysis of a representative sample of fluids to be injected. A chemical analysis shall be prepared for each type of fluid to be injected showing specific conductance as an indication of the dissolved solids, specific gravity, and a determination of the concentration of calcium, sodium, magnesium, chloride, sulfate, sulfide, carbonate, total iron, barium, and bicarbonate. However, if the fluid to be injected is fresh water, then an analysis is not required.

(v) The geological name of the injection interval and the vertical distance separating the top of the injection interval from the base of the deepest underground source of drinking water.

(h) For a proposed injection well to dispose of oil or gas field waste, or both, into an interval that would likely constitute a producing oil or gas pool, a list of all offset operators and certification that the person making application for an injection well has notified all offset operators of the person's intention by certified mail. If within 21 days after the mailing date a substantive objection is filed with the supervisor by an offset operator, then the application shall not be granted without a hearing pursuant to part 12 of these rules. The supervisor may schedule a hearing to determine the need or desirability of granting permission for the proposed injection well.

(i) Identification and description of all faults, structural features, karst, mines, and lost circulation zones within the area of review that can influence fluid migration, well competency, or induced seismicity. The applicant shall include a plan for mitigating risks of identifiable features.

(j) A proposed plugging and abandonment plan and schematic.

(k) Information demonstrating that construction of the well will prevent the movement of fluid that causes endangerment to an underground source of drinking water.

History: 1996 AACS; 2018 AACS.

R 324.803 Class II well notification, public comment, and public hearing.

Rule 803. (1) Within 10 days after receipt of a Class II well permit application the supervisor shall mail notice to each surface owner of record and well permittee of each oil, gas, and injection well within 1,320 feet of the proposed injection well, to the township supervisor or municipal manager where the well is located, and shall post the notice on the department website concurrently with the weekly permit list publishing which is posted on the department website and available by email list server. All of the following information must be included on the notice:

(a) Date of notice.

(b) Applicant's name and address.

(c) Proposed well location, listing the county, township, range, section, and distance from nearest road intersections.

(d) Geological formation name and depth of injection interval.

(e) Maximum anticipated injection pressure, expressed as psig at the well head.

(f) Maximum anticipated daily injection rate expressed as barrels per day or thousand cubic feet per day.

(g) Information on how to submit comments on the application to the supervisor.

(h) The following statement "Any comments or objections on an application, or a request to obtain additional information about the application, must be received by the supervisor within 30 days after the date of notice set forth herein."

(i) If substantial compliance is achieved toward notification requirements, inadvertent mistakes in noticing will not be a bar to processing of the permit.

(2) The supervisor shall receive public comments for 30 days following the date of the notice and complete review of the application as follows:

(a) If no objections are received within the 30-day comment period, the supervisor or authorized representative of the supervisor shall consider that no objections exist and shall issue a permit within 10 days if it is determined that the application complies with the law.

(b) If a comment or an objection to the application is received, the Supervisor or authorized representative of the Supervisor shall, within 10 days after the end of the comment period, determine the validity of the comment or objection. If, in the opinion of the supervisor or authorized representative of the supervisor, it is determined the comment or objection is not relevant to the issues of waste, public health or safety, or is without substance, a permit shall be issued within 20 days after the end of the comment period if it is determined that the application complies with the law.

(c) If, within the 10 day period set forth in (2)(b), above, the supervisor or authorized representative of the supervisor considers the comment or objection to be relevant to the issues of waste, public health or safety, or is of substance, and the commenter has requested a public hearing, then the supervisor shall provide notice of the public hearing within 20 days after the end of the comment period and hold the public hearing within 30 days after giving notice of the public hearing. The public hearing will be held in the township or county of the proposed well, is for gathering public comment on a proposed permit, and is not an evidentiary hearing pursuant to R 324.1201 to R324.1205. The supervisor will provide a minimum of 20 days notice of the public hearing. Notice will be made by posting the hearing on the department calendar, the department website, and in one local newspaper.

(d) If the supervisor or authorized representative of the supervisor determines, after the hearing and upon consideration of comments and the application, that all of the following conditions have been met, the application for a Class II well shall be approved and a permit shall be issued within 30 days:

(i) The application complies with the requirements of these rules.

(ii) The method of injection proposed in the application complies with the law.

(iii) The proposed method of injection will not threaten public health or safety and will not create waste or endanger an underground source of drinking water.

(e) Concurrently with the issuance or denial of a Class II permit application, the supervisor or authorized representative of the supervisor shall post responses to the public comments on the department website.

(3) The provisions of this rule are effective only upon the date of primacy.

History: 1996 AACS; 2018 AACS.

R 324.804 Construction and operation of injection wells.

Rule 804. (1) Injection of fluid into an injection well shall be through a combination of casing, tubing, cement, and packer placement that isolates the injection interval and prevents the movement of fluids into or between underground sources of drinking water, including through vertical channels adjacent to the well bore, which has mechanical integrity. Injection wells utilized for gas storage are not required to install tubing and/or a packer. In addition to cementing requirements in this rule, well casing shall be cemented pursuant to R 324.408, R 324.411, and R 324.413. The supervisor or authorized representative of the supervisor shall review cement details and any logs required for the applicant to demonstrate external mechanical integrity prior to authorization to inject. One of the following methods that demonstrates external mechanical integrity and prevention of fluid migration into or between underground sources of drinking water shall be used:

(a) The results of a temperature log, or noise log, or cement bond log.

(b) Cementing records demonstrating the presence of adequate cement to prevent a migration.

(c) Other methods suggested by the permittee and approved by the supervisor or authorized representative of the supervisor.

(2) A permittee of a well shall ensure that the injection of fluid into a well is through adequate tubing and packer. During injection operations, the permittee shall fill the tubing to casing annulus with a noncorrosive liquid. For Class II wells, the packer shall be set within 100 feet of the base of the injection casing or within 100 feet of the top perforation of the injection interval, unless otherwise approved by the supervisor. Injection wells utilized for gas storage are exempt from this subrule.

(3) A permittee of a well shall ensure that surface access to all casing annuli is provided.

(4) A permittee of a well shall ensure that an injection well is constructed and operated so that the injection of fluids is confined to injection interval or intervals approved by the supervisor or authorized representative of the supervisor.

(5) In addition to R 324.408 surface casing requirements, surface casing must be set a minimum of 100 feet below the base of the glacial drift into competent bedrock or 100

feet below all underground sources of drinking water, whichever is deeper, for new Class II wells. To convert a previously drilled well into a Class II well, where existing surface casing is not 100 feet below underground source of drinking water, a demonstration of the combination of casing and cement must be made to show protection of all underground sources of drinking water.

(6) The injection casing must have a minimum of 250 feet of cement immediately above the injection interval. If less than 250 feet of cement exists, remedial cementing must occur at a point as near to the existing cement top as possible, as determined by the supervisor or authorized representative of the supervisor. Injection wells utilized for gas storage are exempt from this subrule.

(7) Class II wells must have injection casing in addition to the surface casing and any additional casing that may be required under R 324.410.

(8) In addition to other provisions of these rules, the top of the injection interval shall be a minimum of 500 feet below the deepest underground source of drinking water for a new Class II well in an area of karst, unless a lesser separation is approved by the supervisor based on a demonstration of protection of underground sources of drinking water by the permittee. Within an area of karst, in addition to other requirements, all casings except the injection casing shall be circulated to surface with cement. If not possible to circulate cement to surface because of karst features or lost circulation zones, the casing annulus shall have cement from at least 100 feet to the surface.

(9) Subrules R 324.804(1), (5), and (6) do not apply to Existing Class II wells or Rule Authorized wells since they are permitted, constructed or converted prior to the date of primacy.

History: 1996 AACS; 2018 AACS.

R 324.805 Temporary authority to inject.

Rule 805. The supervisor may grant a permittee of a well temporary authorization, for a period of not more than 30 days, to inject fluid for the limited purpose of running injectivity tests. Temporary authorization to inject will only be granted if there will be no endangerment of underground sources of drinking water. Injection wells utilized for gas storage are exempt from this rule.

History: 1996 AACS; 2018 AACS.

R 324.806. Testing and authorization to inject before operation of Class II injection wells.

Rule 806. (1) Before injecting fluid into a new Class II well, a permittee of a well shall provide for a test of the annulus between the innermost casing and the tubing above the packer. The test shall be conducted by a qualified person and the test shall be at a pressure of not less than 300 psig. The difference in pressure between the testing pressure and the tubing pressure shall be not less than 100 psig at the time of the test. A satisfactory test shall have a pressure change of not more than 5% over a period of 30 minutes.

(2) A permittee of a well shall notify the supervisor or authorized representative of the supervisor at least 5 days in advance of the date and time of the test.

(3) Within 14 days of completion of the test, the permittee shall submit, on a form prescribed by the supervisor, a report of each mechanical integrity test to the supervisor or authorized representative of the supervisor. The report shall contain test supporting data, including, but not limited to, gauge calibration data, pressure recordings and charts, tubing size, packer type, and packer depth. Approval of the test results will be based on witnessing by supervisor or authorized representative of the supervisor, or review and evaluation of test data submitted pursuant to this subrule.

(4) Before the commencement of injection, a permittee shall receive an authorization to inject from the supervisor or authorized representative of the supervisor. Prior to issuance of the authorization to inject, the supervisor or authorized representative shall have witnessed the test or received the test data, reviewed the test data, and determined that the permittee has demonstrated that the well has mechanical integrity. Authorization to inject will be granted only after any applicable well records required by R 324.418 have been received and evaluated by the supervisor or authorized representative of the supervisor. Verbal authorization from the supervisor or authorized representative is acceptable to commence injection. Written authorization to inject from the supervisor or authorized representative will be issued within 7 days of verbal authorization.

(5) Injection wells utilized for gas storage are exempt from this rule.

History: 1996 AACS; 2018 AACS.

R 324.807 Maximum injection pressure.

Rule 807. During Class II well injection operations, a permittee shall ensure that the surface injection pressure does not exceed a pressure determined by the following equation:

Pm = (fpg - 0.433 sg)d where

Pm = surface injection pressure

fpg = fracture pressure gradient of the injection interval (if unknown, assume 0.800)

sg = specific gravity of the injection liquid (if unknown, assume 1.2)

d = depth of the top of the injection interval in feet (true vertical depth).

The value for fpg may be determined by an instantaneous shut-in pressure or data derived from step rate testing. Other information to derive fpg values may be used with approval of the supervisor or authorized representative of the supervisor.

History: 1996 AACS; 2018 AACS.

R 324.808 Class II well operational testing requirements.

Rule 808. (1) A permittee of a Class II well shall provide for a pressure test that meets the requirement of subrule (2) of this rule, by a qualified person, to determine the mechanical integrity of the tubing, casing, and packer.

(2) The annulus between the innermost casing and the tubing above the packer shall be tested at least once each 5 years at a pressure of not less than 300 psig. A satisfactory test shall have a pressure change of not more than 5% over a period of 30 minutes. The

difference in pressure between the testing pressure and the tubing pressure shall not be less than 100 psig at the time of the test. At least 5 days before the test, the permittee shall notify the supervisor or authorized representative of the supervisor of the date and time of the test. This subrule applies to all Class II wells, including those with approved temporary abandonment status.

(3) Within 14 days after the test, the permittee shall, on a form prescribed by the supervisor, submit a report of each mechanical integrity test to the supervisor or authorized representative of the supervisor. The report shall contain supporting data including, but not limited to, gauge calibration data, pressure recordings and charts, tubing size, packer type, and packer depth. Prior to an issuance of an authorization to inject, the supervisor or authorized representative shall have witnessed the test or received the test data, reviewed the test data, and determined that the permittee has demonstrated the well has mechanical integrity.

(4) For a Class II well that has not been utilized for its intended purpose for a period of greater than 2 years, the permittee shall, prior to resuming injection, demonstrate mechanical integrity for the well and receive authorization to resume injection from the supervisor or authorized representative of the supervisor.

History: 1996 AACS; 2018 AACS.

R 324.809 Testing requirements for wells utilized for gas storage.

Rule 809. Before injecting fluid into a newly drilled well or previously existing well newly converted to an injection well to be utilized for gas storage, a permittee of an injection well shall provide for a test of the mechanical integrity of the casing, by a qualified person, utilizing either a pressure test at a bottom hole pressure of not less than the maximum expected operating pressure of the gas storage field or an equivalent test approved by the supervisor. Within 14 days of the test, the permittee shall, on a form prescribed by the supervisor, submit a report of each mechanical integrity test to the supervisor or authorized representative of the supervisor. Prior to issuance of an authorization to inject, the supervisor or authorized representative shall have witnessed the test or received the test data, reviewed the test data, and determined that the permittee has demonstrated that the well has mechanical integrity.

History: 2018 AACS.

R 324.810. Monitoring and filing records and reports.

Rule 810. (1) A permittee of a Class II well not utilized for secondary recovery shall, on a weekly basis, monitor and record the annulus pressure, injection pressure, injection rate, and weekly cumulative volume of the fluid injected.

(2) A permittee of a Class II well utilized for secondary recovery injection well shall, on a monthly basis, monitor and record the annulus pressure, injection pressure, injection rate, and monthly cumulative volume of the fluid injected. A permittee of a secondary recovery injection well may conduct the monitoring and recording, required by this rule, on a field or project basis by manifold monitoring, rather than on an individual well basis, if more than 1 secondary recovery injection well operates with a single

manifold, and if the permittee demonstrates that manifold monitoring is comparable to individual well monitoring.

(3) A permittee of an injection well not utilized for secondary recovery shall report the data monthly to the supervisor, unless the supervisor requires a lesser frequency, on forms prescribed by the supervisor.

(4) A permittee of a secondary recovery injection well shall report the monthly data annually to the supervisor, on forms prescribed by the supervisor by March 1 of each year for the previous year.

(5) In addition to other requirements within this rule, a permittee of a Class II commercial disposal well shall submit a complete list of sources of disposed fluids on a quarterly basis on a form prescribed by the supervisor within 45 days of the end of each quarter. The provisions of this subrule are effective only upon the date of primacy.

(6) In addition to other requirements within this rule, a permittee of a Class II commercial disposal well shall submit information on any new source to the supervisor, and shall obtain approval of the source from the supervisor or authorized representative of the supervisor, prior to injection of fluids from that source. The provisions of this subrule are effective only upon the date of primacy.

(7) A permittee of a Class II well shall file on a quarterly basis the fluid loss or gain in the tubing-casing annulus on a form prescribed by the supervisor within 45 days of the end of each quarter. Rule authorized wells are exempt from this requirement. The provisions of this subrule are effective only upon the date of primacy.

(8) The permittee of a Class II well shall submit an annual chemical analysis of the injectate using same analytes as R 324.802(g)(iv) by March 1 of the following year, or more frequently if there has been a change in sources or characteristics of the injectate.

(9) The permittee shall retain all records pertaining to a Class II injection well for a period of 5 years.

(10) The permittee of any Class II well shall indicate on any submitted report observed noteworthy anomalies or problems identified related to that data. The permittee shall report exceedance of the Maximum Injection Pressure on injection monitoring reports. The provisions of this subrule are effective only upon the date of primacy.

History: 2018 AACS.

R 324.811 Loss of mechanical integrity.

Rule 811. (1) A permittee of an injection well shall notify the supervisor or authorized representative of the supervisor of any pressure test failure, significant pressure changes, or other evidence of a leak in an injection well, within 24 hours of the pressure test failure, significant pressure changes, or other evidence of a leak. For other evidence of a leak received via logging, the notification shall occur within five working days after the operator first determines that the condition exists from reading the log data, but not later than 10 working days after the day the operator receives the log data. If there is evidence that indicates an injection well is not, or may not be, directing the injected fluid into the permitted injection interval, a permittee of an injection well shall immediately cease injection.

(2) A permittee shall submit written notice of the pressure test failure, significant pressure changes, or other evidence of a leak to the supervisor or authorized

representative of the supervisor within 5 days of the occurrence, or within 10 days of receiving well logging data, on a form prescribed by the supervisor. If injection has ceased pursuant to subrule (1) of this rule, then a permittee shall not resume injection until the permittee has tested or repaired the well, or both. If the repair requires a change of well status pursuant to R 324.511, or a permit modification, then a plan shall be submitted to, and approved by, the supervisor or authorized representative of the supervisor. The repair or modification plan must demonstrate protection of any underground sources of drinking water.

(3) Before resuming injection, a permittee must demonstrate the well has mechanical integrity and receive an authorization to inject. Verbal authorization from the supervisor or authorized representative of the supervisor is acceptable to commence injection. Written authorization to inject from the supervisor or authorized representative will be issued within 7 days of verbal authorization. Prior to issuance of an authorization to inject, the supervisor or authorized representative shall have witnessed the test or received the test data, reviewed the test data, and determined the permittee has demonstrated that the well has mechanical integrity.

History: 2018 AACS.

R 324.812 Cessation of injection wells; request for temporary abandonment status.

Rule 812. If an injection well ceases operating for the purpose for which it was intended for 1 year, then a permittee shall plug the well or request temporary abandonment status for the well in writing. The request for temporary abandonment status shall be pursuant to R 324.511. The temporary abandonment status may be granted by the supervisor if, after application and justification by the permittee, the supervisor determines that waste will be prevented. When approving the temporary abandonment status or subsequent extensions, the supervisor may require special actions and monitoring by the permittee to ensure the prevention of waste and endangerment of underground sources of drinking water. If temporary abandonment status is not granted, then the permittee of the injection well shall plug the well. The permittee may petition the supervisor for a hearing to show cause why the well should not be plugged. This rule supersedes R 324.209 for injection wells.

History: 2018 AACS.

R 324.813 Suspension of Class II well operations due to threat to public health and safety or underground sources of drinking water.

Rule 813. (1) The supervisor or authorized representative of the supervisor may immediately require corrective action at a Class II well, including suspending any or all components of the injection or disposal operations, if the supervisor determines either of the following:

(a) The injection operations are in violation of the provisions of the act, these rules, permit conditions, instructions, or orders of the supervisor.

(b) The injection operations threaten the public health and safety or underground sources of drinking water.

(2) A suspension of injection or disposal operations shall be in effect for not more than 5 days or until the operation is in compliance and protection of the public health and safety and underground sources of drinking water is ensured.

(3) Unless the permittee brings the operations into compliance as required pursuant to subrule (1), the supervisor may issue an emergency order to continue the suspension of injection or disposal operations beyond 5 days, and may schedule a hearing under part 12 of these rules. The total duration of the suspension of injection or disposal operations under this provision shall not be more than 21 days, as provided in section 61516 of Part 615, MCL 324.61516.

(4) Unless the permittee brings the operations into compliance as required pursuant to subrule (1) or (2) of this rule, the supervisor shall issue a new order following a minimum of 10 day notice and public hearing as provided in section 61516 of Part 615, MCL 324.61516(1) and R 324.1211, enter into an administrative consent agreement, or enter other binding instrument to extend the suspension of injection or disposal operations under this provision beyond 21 days. The order, administrative consent agreement, or other binding instrument shall require corrective actions within specific time limits to achieve compliance and protection of the public health and safety and underground sources of drinking water, and shall remain in force until the operation is brought into compliance.

(5) Authorization to resume injection shall not be given by the supervisor or authorized representative of the supervisor until compliance and protection of the public health and safety and underground sources of drinking water is achieved. The authorization to inject will only be given when mechanical integrity is also demonstrated, if applicable.

(6) This rule supersedes R 324.1014 for Class II wells.

History: 2018 AACS.

R 324.814 Class II primacy transitional requirements for supervisor and owner-operators.

Rule 814. (1) Transitional requirements for the supervisor include all of the following:

(a) Upon the date of primacy, the supervisor shall do the following:

(i) Accept all Class II well permits, including rule authorized wells, issued under the authority of the USEPA administered underground injection control program. These wells are currently permitted under Part 615, and are deemed to meet the requirements of Part 615. Existing permit terms under Part 615 remain in effect.

(ii) Accept records from the USEPA of all Class II wells, including rule authorized wells.

(iii) Accept maximum injection pressures established by permits issued by USEPA including maximum injection pressures issued for rule authorized wells,

(iv) Accept mechanical integrity test data and test schedules for all existing Class II wells and rule authorized wells.

(b) Within 30 days following the date of primacy, an owner or operator shall do the following:

(i) Transfer pending applications submitted for Class II wells under the USEPA underground injection control program to the Michigan Department of Environmental Quality, Oil, Gas, and Minerals Division, P.O. Box 30256, Lansing, Michigan 48909, for final review and permitting decisions.

(ii) File or transfer a conformance bond pursuant to R 324.212.

History: 2018 AACS.

R 324.815 Class II permit modifications.

Rule 815. (1) Modifications to a Class II permit issued pursuant to R 324.206 may be considered major modifications and subject to requirements of R 324.802 and R 324.803. Minor modifications are not subject to requirements of R 324.802 and R 324.803.

(2) Minor modifications include activities such as the following:

(a) Correcting typographical errors.

(b) Requiring more frequent monitoring or reporting by the permittee.

(c) Changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.

(d) Change in ownership or operational control of a facility where the supervisor determines that no other change in the permit is necessary.

(e) Changing quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the supervisor, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

(f) Changes in construction requirements approved by the supervisor or authorized representative of the supervisor, including remedial cementing or adding perforations to the approved injection interval.

(g) Amendment of a plugging and abandonment plan when approved by the supervisor or authorized representative of the supervisor.

(3) The provisions of this rule are effective only upon the date of primacy.

History: 2018 AACS.

R 324.816 Class II Cross Reference

Rule 816. For Class II wells, the following rules are applicable: R 324.101 to 324.199, R 324.201 to 324.208, R 324.210 to 324.216, R 324.401 to 324.422, R 324.501 to 324.504, R 324.507, R 324.508, R 324.510, R 324.511, R 324.701 to 324.705, R 324.801 to 324.808, R 324.810 to 324.816, R 324.901 to 324.904, R 324.1001 to 324.1013, R 324.1015, R 324.1101 to 324.1130, R 324.1201 to 324.1212, R 324.1301, and R 324.1401 to 324.1406.

History: 2018 AACS.

PART 9. PLUGGING

R 324.901 Notification of intention to abandon and plug well.

Rule 901. A person shall not begin the plugging of a well until the permittee of a well has notified the supervisor or authorized representative of the supervisor of his or her intention to abandon the well and has received instructions for the plugging operation. The notification shall provide all of the information requested by the supervisor or authorized representative of the supervisor required to issue plugging instructions.The notification may also include any of the following information:

(a) The present condition of the well.
(b) Casing and sealing information.
(c) The sizes and lengths of all casing strings.
(d) The depths of the top of all principal formations.
(e) The depths where oil, gas, and water were encountered.
(f) The method to be used to tag plugs.
(g) The proposed method for handling unusual or hazardous conditions.
(h) The date of the last production or operation.

History: 1996 AACS.

R 324.902 Plugging instructions; methods and materials.

Rule 902. (1) The supervisor or authorized representative of the supervisor shall issue plugging instructions after receipt of notification pursuant to R 324.901. The plugging instructions shall specify all of the following information:

(a) The type and amount of plugging material to be used.
(b) The depths at which bridges are to be set.
(c) The depths and lengths of cement plugs.
(d) The amount of casing to be pulled.
(e) Other requirements the supervisor determines are necessary for the proper plugging of the well.

(2) A permittee of a well shall ensure that all oil, gas, brine, and fresh water is confined to the strata in which the oil, gas, brine, and fresh water occur by using cement plugs or other plugs approved by the supervisor. A permittee of a well shall ensure that the well is plugged under static hole conditions at all times, unless otherwise approved by the supervisor or authorized representative of the supervisor.

(3) A permittee of a well shall ensure that each cement plug, except for the bottom hole plug required by subrule (5) of this rule, the plug to be set at the base of the surface casing required by subrule (6) of this rule, and the surface plug required by subrule (7) of this rule, is a minimum of 200 feet in length or contains 50 sacks of cement, whichever is the greater volume of cement, unless otherwise approved by the supervisor or authorized representative of the supervisor.

(4) A permittee of a well shall ensure that each cement plug, except for the bottom hole plug required by subrule (5) of this rule and the plug to be set at the base of the

surface casing required by subrule (6) of this rule, is allowed to set undisturbed for a minimum of 1 hour and that the fluid level in the casing is continuously observed. If the observed fluid level in the casing drops during the hour, then the cement plug shall be tagged to ensure that the plug is still in place before setting the next plug uphole.If the plug is found not to be in place, then the plug shall be reset.

(5) A permittee of a well shall ensure that the bottom hole cement plug is either:

(a) A minimum of 200 feet in length, is allowed to set undisturbed for a minimum of 4 hours, has reached a compressive strength of 100 psi or more, and is tagged to ensure that it is still in place before setting the next plug uphole; however, if the bottom hole cement plug in a dry hole drilled by rotary methods is a minimum of 400 feet in length and the fluid level in the hole is observed to remain static, then the bottom hole plug is not required to be tagged.

(b) A mechanical bridge plug or other approved bridge has been set and a minimum of 50 feet of cement has been placed on the bridge before setting the next plug uphole.

(6) A permittee of a well shall set the plug at the base of the surface casing using either of the following methods as approved by the supervisor or authorized representative of the supervisor:

(a) In static hole conditions, a cement plug shall be set at a minimum of 100 feet below the surface casing and shall extend a minimum of 100 feet into the surface casing. The cement plug shall be allowed to set undisturbed a minimum of 4 hours, shall have reached a compressive strength of 100 psi or more, and shall be tagged to ensure that it is still in place before setting the next plug uphole. If the plug is found not to be in place, then the plug shall be reset.

(b) A mechanical open hole bridge plug or other approved bridge shall be set a minimum of 100 feet below the surface casing. A cement plug shall then be placed on the mechanical open hole bridge plug or other approved bridge. The cement plug shall extend a minimum of 100 feet into the surface casing,

unless otherwise approved by the supervisor or authorized representative of the supervisor.

(7) A permittee of a well shall set a cement surface plug a minimum of 30 feet below the surface and within 5 feet of the surface, unless otherwise approved by the supervisor or authorized representative of the supervisor.

(8) If surface casing is not present, a permittee of a well shall set a mechanical open hole bridge plug or other approved bridge a minimum of 100 feet below the base of the glacial drift or 100 feet below the deepest fresh water stratum, whichever is the greater depth, and shall circulate cement to within 5 feet of the surface.

(9) A permittee of a well shall ensure that the surface pipe or conductor pipe abandoned with the hole is cut off at a point not less than 4 feet below grade, a 1/2-inch steel welded plate or another type of seal approved by the supervisor or authorized representative of the supervisor is placed across the top of the pipe or pipes, and the permit number of the well is permanently affixed to the plate or approved seal at the top of the well.

(10) A permittee shall file, within 60 days after plugging, the final plugging forms and certified copies of the service company records, which shall include all of the following information:

(a) The type of cement and number of sacks used, including the additives and percentages of the additives for each cement bridge plug.

(b) The type and volume of plugging material used if other than cement.

(c) The number of bridge plugs set in the hole and the depth and length of each plug.

(d) Other materials left in the hole.

(e) Service companies' records of cementing operations if requested by the supervisor or authorized representative of the supervisor.

(f) All available graphics, if requested by the supervisor or authorized representative of the supervisor, showing the all of following information:

(i) Pumping.

(ii) Placement of cement.

(iii) Weights.

(iv) Times.

(v) Pump rates.

(vi) Other pertinent data dealing with the plugging operations.

(g) The amounts and type of mix water used for each sack of cement.

(h) The volume and types of spacers and flushes used.

(i) The operator's daily plugging records.

(11) At a permittee's option, the well bore may be plugged from bottom to top with a material approved by the supervisor if the hydrostatic pressure of the material used is not allowed to exceed the fracturing pressure of the strata.

History: 1996 AACS.

R 324.903 Commencement of plugging operations.

Rule 903. (1) A permittee of a well shall commence plugging operations within 90 days after drilling completion or well completion as a dry hole, when the well has not economically produced or has not been utilized for its permitted use for more than 12 consecutive months, when a change of well status has not been granted, or when the permitted use has been suspended for more than 12 consecutive months. The supervisor may require, or a permittee may submit, proof that is necessary to determine if the well is being economically produced.

(2) After receiving a written request showing just cause why the well should not be plugged, the supervisor or authorized representative of the supervisor may grant temporary abandonment status pursuant to R 324.209 or require completion of the plugging operations.

(3) A permittee may petition the supervisor for a hearing to show cause why the well should not be plugged.

History: 1996 AACS.

R 324.904 Pulling of surface pipe and conductor pipe.

Rule 904. A permittee of a well shall ensure that surface pipe or conductor pipe is not pulled at a location, unless it is required by the supervisor.

History: 1996 AACS.

PART 10. WELL SITES AND SURFACE FACILITIES; PREVENTION OF FIRES, POLLUTION, AND DANGER TO, OR DESTRUCTION OF, PROPERTY OR LIFE

R 324.1001 Well sites and surface facilities; flammable and combustible material.

Rule 1001. A permittee of a well shall ensure that the area around the well and surface facilities is kept clear of flammable and combustible material stored within a radius of 75 feet, or as approved by the supervisor, using the well or dike wall as the point of measurement. The supervisor, if conditions warrant, may also require construction of a fire line around the outer edge of the cleared area. A permittee of a well shall ensure that the disposal of material resulting from the clearing operations is consistent with all applicable state and federal laws and regulations.

History: 1996 AACS.

R 324.1002 Secondary containment requirements and construction standards.

Rule 1002. (1) All wellheads and pump jacks installed after the effective date of these rules and surface facilities constructed for hydrocarbon, gas, brine injection, or brine handling or surface facilities converted to brine injection or handling after November 15, 1989, shall provide for secondary containment pursuant to the requirements of this rule. A permittee of a well shall maintain all existing dikes or fire walls approved before November 15, 1989, in a manner to form a reservoir that has a capacity of 1 1/2 times the capacity of the enclosed tank or tank battery and shall keep the reservoir free of oil, emulsions, tank bottoms, brine, water, vegetation, debris, or any flammable or combustible material. The supervisor or authorized representative may require surface facilities for hydrocarbon, gas, brine injection, or brine handling constructed before November 15, 1989, to be upgraded to meet the requirements of this rule if the facility is substantially reconstructed.

(2) A permittee of a well shall submit secondary containment plans to the supervisor or authorized representative of the supervisor for approval before construction of the facility. The secondary containment plans shall consist of a plot plan of the proposed facility and cross sections showing construction details of the sidewalls and floor or floors of all secondary containment areas, including the proposed overall dimensions of the facility. The supervisor or authorized representative of the supervisor shall approve or disapprove the secondary containment plans within 30 days of receipt of the plans.

(3) A permittee of a well shall comply with all of the following minimum construction standards to meet the secondary containment requirements of this rule:

(a) A permittee shall be required to prepare a hydrogeological investigation of the facility area to establish local background groundwater quality. The hydrogeological investigation shall include all of the following:

(i) Water quality sampling pursuant to the parameters established in R 324.802(g)(iv).

(ii) A determination of the direction of groundwater flow and depth to the groundwater in the uppermost aquifer.

(iii) A chemical analysis showing the concentrations of benzene, ethylbenzene, toluene, and xylene.

(iv) A geologic description of earth materials, both horizontally and vertically, in the immediate vicinity of the proposed facility.

(b) Each facility shall be required to have 1 of the following monitoring systems to detect leakage from hydrocarbon or brine storage secondary containment areas:

(i) A minimum of 1 groundwater monitoring well downgradient which is in close proximity to all hydrocarbon or brine storage secondary containment areas.

(ii) Tertiary containment underlying the secondary containment, which shall be constructed and sealed in a manner to capture any hydrocarbons or brine that may leak or seep through the secondary containment. A layer of permeable material and a monitoring tube shall be placed between the secondary and tertiary containment to allow monitoring to determine the presence of any leakage or seepage through the secondary containment.

(c) A vessel that contains hydrocarbons or brine, or both, shall be elevated and placed on impervious pads or constructed so that any leakage can be easily detected. A vessel that is to be used on-site for 30 days or less shall, at a minimum, be placed on leak-resistant material.

(d) A hydrocarbon and brine storage vessel, including oil heating and treating equipment, shall be located in a secondary containment area and the containment volume shall be in compliance with the following minimum requirements, as applicable:

(i) Containment areas that have only brine storage vessels shall be constructed to contain 150% of the largest storage vessel.

(ii) Containment areas with only hydrocarbon storage vessels shall be constructed pursuant to R 29.2301 et seq.

(iii) Containment areas where both hydrocarbon and brine storage vessels are located shall be in compliance with the volume requirements for the largest storage vessels.

(iv) Precipitation shall be taken into consideration in the design of the secondary containment area.

(e) The sidewalls and floor of the secondary containment and spill containment areas shall be constructed and sealed in a manner to prevent the seepage of hydrocarbons or brine, or both, into the surrounding soils, surface waters, or groundwater.

(f) A hydrocarbon and brine storage vessel shall not be erected, enclosed, or maintained closer than 200 feet from any drilling or producing well.

(g) Oil heating or treating equipment shall not be erected, enclosed, or maintained closer than 75 feet from any drilling or producing well or oil storage tank or tank battery.

(h) Dikes shall be maintained and the enclosure kept free of all of the following:

(i) Oil.

(ii) Emulsions.

(iii) Tank bottoms.

(iv) Brine.

(v) Water.

(vi) Vegetation.

(vii) Debris.

(viii) Any flammable or combustible material.

(i) The hydrocarbon and brine truck loading and unloading areas located outside of hydrocarbon or brine storage secondary containment areas shall have a spill containment capacity equal to double the volume of the hoses used to connect the truck to the tanks, but not less than a capacity of 5 barrels. The spill containment shall be constructed and sealed in a manner that prevents the seepage of hydrocarbons or brine, or both, into the surrounding soils, surface waters, or groundwater.

(j) Brine disposal well truck unloading areas and commercial brine truck loading and unloading areas located outside of hydrocarbon or brine storage secondary containment areas shall be constructed and sealed in a manner that prevents the seepage of hydrocarbons or brine, or both, into the surrounding soils, surface waters, or groundwater. In addition, a ramp shall be constructed to contain the unloading vehicle, its hoses, and connections within the ramp area. The ramp area shall contain a sump and be connected to a secondary containment area so that any spillage drains into the sump and into the secondary containment area. The spill containment ramp and sump shall have a combined capacity of not less than 20 barrels.

(k) Sumps shall be constructed of materials impervious to hydrocarbons and brines and resistant to damage and deterioration during use. Sumps shall be connected to the ramp area and the secondary containment area in a manner that prevents leakage.

(l) Surface facilities for hydrocarbon and brine handling shall be constructed to meet all of the following minimum requirements:

(i) All transfer and injection pumps shall have leak containment.

(ii) All brine and hydrocarbon flow lines to a facility are considered part of that facility and are subject to the following requirements:

(A) All flow lines shall be pressure tested pursuant to the provisions of paragraph (iii)(A),(B),(C),(E), and (G) of this subdivision.

(B) A permittee may elect to not perform the pressure testing of the flow lines, except flow lines that transport brine only, if the permittee performs visual inspections of the entire flow line corridor every 3 months, except when impractical due to snow cover, and reports the results of the inspections to the supervisor or authorized representative of the supervisor annually by January 31 of each year for the previous calendar year.

(iii) All buried facility piping for the transport of liquids shall be pressure-tested pursuant to the following provisions, as applicable:

(A) Piping made of noncorrodible or corrosion-protected material shall be pressure-tested every 3 years.

(B) All piping other than piping specified in subparagraph (A) of this paragraph shall be pressure-tested every 12 months.

(C) If buried piping is excavated for repair or relocation, then the disturbed portion shall be pressure-tested immediately pursuant to subparagraphs (D) and (E) of this paragraph.

(D) The pressure test shall be 100% of the normal oil and gas separator operating pressure. The pressure shall be stabilized at 90% of test pressure, at a minimum, and shall hold for a period of 15 minutes.

(E) A permittee shall provide certification to the supervisor or authorized representative of the supervisor, within 30 days of a pressure test, that a pressure test was conducted and the facility piping passed the pressure test. If a facility's piping does not pass the pressure test, the supervisor or authorized representative of the supervisor shall be notified by the permittee within 48 hours after the test. If the pressure test indicated that the facility's piping leaked, then the piping shall be repaired and retested before putting the piping back in service. After the repair of the piping, the permittee shall report the repair to the supervisor or authorized representative of the supervisor and provide certification that the piping has been retested and is not leaking.

(F) Single-phase gas lines are not subject to the pressure test requirements if the lines are protected by a liquid phase trap.

(G) The supervisor may approve or require other pressure testing or leak detection methods in place of the pressure testing required in this paragraph.

(iv) At production or injection well facilities, all piping shall be routed above the ground and kept within the secondary containment area where practical. Piping that cannot be routed above the ground shall have its location marked with posts or with other location-identifying markers approved by the supervisor or authorized representative of the supervisor so that the buried piping can be easily located.

(v) Brine injection wells shall have a working check valve on the flow line at or near the wellhead to avoid backflow.

(vi) All hydrocarbon and brine loading and unloading facility transfer lines that are not in use shall be secured to prevent spillage. A shutoff valve shall be installed at the truck connect point and at the storage vessels. At connect points, impermeable drip containment vessels shall be used and shall be an adequate size to contain all spillage and precipitation to avoid overflow.

(m) Wellheads, flare pits, vents, and flare stacks shall have secondary containment and spill containment areas constructed in a manner to prevent the seepage of hydrocarbons or brine, or both, into the surrounding soils, surface waters, or groundwater. Secondary containment at the wellhead shall be constructed in a manner to capture any leakage of liquid that may occur. In addition, if the wellhead is provided with a pump jack or is converted to a pump jack equipped with a gasoline or diesel-powered engine, then the engine shall also have secondary containment that is sufficient to prevent the seepage of any machine oils or fuels into the surrounding soils, surface waters, or groundwater. Injection wells utilized for gas storage are exempt from this subrule.

(4) Upon completion of the construction of the facility, but before its use, a permittee of a well shall certify, to the supervisor or authorized representative of the supervisor, that the secondary containment area was constructed according to the approved plan. A permittee shall ensure that an approved spill or loss response and remedial action plan is also on file with the supervisor or authorized representative of the supervisor before a facility is used.

(5) Before any significant modification of the secondary containment area occurs, a permittee of a well shall notify the supervisor or authorized representative of the supervisor and receive approval before making the modification. The supervisor or authorized representative of the supervisor shall approve or deny the request within 10 days of receipt of the request.

(6) A permittee of a well shall perform inspections at the facility at a frequency that is sufficient to ensure that the throughput of fluids in the system does not exceed the primary and secondary containment capacity between inspections. The permittee shall perform at least 1 inspection per week.

(7) The supervisor shall require the installation of an automatic facility shutdown system if the facility has a throughput of liquids in a 24-hour period that exceeds the containment volume of the secondary containment area. The automatic shutdown system shall be designed to prevent liquids from overflowing the secondary containment area. A facility shall be exempt from the requirement of an automatic shutdown system if the facility has staff present 24 hours per day and is equipped with alarm systems on the tank or tanks of the tank battery.

(8) The monitoring system required by R 324.1002(3)(b) shall be kept in a functional condition so that water samples can be collected and water level measurements can be taken every 6 months. The water samples shall be tested for specific conductance as an indicator of dissolved solids, concentrations of chloride, and a chemical analysis pursuant to subrule (3)(a)(iii) of this rule, except the chemical analysis provided by subrule (3)(a)(iii) of this rule shall not be required at monitoring systems at surface facilities where liquid hydrocarbons are not handled. If sampling indicates a possible problem, then additional sampling for the water quality parameters established in R 324.802(g)(iv) may be required. The results of the sample analysis shall be provided to the supervisor or authorized representative of the supervisor as soon as the results are available. If the samples taken by the permittee show substantial increases above background water quality, then the permittee shall, at a minimum, increase monitoring. If the samples confirm that hydrocarbons are present at levels above background, then the permittee shall immediately take remedial action in the form of containment and removal.

(9) A permittee of a well shall provide a right of entry to the facility for monitoring at all times to the supervisor or authorized representative of the supervisor.

History: 1996 AACS; 2018 AACS.

Editor's Note: An obvious error in R 324.1002 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in *Michigan Register*, 2018 MR 11. The memorandum requesting the correction was published in *Michigan Register*, 2018 MR 18.

R 324.1003 Restoration of well site; filling and leveling of cellars, pits, and excavations; removal of debris.

Rule 1003. A permittee of a well shall fill and level the cellar and all pits and excavations, remove or eliminate debris, minimize erosion, and restore the well site as nearly as practicable to the original land contour or to a condition approved by the supervisor or authorized representative of the supervisor as soon as practical after the completion of plugging to the surface, but not more than 6 months after the completion of plugging to the surface.

History: 1996 AACS.

R 324.1004 Safety measures.

Rule 1004. If hazards to life or property, or both, exist, then a permittee of a well shall post safety signs in conspicuous places around the well or surface facility. The supervisor or authorized representative of the supervisor may require the installation of fences, gates, or other safety measures.

History: 1996 AACS.

R 324.1005 Use of pits to collect waste oil and tank bottoms prohibited; conveying, storing, or disposing of waste oil and tank bottoms.

Rule 1005. A permittee of a well shall not use earthen pits to collect waste oil and tank bottoms. A permittee shall not convey, store, or dispose of waste oil and tank bottoms in a manner that causes waste.

History: 1996 AACS.

R 324.1006 Cleanup and disposal of losses.

Rule 1006. A permittee of a well shall clean up and dispose of, in a manner consistent with these rules and all applicable state and federal laws and regulations, losses of oil, gas, or brine from wells, flow lines, and associated surface facilities.

History: 1996 AACS.

R 324.1007 Notice of serious accident; reporting.

Rule 1007. (1) A person shall immediately notify the supervisor or authorized representative of the supervisor of a serious accident that has created, or may create, a fire or other hazard that may cause waste. The notification shall be made within 8 hours of the accident, by telephone, and shall give the particulars of the accident. A detailed written report shall be submitted to the supervisor or authorized representative of the supervisor within 15 days of the accident.

(2) If a person cannot contact the supervisor or authorized representative of the supervisor after an accident, then the person shall immediately telephone the pollution emergency alerting system.

History: 1996 AACS.

R 324.1008 Reporting of losses, spills, and releases.

Rule 1008. (1) A permittee of a well shall, under this rule and instructions issued by the supervisor and in compliance with all applicable state and federal laws and regulations, promptly report and record all reportable losses, spills, and releases of any of the following:

(a) Brine.

(b) Crude oil.

(c) Oil or gas field waste.

(d) Natural gas.

(e) Products and chemicals used in association with oil and gas exploration, production, disposal, or development.

(2) A permittee of a well shall promptly report, within 8 hours of a loss, release, or spill discovery, by telephone or in person, to the supervisor or authorized representative of the supervisor during normal business hours or to the department of environmental quality, pollution emergency alerting system between 5 p.m. and 8 a.m. and on weekends and holidays, all losses or releases of gas that result in, or may result in, a nuisance odor or unnecessary endangerment of public health or safety, and all losses or spills of 42 gallons or more of brine, crude oil, or oil and gas field waste. A permittee shall provide all of the following minimum information, to the extent known, when reporting the loss, spill, or release:

(a) The name of person reporting the loss, spill, or release.

(b) The name of permittee who has sustained the loss, spill, or release.

(c) The date and time of the loss, spill, or release.

(d) The date and time that the loss, spill, or release was discovered.

(e) The date and time cleanup commenced.

(f) The location of the loss, spill, or release, including all of the following information:

(i) Well name.

(ii)Quarter-quarter-quarter section.

(iii)Section number.

(iv)Township.

(v) County.

(g) The material lost, spilled, or released.

(h) The volume of the loss, spill, or release.

(i) The volume of the loss, spill, or release recovered.

(j) The cleanup or recovery measures taken.

(k) The cause of the loss, spill, or release.

(l) Whether the loss, spill, or release contacted surface waters, groundwater, or other environmentally sensitive resources.

(m) The approximate air temperature, wind direction, wind velocity, and precipitation conditions at the time of the spill or release.

(3) A permittee of a well shall submit written notification of the losses, spills, and releases to the supervisor or authorized representative of the supervisor by completing all parts of the form provided by the supervisor within 10 days from the time the loss, spill, or release was discovered.

(4) A permittee of a well shall report all losses or spills of less than 42 gallons of brine, crude oil, or oil and gas field waste by completing only parts 1 and 3 of the form provided by the supervisor if both of the following provisions apply:

(a) The loss or spill does not contact surface waters, groundwater, or other environmentally sensitive resources.

(b) The loss or spill is completely contained and cleaned up within 48 hours from the time the loss or spill was discovered.

(5) If a loss or spill of less than 42 gallons of brine, crude oil, or oil and gas field waste does contact surface waters, groundwater, or other environmentally sensitive resources, or is not completely contained and cleaned up within 48 hours from the time the loss or spill was discovered, then a permittee of a well shall report the loss or spill as provided by subrule (2) of this rule and submit the written notification as provided by subrule (3) of this rule.

(6) If the loss or spill is less than 42 gallons of brine, crude oil, or oil and gas field waste, then the loss is not a reportable loss or spill if the loss or spill occurs while a permittee or an authorized representative of the permittee is on-site and the loss or spill is completely contained and cleaned up within 1 hour of the occurrence.

(7) A permittee of a well shall promptly report, within 8 hours of discovery of the loss or spill, by telephone or in person, a loss or spill of other chemicals used in association with oil and gas exploration, production, disposal, or development, shall provide the information required in subrule (2)(a) through (l) of this rule, and shall complete the form required in subrule (3) of this rule. A permittee shall report the losses or spills under other applicable state and federal laws and regulations.

History: 1996 AACS; 2001 AACS.

R 324.1009 Smoking and open flame restrictions.

Rule 1009. A permittee of a well shall ensure that smoking and open flames shall not occur where oil or gas, or both, constitutes a hazard of fire or explosion.

History: 1996 AACS.

R 324.1010 Gas burning, processing, or disposal.

Rule 1010. A permittee of a well shall ensure that all gas produced in the operation or testing of wells that is not utilized is burned, processed, or disposed of in a manner consistent with these rules and all applicable state and federal laws and regulations. The gas shall not be burned closer than 100 feet from a well or storage tank or 300 feet from structures used for public or private occupancy or from any other flammable and combustible material.

History: 1996 AACS.

R 324.1011 Purging, removal, and abandonment of lines and vessels.

Rule 1011. A permittee of a well shall purge all flow lines and vessels, including tanks, if the flow lines or vessels are not used for 1 year and shall provide notification of the purging operation to the supervisor or authorized representative of the supervisor. The supervisor may require the line to be removed or abandoned.

History: 1996 AACS.

R 324.1012 Identification of wells and surface facilities.

Rule 1012.(1)A permittee of a well shall ensure that a well is identified by a sign which is posted in a conspicuous place and which is not more than 20 feet from the well. A sign shall be durably constructed, be kept in good condition, and the lettering shall be not less than 1 1/2 inches high and legible under normal conditions at a distance of 25 feet. A sign shall show all of the following information:

(a) The permit number.

(b) The name of the permittee.

(c) The name of the lease and well number.

(d) The well location by quarter-quarter section, township, and range.

(e) A telephone number by which an authorized representative of the permittee may be contacted at any time to respond to an emergency at the well.

(2) A surface facility shall be identified by a sign which is posted in a conspicuous place and which is not more than 25 feet from the outside limits of the surface facility or at a location prescribed by the supervisor or authorized representative of the supervisor. A sign shall show all of the following information:

(a) The name of the permittee or owner.

(b) A telephone number by which an authorized representative of the permittee may be contacted at any time to respond to an emergency at the facility.

(c) The location by quarter-quarter section, township, and range. If more than 1 facility is located at a common site, 1 identification sign is sufficient. A sign shall be kept in good condition and the lettering shall be not less than 1 1/2 inches high and legible under normal conditions at a distance of 25 feet.

History: 1996 AACS; 2001 AACS.

R 324.1013 Nuisance odors.

Rule 1013. A person shall not cause a nuisance odor in the exploration for, or in the development, production, handling, or use of, oil, gas, or brine or in the handling of any product associated with the exploration, development, production, or use of oil, gas, or brine.

History: 1996 AACS.

R 324.1014 Suspension of OIL AND GAS operations due to threat to public health and safety.

Rule 1014. (1) The supervisor or authorized representative of the supervisor shall have the authority to immediately require corrective action, including suspending any or all components of the oil and gas operations, if the oil and gas operations have been determined by the supervisor to be in violation of the provisions of the act, these rules, permit conditions, instructions, or orders of the supervisor and threatens the public health and safety.

(2) A suspension of oil and gas operations shall be in effect for not more than 5 days or until the operation is in compliance and protection of the public health and safety is ensured. To extend the suspension beyond 5 days, the supervisor shall issue an

emergency order to continue the suspension of oil and gas operations and may schedule a hearing under part 12 of these rules. The total duration of the suspension of oil and gas operations shall not be more than 21 days, as provided in section 61516 of the act.

History: 1996 AACS; 2002 AACS.

R 324.1015 Nuisance noise; "decibel," "decibels on the a-weighted network," "noise-sensitive area," and "nuisance noise" defined.

Rule 1015. (1) A person shall not cause a nuisance noise in the production, handling, or use of oil, gas, or brine or in the handling of any product associated with the production or use of oil, gas, or brine.

(2) If the supervisor or authorized representative of the supervisor receives 1 or more complaints of noise heard by the complainant at noise-sensitive areas that is attributed to a surface facility, then the supervisor may require the permittee to collect decibel readings to determine the sound levels at the noise-sensitive areas and at a distance of 1,320 feet from the facility. If the sound level of the facility is more than 45 decibels on the a-weighted network at a distance of 1,320 feet from the facility, then the supervisor or authorized representative of the supervisor may find that a nuisance noise exists after considering all applicable information, including the distance between the surface facility and the noise-sensitive areas, the sound levels at the noise-sensitive areas, and sound attributable to sources other than the surface facility. The supervisor or authorized representative of the supervisor may require appropriate noise control measures to reduce the decibel levels. If noise control measures are required, then the permittee shall submit, to the supervisor or authorized representative of the supervisor, for approval, an abatement plan and schedule for implementation within 30 days of a determination by the supervisor or authorized representative of the supervisor that noise control measures are necessary.

(3) As used in this rule:

(a) "Decibel" means a unit of sound level on a logarithmic scale measured relative to the threshold of audible sound by the human ear in compliance with the ANSI standard 1.1, entitled "Acoustical Terminology," 1994 edition, which is adopted by reference in these rules. Copies of the standard are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $100.00 each, and from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036, at a cost as of the time of adoption of these rules of $100.00 each.

(b) "Decibels on the a-weighted network" means decibels measured on the a-weighted network of a sound level meter, as specified in the ANSI standard 1.4, entitled "Specifications for Sound Level Meters," 1983 edition, which is adopted by reference in these rules. Copies of the standard are available for inspection at the Lansing office of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $70.00 each, and from the American National Standards

Institute, 11 West 42nd Street, New York, NY 10036, at a cost as of the time of adoption of these rules of $70.00 each.

(c) “Noise-sensitive area” means a residential dwelling, place of worship, school, or a hospital and also means an existing site that is maintained for public recreation for which quiet is a primary consideration in the use of the site.

(d) “Nuisance noise” means any noise from a well or its associated surface facilities that causes injurious effects to human health or safety or the unreasonable interference with the comfortable enjoyment of life or property.

History: 1996 AACS; 2015 AACS.

R 324.1016 Construction standards for noise abatement at compressors associated with surface facilities.

Rule 1016. (1) This rule shall apply to compressors that have motors rated for more than 150 horsepower.

(2) A permittee of a well who installs a compressor after the effective date of these rules, or a permittee of a well who substantially reconstructs an enclosure for a compressor after the effective date of these rules, shall comply with all of the following provisions:

(a) The compressor, drive motor, and cooler shall be completely enclosed.

(b) The walls, doors, and roof of the enclosure shall be completely lined with sound-absorbent material.

(c) The compressor drive motor shall be equipped with a hospital-type muffler or the equivalent.

(d) Air intake and exhaust passages shall be constructed so as to include at least 1 right-angle turn between the point of air entrance or exit to or from the passage and the main volume of the compressor enclosure. Air intake and exhaust passages shall be completely lined with sound- absorbent material, unless the passages vent through the roof.

(e) The compressor shall be capable of operating with the enclosure doors closed at ambient air temperatures of 85 degrees Fahrenheit or lower."Doors" as used in this rule shall not include necessary openings for air intake and exhaust passages.

(3) The supervisor or authorized representative of the supervisor may grant an exception to the requirements of subrule (2) of this rule if a permittee designs and constructs a compressor according to a plan submitted to, and approved by, the supervisor or authorized representative of the supervisor. The plan shall provide for sound abatement equal to or exceeding the sound abatement standard specified in subrule (2)(a) of this rule.

(4) A compressor which is installed as a replacement for, and on the same site as, a compressor that was installed before the effective date of these rules and which is an equivalent size as the previous compressoris not subject to subrule (2) of this rule.

History: 1996 AACS.

PART 11. HYDROGEN SULFIDE MANAGEMENT

R 324.1101 Definitions; B to M.

Rule 1101. As used in this part:

(a) "Briefing area" means a specified geographic area nearby where all personnel can safely assemble in an emergency.

(b) "Colorimetric or length of stain tubes" means glass tubes that contain a chemical which changes color upon exposure to a specified substance and which allow the concentration of the specified substance to be read directly.

(c) "Emergency preparedness coordinator" means an individual appointed pursuant to Act No. 390 of the Public Acts of 1976, being §30.401 et seq.of the Michigan Compiled Laws, to coordinate emergency planning or services within the county or municipality.

(d) "Existing H2S well" means an H2S well that is drilled and completed before September 2, 1987.

(e) "Existing process equipment" means equipment for the production of oil or gas, or both, which was in existence, and through which oil or gas, or both, was being produced, before September 2, 1987. Existing process equipment does not include gas sweetening plants or stripping plants.

(f) "Flare" means a device for the burning of gasses in which the flame is exposed to the atmosphere and burning takes place at a height of not less than 20 feet above the ground.

(g) "H2S well" means a well that contains a hydrogen sulfide content in the gas of not less than 300 ppm.

(h) "Incinerator" means a device specifically designed for the destruction, by burning, of combustible gasses, in which the products of combustion are emitted to the outer air by passing through a stack or chimney that opens to the outer air at a height of not less than 20 feet above the ground.

(i) "Mcf" means 1,000 cubic feet of gas at standard conditions of 14.65 psi absolute and at 60 degrees Fahrenheit.

History: 1996 AACS.

R 324.1102 Definitions; N to W.

Rule 1102. As used in this part:

(a) "NACE" means the national association of corrosion engineers.

(b) "New H2S well" means an H2S well that is drilled or completed after September 2, 1987.

(c) "Radius of exposure" means the distance, in feet, that results when appropriate values are substituted for the variables in the following equation:

$$RoE = (A \times B \times C)^{0.6258}$$ where

A = 1.589 for a 100-ppm radius of exposure.

B = the mole fraction concentration of hydrogen sulfide in the released gas.

C = the maximum volume of gas determined to be available for release in cubic feet per 24 hours. The radius of exposure is the distance from a point of release at

which a specified concentration of hydrogen sulfide would occur if gas of a known concentration of hydrogen sulfide were released at a known rate.

(d) "Safety equipment" means, at a minimum, all of the following items:

(i) First aid kits.

(ii) Stretchers.

(iii) Blankets.

(iv) Portable dry chemical fire extinguishers.

(v) Ropes.

(vi) Flare guns and flares.

(vii) Battery-operated lanterns.

(viii) Portable electronic hydrogen sulfide detectors.

(ix) Warning signs that have the word "Danger" or "Caution" followed by the words "Poison Gas."

(x) Two copies of the owner's contingency plan.

(xi) Not less than 2 portable, self-contained, pressure-demand breathing apparatus that have a 30-minute air supply.

(xii) A supply of compressed breathable air or oxygen that is sufficient to recharge each self-contained breathing apparatus at least once.

(e) "Well class" means the category into which an H2S well falls or, in the case of an H2S well to be drilled, the category into which it is expected that the well will fall, as follows:

(i) "Class I H2S well" means a well that has a 100-ppm radius of exposure of more than 300 feet and a hydrogen sulfide content in the gas of not less than 300 ppm.

(ii) "Class II H2S well" means a well that has a 100-ppm radius of exposure of not less than 100 feet and not more than 300 feet and a hydrogen sulfide content in the gas of not less than 300 ppm.

(iii) "Class III H2S well" means a well that has a 100-ppm radius of exposure of less than 100 feet and not less than 30 feet and a hydrogen sulfide content in the gas of not less than 300 ppm.

(iv) "Class IV H2S well" means a well that has a 100-ppm radius of exposure of less than 30 feet and a hydrogen sulfide content in the gas of not less than 300 ppm.

History: 1996 AACS.

R 324.1103 Metallic component standards.

Rule 1103. A permittee of a well shall ensure that metallic components of the well, flow line, and associated surface facilities installed during the course of drilling, completing, testing, producing, repair, workover, or servicing operations after September 2, 1987, where applicable, are in compliance with or exceed the standards for use in a hydrogen sulfide environment set forth in the NACE standard MR0175-2000, 2000 edition, entitled “Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment,” which is adopted by reference in these rules. Copies may be inspected at the Lansing office or field offices of the office of oil, gas, and minerals of the department of environmental quality. Copies may be obtained from the Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing,

Michigan 48909, at a cost as of the time of adoption of these rules of $50.00 each, and from the National Association of Corrosion Engineers, P.O. Box 218340, Houston, Texas 77218, at a cost as of the time of adoption of these rules of $50.00 each.

History: 1996 AACS; 2001 AACS; 2015 AACS.

R 324.1104 Permittee compliance with this part and state and federal laws and regulations.

Rule 1104. A permittee of a well shall comply with all of the provisions of this part. Compliance with this part does not exempt a permittee from complying with all applicable state and federal laws and regulations governing air pollution and emissions.

History: 1996 AACS.

R 324.1105 Classification of H2S wells; applicability of rules to well classes.

Rule 1105.(1) An H2S well is considered a class I H2S well and is subject to the requirements of R 324.1103, R 324.1104, R 324.1106 to R 324.1115(1) to (5) and (7), and R 324.1116 to R 324.1130, unless a permittee can supply data showing that the well is a class II H2S, class III H2S, or class IV H2S well.

(2) An H2S well that is considered to be a class II H2S well is subject to the requirements of R 324.1103, R 324.1104, R 324.1106 to R 324.1115(1) to (5) and (7), R 324.1116 to R 324.1129, and R 324.1130(1),(3) and (4).

(3) An H2S well that is considered to be a class III H2S well is subject to the requirements of R 324.1103, R 324.1104, R 324.1106 to R 324.1109, R 324.1111, R 324.1112, R 324.1114, R 324.1115(1) to (5) and (7), R 324.1116 to R 324.1129, and R 324.1130(1) and (4).

(4) An H2S well that is considered to be a class IV H2S well is subject to the requirements of R 324.1103, R 324.1104, R 324.1106 to R 324.1109, R 324.1111, R 324.1112(2), R 324.1114, R 324.1115(6) and (7), R 324.1118 to R 324.1124, R 324.1126 to R 324.1129, and R 324.1130(1) and (4).

(5) If a well is being drilled through, but not completed in, a reservoir known to contain hydrogen sulfide-bearing gas, then the well shall be in compliance with the requirements of the H2S well class to which it would be assigned if it were completed in the reservoir. Compliance shall continue until all hydrogen sulfide-bearing zones have been cased off.

(6) The supervisor may require a permittee to provide the information necessary to determine whether these rules apply to a well.

History: 1996 AACS; 2001 AACS.

R 324.1106 Location of H2S wells and associated surface facilities.

Rule 1106. (1) New H2S wells shall be located not less than 300 feet from existing water wells, existing structures used for public or private occupancy, existing areas

maintained for public recreation, or the edge of the traveled portion of an existing interstate, United States, or state highway.

(2) Surface facilities associated with new H2S wells shall be located not less than 600 feet from existing water wells, existing structures used for public or private occupancy, existing areas maintained for public recreation, or the edge of the traveled portion of an existing interstate, United States, or state highway. The supervisor or authorized representative of the supervisor may grant an exception to the setback distance to not less than 450 feet for a class II H2S well and not less than 300 feet for a class III H2S well and a class IV H2S well either upon presentation, to the supervisor or authorized representative of the supervisor, of a consent form, provided by the supervisor, signed by the owner or owners of all existing water wells, existing structures used for public or private occupancy, or existing areas maintained for public recreation located less than 600 feet from the proposed process equipment site or upon receipt of a petition from the permittee for a hearing pursuant to part 12 of these rules.

(3) If existing process equipment is located less than 600 feet from existing water wells, existing structures used for public or private occupancy, existing areas maintained for public recreation, or a state, United States, or interstate highway, then the supervisor or authorized representative of the supervisor may require relocation of the facility if it

is substantially reconstructed after September 2, 1987.

(4) The supervisor shall not require relocation of an existing facility because of its proximity to an existing water well, to a structure used for public or private occupancy, to an area maintained for public recreation, or to a state, United States, or interstate highway constructed or established after the installation of the facility or after September 2, 1987.

History: 1996 AACS.

R 324.1107 Training.

Rule 1107.(1) A permittee of a well is responsible for ensuring that all agents, employees, or other representatives of the permittee who are involved in drilling, completing, testing, producing, repair, workover, or servicing operations on an H2S well have received training from persons qualified in hydrogen sulfide safety. The training shall include all of the following matters:

(a) The physical properties and physiological effects of hydrogen sulfide.

(b) The effects of hydrogen sulfide on metals and elastomers.

(c) Emergency escape procedures.

(d) The location and proper use of safety equipment.

(e) The locations of primary and secondary briefing areas.

(f) The location and operation of the hydrogen sulfide detection and warning system.

(g) The corrective actions, shut-in procedures, H2S well ignition procedures, and procedures for notifying off-site public authorities listed in the contingency plan to be followed in an emergency.

(h) The contents of the permittee's contingency plan.

(2) Not less than 2 persons per crew shall be trained in emergency first aid procedures, including red cross-approved techniques of cardiopulmonary resuscitation.

(3) When a drilling contractor or other independent contractor is involved in drilling, completing, testing, producing, repair, workover, or servicing operations on an H2S well, a permittee of a well may rely on written certification obtained from the contractor that the agents and employees of the contractor involved in the operations have received the training required by this rule. A permittee shall retain the written certification. Failure to ensure that employees receive adequate training and are current in the training is sufficient cause for the suspension of any or all components of the oil and gas operations on the well. A suspension shall continue as provided in R 324.1014(2).

History: 1996 AACS; 2002 AACS.

R 324.1108 Securing of nonproducing H2S wells.

Rule 1108. A permittee of a nonproducing H2S well shall ensure that the well is secured to prevent a person other than authorized personnel from opening the well.

History: 1996 AACS.

R 324.1109 Warning signs; specifications.

Rule 1109. A permittee of a well shall ensure that warning signs have letters that are not less than 1 1/2 inches in height and that are legible under normal conditions at a distance of 25 feet.

History: 1996 AACS.

R 324.1110 Contingency plans for drilling and production.

Rule 1110.(1) A contingency plan for drilling shall be prepared by the applicant to provide an organized plan of action for alerting and protecting personnel at an H2S well site and the public. The contingency plan for drilling shall consist of 2 parts.

(2) Part 1 of the plan shall contain the general procedures that shall be followed in the event of an emergency involving the possible release of hydrogen sulfide into the atmosphere and shall include both of the following sections:

(a) A section that lists, by title, personnel to be contacted and their duties and responsibilities. The list shall also include a delegation of duties and responsibilities and shall specify who is responsible for ordering ignition of the H2S well if necessary. The list shall be kept current by the applicant or permittee.

(b) A section that contains all of the following information:

(i) The emergency circumstances that cause the plan to be put into operation.

(ii)The initial procedures to be followed if the plan is activated.

(iii)The actions to be taken to ensure that all personnel known to be on the location are accounted for and that nonessential personnel shall be safely removed.

(iv)The actions to be taken to restrict access of nonessential personnel to the location.

(v) The procedure for notifying the general public, public authorities, as listed in the contingency plan, and safety agencies in the event of an emergency.

(vi)If evacuation of the public is necessary, the procedure for conducting the evacuation.

(vii)The procedures for igniting the H2S well.

(3) Part 2 of the plan shall be site-specific and shall contain all of the following information:

(a) An accurate map that shows the locations of all existing structures used for public or private occupancy, areas maintained for public recreation, roads, and railroads within a 1,300-foot radius of the drilling well in the case of a class I H2S well or within a 500-foot radius of the drilling well in the case of a class II H2S well.

(b) A list of names, telephone numbers, and addresses of all of the following:

(i) Seasonal and permanent residents.

(ii)Private businesses.

(iii)Schools.

(iv)Places of worship.

(v) Hospitals.

(vi)Governmental offices.

(vii)Parties responsible for the areas maintained for public camping or gathering identified on the map.

(c) A list of emergency telephone numbers, including the numbers of all of the following:

(i) Representatives of the permittee.

(ii)Representatives of the drilling contractor.

(iii)The emergency preparedness coordinator.

(iv)Local ambulance services.

(v) Local hospitals.

(vi)Local fire departments.

(vii)The department of environmental quality.

(viii)The pollution emergency alerting system.

(4) An applicant shall submit part 1 of the contingency plan for drilling an H2S well at the request of the supervisor or authorized representative of the supervisor. The applicant shall submit part 2 of the contingency plan for drilling an H2S well with the application for a drilling permit. The applicant shall submit a copy of part 2 of the contingency plan to the local emergency preparedness coordinator at the time the application is submitted to the supervisor. The supervisor or authorized representative of the supervisor may require that contingency plans for producing H2S wells be updated periodically.

(5) An applicant may request, from the supervisor or authorized representative of the supervisor, an exception to the requirement to prepare the map and accompanying list of residences required in subrule (3) of this rule.

(6) A permittee shall prepare a contingency plan for production for any well, surface facility, or flow line subject to this rule. A contingency plan shall contain all of the following information:

(a) Permittee name, well name, location, and permit number of the well or facility.

(b) An accurate map or site plan showing the location of all equipment carrying or containing fluids with hydrogen sulfide.

(c) Names and contact information for local representatives of the permittee who have knowledge of the equipment and authority to take corrective actions at the well or facility in an emergency situation.

(d) Available information on hydrogen sulfide concentrations at the site.

(7) Every 3 years or as required by the supervisor, a permittee shall review contingency plans and certify to the supervisor or authorized representative of the supervisor and the local emergency preparedness coordinator that the contingency plans are accurate. The permittee shall update the contingency plan under any of the following conditions and submit a copy of the updated contingency plan to the supervisor or authorized representative of the supervisor and the local emergency preparedness coordinator:

(a) A change of the notification process or local representatives of the permittee.

(b) A substantial change in the site conditions or equipment noted on the plan.

(c) A change of the permittee.

(8) A permittee shall provide a contingency plan for production to the supervisor or authorized representative of the supervisor and the local emergency preparedness coordinator for all wells, surface facilities, and flow lines subject to this rule 6 months after the effective date of these amendatory rules for all existing production facilities and before the commencement of production for all production facilities completed after the effective date of these amendatory rules.

History: 1996 AACS; 2001 AACS.

R 324.1111 Compliance with rules; time.

Rule 1111. A permittee of a well shall comply with R 324.1112 to R 324.1116 not later than the time at which drilling reaches a depth of 500 feet above the projected top of the geological stratum suspected by a permittee or the supervisor or authorized representative of the supervisor to contain hydrogen sulfide. Compliance shall continue until all formations or strata suspected to contain hydrogen sulfide are cased off, plugged, or drilled and proven not to be a potential problem.

History: 1996 AACS.

R 324.1112 Briefing areas.

Rule 1112. (1) A permittee of a well shall establish primary and secondary briefing areas at the drilling site. A permittee shall ensure that safety equipment is located at the primary briefing area.

(2) The supervisor or authorized representative of the supervisor may require safety equipment, in addition to that listed in R 324.1102(d), if necessary for the safety of the public or the workers.

History: 1996 AACS.

R 324.1113 Emergency preparedness coordinator; contact by permittee.

Rule 1113. A permittee of a well shall contact the appropriate emergency preparedness coordinator not less than 24 hours before the commencement of drilling the H2S well.

History: 1996 AACS; 2001 AACS.

R 324.1114 Wind direction indicators.

Rule 1114. A permittee of a well shall install wind direction indicators at the drilling site. the wind direction indicators shall be visible from all normal work stations within the drilling site.

History: 1996 AACS.

R 324.1115 Equipment; electric or mechanical fan; hydrogen sulfide detection and warning system; emergency escape self-contained breathing apparatus; rig floor ventilation.

Rule 1115. (1) A permittee of a well shall install a hydrogen sulfide detection and warning system that activates audible and visual alarms if hydrogen sulfide is detected. Visual alarms shall be activated if a hydrogen sulfide concentration of 10 ppm is detected. Audible alarms shall be activated if a hydrogen sulfide concentration of 20 ppm is detected.

(2) A permittee of a well shall locate hydrogen sulfide sensors as follows:

(a) For rotary rigs, at all of the following locations:

(i) The shale shaker or at the point of first release of gas from the returning stream of drilling fluid.

(ii) On the rig floor.

(iii) In the substructure.

(iv) At the mud hopper.

(b) For cable tool rigs, at the point of first release of gas from the well bore and on the rig floor.

(3) After the sensors are mounted, a permittee of a well shall calibrate the system according to the manufacturer's instructions. The permittee shall test the detection and warning system before drilling into the geological stratum suspected to contain hydrogen sulfide. The permittee shall record the calibrations and tests in the driller's log. The supervisor or authorized representative of the supervisor may witness the testing and calibration.

(4) A permittee of a well shall ensure that an emergency escape self- contained breathing apparatus is readily available to every member of the drilling crew at that member's work station and to other personnel required to be on the rig floor during the drilling operation.

(5) A permittee of a well shall ensure that the rig floor and substructure is adequately ventilated to prevent the accumulation of gas.Forced-air ventilation shall be

used when natural ventilation is inadequate. An electric or mechanical fan shall be available on the drill site for ventilation.

(6) A permittee of a well shall ensure that the rig floor and substructure of a class IV H2S well is adequately ventilated to prevent the accumulation of gas and shall utilize either a hydrogen sulfide detector that has an audible alarm or an electric or mechanical fan that operates constantly during the operation if natural ventilation is inadequate to keep the wellhead area free from gas.

(7) A permittee of a well shall ensure that well safety equipment is the same equipment that is required under R 324.1102(d) for class I H2S and class II H2S wells and R 324.1102(d)(viii), (ix), and (xi) for class III H2S wells. Safety equipment shall be located at the primary briefing areas for class I H2S and class II H2S wells and at the well site for class III H2S and class IV H2S wells, if safety equipment is required for class IV H2S wells, unless otherwise stated in this rule. The supervisor or authorized representative of the supervisor may require the use of safety equipment, in addition to the equipment listed in R 324.1102(d), if necessary for the safety of the public or the workers.

History: 1996 AACS.

R 324.1116 Mud gas separator; burning of gas generated by mud gas separator; incinerator or flare installation; hydrogen sulfide concentration determination.

Rule 1116. (1) All of the following provisions apply to rotary drilling operations:

(a) If a gas kick occurs, all returning drilling fluid shall be circulated through a mud gas separator.

(b) All gas separated from the drilling fluid by the mud gas separator shall be routed to a properly engineered incinerator or flare that has an elevated discharge to the atmosphere and shall be burned.

(c) When gas is being routed to the incinerator or flare from the mud gas separator, the hydrogen sulfide content of the gas shall be determined by a permittee or the permittee's representative. The determination shall be made using colorimetric or length of stain tubes or other equipment designed to measure hydrogen sulfide concentrations and shall utilize a procedure approved by the supervisor or authorized representative of the supervisor. The results of the determination shall be entered into the driller's log.

(2) Both of the following provisions apply to cable tool drilling:

(a) All gas separated from other fluids shall be routed to a properly engineered flare or incinerator that has an elevated discharge to the atmosphere and shall be burned.

(b) When gas is being routed to the incinerator or flare, the hydrogen sulfide content of the gas shall be determined by a permittee or the permittee's representative. The determination shall be made using colorimetric or length of stain tubes or other equipment designed to measure hydrogen sulfide concentrations and shall utilize a procedure approved by the supervisor or authorized representative of the supervisor. The results of the determination shall be entered into the driller's log.

History: 1996 AACS.

R 324.1117 Initial testing.

Rule 1117. (1) When initial testing of an H2S well is performed, in addition to applicable air pollution control commission general rules, a permittee of a well shall comply with all of the following requirements not later than the start of testing if permanent surface facilities have not been installed:

(a) One or more wind direction indicators shall be installed and shall be visible from all normal work stations within the test site of class I H2S and class II H2S wells.

(b) An incinerator or flare shall be installed for the purpose of burning all gas and stock tank vapor produced during the test. The incinerator or flare shall be equipped with a continuous pilot light or a pilot light outage detector that has an automatic reignition system. The incinerator or flare shall be located not less than 75 feet from the wellhead and test tanks and shall be positioned so that the prevailing winds carry the combustion products away from the site.

(c) A flashback prevention system shall be installed between the incinerator or flare and the test tanks.

(d) All of the following equipment shall be located at the test site:

(i) Not less than 2 self-contained, pressure-demand breathing apparatus that have a 30-minute air supply for class I H2S and class II H2S wells.

(ii) A first aid kit for class I H2S and class II H2S wells.

(iii) A portable electronic hydrogen sulfide detector for class I H2S and class II H2S wells.

(iv) An emergency escape self-contained breathing apparatus for each member of the test crew for class I H2S and class II H2S wells.

(v) The supervisor or authorized representative of the supervisor may require the use of safety equipment in addition to the equipment listed in R 324.1102(e) if necessary for the safety of the public or the workers.

(e) Warning signs that have the word "Danger" or "Caution" followed by the words "Poison Gas" shall be posted at the entrances to all access roads.

(f) The supervisor or authorized representative of the supervisor shall be notified of the expected start-up date of the initial test.

(2) During the test period, a permittee of a well shall determine the hydrogen sulfide content of the gas produced. Hydrogen sulfide content shall be determined on-site using colorimetric or length of stain tubes or other equipment designed to measure hydrogen sulfide concentrations utilizing a procedure approved by the supervisor or authorized representative of the supervisor.

(3) All gas measurements made during the initial flow test shall be made using a meter that allows all gas metered to be burned.

(4) Operations or procedures that require the use of a self-contained breathing apparatus shall be performed only if not less than 2 people who are authorized by the permittee of the well are on-site.

(5) The supervisor or authorized representative of the supervisor may grant exceptions to this rule when compliance with the provisions of this rule is not necessary to provide for the protection or safety of the public or workers or when the

H2S well or associated surface facilities are not likely to constitute sources of nuisance odors.

History: 1996 AACS.

R 324.1118 Gas analyses.

Rule 1118. (1) The supervisor or authorized representative of the supervisor may require periodic gas analyses to determine hydrogen sulfide concentration.

(2) A permittee of a well shall make a second gas analysis 1 year after the date of the initial analysis required in R 324.1117(2). Further gas analyses shall be required only at the request of the supervisor or authorized representative of the supervisor.

(3) A permittee of a well shall notify the supervisor or authorized representative of the supervisor before the sampling and analysis required in subrules (1) and (2) of this rule.

(4) A permittee of a well shall report, in writing, the results of a gas analysis required by the supervisor or authorized representative of the supervisor to the supervisor within 1 month of the date of the analysis.The report shall state the methods of sampling and analysis used.

History: 1996 AACS.

R 324.1119 Wellheads; painting requirements; warning signs.

Rule 1119. (1) A permittee of a well shall ensure that the valve or valves necessary to shut off all fluid flow nearest the wellhead are painted yellow.

(2) A permittee of a well shall ensure that the power supply kill switch of an H2S well that is produced by artificial lift is painted yellow. A permittee of a well shall ensure that the power supply kill switch is conspicuously marked and readily accessible.

(3) A permittee of a well shall ensure that a warning sign that has the word "Danger" or "Caution" followed by the words "Poison Gas" is prominently displayed at the wellhead.

History: 1996 AACS.

R 324.1120 Flow lines; markers; protection.

Rule 1120. (1) A permittee of a well shall ensure that the routes of flow lines that are located before the point of sale and that are used for transporting fluids containing hydrogen sulfide are marked. Markers shall be mounted not less than 4 feet above ground level, shall consist of signs denoting the presence of a buried line carrying hydrogen sulfide, and shall contain the name of the flow line owner and the flow line owner's emergency telephone number. Markers shall be properly maintained and shall be spaced

so that the route of the flow line can be easily traced. Routes shall be kept sufficiently cleared to allow adjacent markers to be visible with the naked eye.

(2) A permittee of a well shall ensure that flow lines constructed above ground level are protected from accidental damage by vehicular traffic or other similar causes.

History: 1996 AACS.

R 324.1121 Heated vessels; installation of certain equipment required; exhaust gas stack height.

Rule 1121. A permittee of a well shall ensure that heated vessels fueled with natural gas that contains hydrogen sulfide are equipped with a system to prevent the emission of the fuel gas to the atmosphere in the event of a pilot failure or flameout and shall be in compliance with the emissions and operations requirements provided in R 336.1403. The exhaust gas stack height shall be not less than 20 feet.

History: 1996 AACS.

R 324.1122 Vessels used for storing hydrogen sulfide-bearing liquid hydrocarbons or hydrogen sulfide-bearing brine; equipment requirements.

Rule 1122.(1) A permittee of a well shall ensure that a vessel which is located at an H2S well site or in a central production facility serving an H2S well and which is used for the storage of hydrogen sulfide-bearing liquid hydrocarbons or hydrogen sulfide-bearing brine is equipped with a sealing, pressure-vacuum-type hatch, except that a pressure-vacuum-type hatch is not required on a storage vessel if the venting of vapor to the atmosphere is permitted under subrule (4) of this rule. A hatch shall be kept closed when a tank is not being gauged.

(2) If a storage vessel described in subrule (1) of this rule releases a total 24-hour volume of 5 mcf or more of vapors, then a permittee of a well shall ensure that the vessel is equipped with a vent line for conveying released gasses and vapors to an incinerator, flare, or vapor recovery system. A flashback prevention system shall be installed on the line between a vessel and the incinerator or flare. If a vapor recovery system is used to control tank vapor emissions, then a flare or incinerator shall be available for standby or emergency use. Installing a vapor recovery system does not exempt a flare or incinerator from being in compliance with the requirements of R 324.1123.

(3) If a storage vessel described in subrule (1) of this rule releases a total daily volume of 5 mcf or more of vapors, then a permittee of a well shall install a fence around the vessel equipped with a gate. A fence shall be located not less than 20 feet from the base of a storage vessel. A permittee shall ensure that warning signs with the word "Danger" or "Caution" followed by the words "Poison Gas" are installed on all sides of the fence.If the supervisor or authorized representative of the supervisor finds that a threat to the public safety exists due to emissions of sulfur-bearing gas or vapor, then fencing other than that specified in R 324.102(p) may be required.

(4) If a storage vessel described in subrule (1) of this rule releases a total daily volume of 5 mcf or less of vapor, then it may be vented to the atmosphere if the vent is located not less than 10 feet above the tank top and if the opening of the vent is within the diked area or not less than 20 feet above the ground if the opening of the vent is

outside the diked area. The supervisor may prohibit venting of vapor to the atmosphere if a verified chronic nuisance odor results from the sulfur-bearing compounds being vented.

(5) If the hydrogen sulfide concentration at the tank thief hatch is more than 500 ppm by volume, then a permittee of a well shall ensure that a tank has a latched gate at the foot of the catwalk stairs. A permittee of a well shall ensure that a sign reading "Self-contained Breathing Apparatus is Recommended Beyond This Point if Hatches are to be Opened" is posted on the gate.

(6) The supervisor may require the use of a tank gauging system that does not require the opening of the tank hatches if a verified chronic nuisance odor results from tank gauging.

(7) A person or a permittee of a well shall not install a tank which is used for the storage of hydrogen sulfide-bearing liquid hydrocarbons or brine from an H2S well if the separator or treater immediately upstream of the tank has an operating pressure of more than 250 psig unless an independent

registered engineer certifies that the facility is designed and constructed such that any release of liquids or gas to the tank shall not cause a release of hydrogen sulfide to the atmosphere.

History: 1996 AACS; 2001 AACS; 2002 AACS.

R 324.1123 Incinerators and flares; equipment and design requirements; additional requirements.

Rule 1123.(1) A permittee of a well shall ensure that an incinerator or flare installed under R 324.1117, R 324.1122, or R 324.1124 is designed and equipped to prevent the release of unburned gas to the atmosphere. If the daily volume of gas handled by the incinerator or flare contains 28 pounds or more of hydrogen sulfide, then a permittee shall ensure that the incinerator or flare is equipped with a mechanism that operates upon failure of the pilot light to shut off the flow of fluid from the wellhead.

(2) A permittee of a well shall ensure that an incinerator or flare required by R 324.1122 is fenced. A fence shall be located not less than 20 feet from the base of the incinerator or flare. A permittee of a well shall ensure that warning signs that have the word "Danger" or "Caution" followed by the words "Poison Gas" are posted on all sides of the fence.If the supervisor or authorized representative of the supervisor finds that a threat to the public safety still exists due to emissions of the incinerator or flare, then fencing other than that specified in R 324.102(p) may be required.

(3) If the supervisor or authorized representative of the supervisor finds that a threat to the public health or safety exists due to the emission of sulfur-bearing gasses or vapors, then a flare stack or incinerator stack that is more than 20 feet high, as specified in R 324.1101(f) and (h), may be required.

History: 1996 AACS; 2002 AACS.

R 324.1124 Emergency relief valves.

Rule 1124. A permittee of a well shall ensure that an emergency relief valve on process equipment is equipped with a line for conveying the released gasses or vapors to an incinerator or flare. The supervisor or authorized representative of the supervisor may grant an exception if the total daily volume of gas produced is less than 5 mcf.

History: 1996 AACS.

R 324.1125 Shut-in systems.

Rule 1125.(1)A permittee of a well shall ensure that an H2S well which produces unattended and which has a stabilized producing tubing pressure of not less than 100 psig is equipped with a high-pressure and low-pressure shut-in system.

(2) A permittee of a well shall ensure that a class I H2S well drilled after the effective date of these amendatory rules for which the 100 ppm radius of exposure includes an existing structure used for public or private occupancy, existing area maintained for public recreation, or the edge of the traveled portion of an existing interstate, united states, or state highway, shall be equipped with the following:

(a) Hydrogen sulfide sensors located on four sides of the wellhead at a distance of not more than 20 feet. The sensors shall be set to activate safety shutdown equipment as specified in subdivisions (b) and (c) of this subrule when a hydrogen sulfide concentration of 30 ppm is detected. A permittee of a well shall calibrate the sensor system according to the manufacturer's instructions.

(b) For flowing class I H2S wells:

(i) Dual manual master valves.

(ii)A fail-closed wing safety valve automatically actuated by a low pressure pilot sensor downstream of the valve and by the hydrogen sulfide sensors at the wellhead.

(iii)Remote telemetry that alerts the well operator when the hydrogen sulfide sensors detect a hydrogen sulfide concentration of 30 ppm.

(iv)An emergency access valve into the tubing spool.

(c) For pumped class I H2S wells:

(i) An emergency access valve into the tubing spool.

(ii)A fail-closed blowout preventer automatically actuated in the event the polish rod breaks.

(iii)A fail-closed polish rod ram blowout preventer automatically actuated by the hydrogen sulfide sensors at the wellhead.

(iv)Equipment that automatically shuts off the pump drive unit in the event of a stuffing box failure.

(v) A safety shut down of the pump drive unit, which cannot be isolated from the tubing pressure without unlocking a valve, automatically actuated by the high pressure low pressure sensor and the hydrogen sulfide sensors at the wellhead.

History: 1996 AACS; 2001 AACS.

R 324.1126 Vehicle loading racks; vapor return lines required; vapor vent lines permitted.

Rule 1126. (1) Truck vapor return lines are required on the loading racks of the surface facilities and shall be utilized when oil or condensate is loaded into the truck, except as provided in this rule.

(2) Truck vapor vent lines are permitted if the point of emission is not less than 75 feet from the loading rack and not less than 600 feet from an existing water well and an existing structure used for public or private occupancy. The allowance for truck vapor vent lines may be rescinded in specific cases if the supervisor or authorized representative of the supervisor determines that nuisance odors are caused by the use of the vent lines.

History: 1996 AACS.

R 324.1127 Compliance with rules before production of new H2S well.

Rule 1127. (1) A permittee of a well shall comply with this rule and R 324.1119 to R 324.1126 before production of a new H2S well.

(2) The supervisor may grant exceptions to R 324.1119 to R 324.1123, R 324.1125, R 324.1126, and this rule when the rules are not necessary to provide for the protection or safety of the public or workers or when the H2S well or associated surface facilities are not likely to constitute sources of nuisance odors.

History: 1996 AACS.

R 324.1128 Servicing; requirements.

Rule 1128. Before commencing an operation that requires removing the seal between the tubing and production casing, a permittee of a well shall meet all of the following requirements:

(a) Blowout prevention equipment sized to accommodate the tubing and rework drill pipe shall be installed and tested for class I H2S, class II H2S, and class III H2S wells.

(b) Primary and secondary briefing areas shall be established for class I H2S and class II H2S wells.

(c) The same safety equipment that is required under R 324.1102(d) is required for class I H2S and class II H2S wells and under R 324.1102(d)(viii), (ix), and (xi) is required for class III H2S wells. Safety equipment shall be located at the primary briefing areas for class I H2S and class II H2S wells and at the well site for class III H2S and class IV H2S wells if required for class IV H2S wells. The supervisor or authorized representative of the supervisor may require the use of safety equipment, in addition to the equipment listed in R 324.1102(d), if the equipment is necessary for the safety of the public or the workers.

(d) An electric or mechanical fan shall be located at the well site for class I H2S, class II H2S, and class III H2S wells. The fan shall be operated constantly during the operation to keep the wellhead area free from gas if natural ventilation is inadequate.

(e) A hydrogen sulfide detection and warning system shall be installed and have the detector located downwind from the well or in the direction in which the fan is blowing. The detection and warning system shall activate visual alarms if a hydrogen

sulfide concentration of 10 ppm is detected. Audible alarms shall be activated if a hydrogen sulfide concentration of 20 ppm is detected; however, the use of a hydrogen sulfide detection and warning system is optional for a class IV H2S well.

(f) Signs that have the word "Danger" or "Caution" followed by the words "Poison Gas" shall be installed at the entrances of all access roads.

(g) The supervisor or authorized representative of the supervisor shall be notified before the start of servicing operations for class I H2S, class II H2S, and class III H2S wells.

(h) A revised and updated contingency plan shall be at the well site and shall be reviewed with all workers for class I H2S and class II H2S wells.

History: 1996 AACS.

R 324.1129 Burning, processing, or disposing of hydrogen sulfide gas.

Rule 1129. (1) A permittee shall not release gas produced from an H2S well to the environment, except as follows:

(a) By burning as fuel in a heated vessel in compliance with R 324.1121.

(b) By burning in a flare or incinerator that complies with R 324.1010.

(c) By injection into an approved underground formation under R 324.612 or R 324.703.

(d) By venting from tanks under R 324.1122(4) or R 324.1124.

(e) By disposal by other means as may be approved by the supervisor under a specific request by the permittee, if the permittee demonstrates to the supervisor that the manner of disposal prevents waste and does not cause unnecessary endangerment of public health, safety, and welfare.

(2) If a well or its associated surface facilities produce hydrogen sulfide and the supervisor or authorized representative of the supervisor receives 1 or more complaints of odor regarding the facility, then the supervisor may require the permittee of a well to perform numerical modeling to determine the concentration of hydrogen sulfide in the ambient air. Numerical modeling shall utilize the distance from the potential point of an uncontrolled release of gas at the well or its associated surface facilities to the closest existing structure used for public or private occupancy, existing area maintained for public recreation, or the edge of the traveled portion of an existing interstate, United States, or state highway. A permittee shall have the opportunity to provide, in addition to the numerical modeling, actual measurements of the concentration of hydrogen sulfide in the ambient air taken at the closest existing structure used for public or private occupancy, existing area maintained for public recreation, or the edge of the traveled portion of an existing interstate, United States, or state highway.The supervisor or authorized representative of the supervisor may determine a nuisance odor exists based on all applicable information. The supervisor or authorized representative of the supervisor may require appropriate emission control measures consistent with the provisions of this rule and R 324.1101 to R 324.1128. If emission control measures are required, then the permittee shall submit, within 30 days of being determined to be necessary by the supervisor, for the approval of the supervisor or authorized representative of the supervisor, a timetable for the installation of any equipment required.

History: 1996 AACS; 2001 AACS.

R 324.1130 Requirements for certain gathering lines, flow lines, and facility piping.

Rule 1130. (1) A gathering line, installed after the effective date of these amendatory rules carrying gas with more than 300 ppm hydrogen sulfide shall be subject to the provisions for design, construction, testing, maintenance, and operation as specified in administrative rules promulgated under Act No. 165 of the Public Acts of 1969, as amended, being §483.151 et seq. of the Michigan Compiled Laws.

(2) A flow line or facility piping, carrying gas from a class I H2S well and which is subject to a maximum working pressure in excess of 125 psig shall be subject to the provisions for design, construction, testing, maintenance, and operation as specified in administrative rules promulgated under Act No. 165 of the Public Acts of 1969, as amended, being §483.151 et seq. of the Michigan Compiled Laws.

(3) A person or a permittee shall not install a flow line or gathering line, carrying gas from a class I H2S or class II H2S well, or modify an existing flow line or gathering line to serve additional class I H2S or class II H2S wells, unless all of the following provisions are met:

(a) The person or permittee shall calculate the 100 ppm radius of exposure, using either the equation set forth in R 324.1102(c) or another dispersion model accepted by the supervisor. The calculation shall be based upon the reasonably expected concentration of hydrogen sulfide to be transported in the flow line or gathering line, the maximum actual operating pressure, and the volume of gas that could be released from the flow line or gathering line, accounting for any automatic shut-in systems and blocking valves that will be utilized.

(b) If an existing structure used for public or private occupancy, an existing area maintained for public recreation or the edge of the traveled portion of an existing interstate, united states, or state highway falls within the 100 ppm radius of exposure, the person or permittee shall prepare a construction and operation plan that incorporates reasonable measures to reduce the potential for public exposure to hydrogen sulfide from a release that might occur. The construction and operation plan shall consider appropriate construction standards, routing alternatives, monitoring equipment, automatic controls for source shut-in, or other available engineering methods. The person or permittee shall submit the construction and operation plan to, and receive the approval of the supervisor or authorized representative of the supervisor. The supervisor or authorized representative of the supervisor shall have 30 days to approve the plan or to require modifications or additional information.

(c) Repair and maintenance of an existing flow line or gathering line are exempt from the provisions of this subrule.

(4) Gathering lines, flow lines, or facility piping are not subject to this rule if they are subject to the issuance of a certificate of public convenience and necessity by the Michigan public service commission under the provisions of Act 9 of the Public Acts of 1929, as amended, being §483.101 et seq. of the Michigan Compiled Laws or are subject to regulation by the Michigan public service commission under the provisions

of Act No. 165 of the Public Acts of 1969, as amended, being §483.151 et seq. of the Michigan Compiled Laws.

History: 2001 AACS.

PART 12. HEARINGS

R 324.1201 Hearing; purpose; scheduling; request or petition generally.

Rule 1201. Hearings may be held to receive evidence pertaining to the need or desirability of an action or an order by the supervisor. A hearing may be scheduled at the initiative of the supervisor or by the supervisor upon the receipt of a petition, which is properly filed as specified in R 324.1202, from an owner, producer, lessee, lessor, or other person interested in the matter proposed for hearing.

History: 1996 AACS.

R 324.1202 Petition for hearing; contents.

Rule 1202. (1) A proper written petition for a hearing, except for the material filed pursuant to subdivisions (e) and (f) of this subrule, shall be filed on 8 1/2 by 11-inch paper and shall contain at least all of the following information:

(a) The name and address of petitioner.

(b) A specific statement of the matters asserted or relief sought indicating the rule, order, or section of the act applicable to the petition.

(c) Property descriptions, locations, sections, townships, and counties relating to the matter to be heard.

(d) The names and last known addresses of the last record owners, lessees, lessors, or other parties of record in the register of deeds office who own interests in the lands that are the subject of the petition.

(e) A map of the area to be affected and of the contiguous property. Lease ownership and well locations within 1,320 feet of the area to be affected shall be identified.

(f) Other maps, plats, and exhibits that may be useful in considering the matter to be heard.

(g) The name and address of the newspaper circulated in the county or counties where the affected lands are located.

(h) A copy of a permit application and attachments pertinent to the matters asserted in the petition.

(i) The name, address, and telephone number of the representative or representatives of the petitioner to whom inquiries can be made.

(2) All of the following additional information shall be filed with the petition when a spacing or proration order is to be considered:

(a) The size, shape, and orientation of the proposed drilling unit.

(b) The well spacing pattern to be proposed.

(c) The surface geographic area to be included in the spacing order, and the geologic formation or formations to be spaced or prorated.

(d) Well production, testing history, and other applicable reservoir and geological data.

(e) Proposed daily well allowables, if applicable.

(3) A petition to establish secondary recovery operations pursuant to R 324.612 shall also include all of the following information:

(a) Applicable seismic lines, profiles, and interpretation showing seismic outlines or boundaries of reservoir structure and the geologic structure and area to be impacted by the operations.

(b) Appropriate geologic information, such as structural cross sections and productive areas, thickness isopach, and other essential maps.

(c) Applicable reservoir engineering data, such as the following:

(i) Pressure versus time.

(ii) Pressure versus oil production.

(iii) Reservoir rock and fluid properties.

(iv) Primary production.

(v) An estimated forecast of oil recoveries.

(vi) Estimated economics of secondary recovery project.

(d) A plan that shows the locations of existing production wells, proposed production wells, and proposed injection wells and a facilities plan that includes schematics that show the locations of existing and proposed flow lines and wells and associated surface facilities.

(e) If groundwater is to be injected, a hydrogeologic investigation report of the source aquifer.

(4) The supervisor may return a petition that is not in conformance with these rules and may include a list of the deficiencies of the petition.

(5) All of the following additional information shall be filed with the petition when statutory pooling is to be considered:

(a) The ownership of oil and gas interests within the drilling unit and a specific description of the nature and extent of the interests sought to be pooled.

(b) Sworn statements that indicate, in detail, what action the petitioner has taken to obtain a voluntary unit.

(c) Whether or not the petitioner desires to drill or operate the unit, or both, and, if not, the name of the party nominated as operator and the recommendation of the petitioner as to the arrangements that are just and equitable to all owners within the drilling unit.

(d) The estimated costs of drilling, completing, and equipping the well, on a form provided by the supervisor, and additional compensation proposed for the risk associated with the drilling and equipping of the well.

History: 1996 AACS; 2015 AACS.

R 324.1203 Hearings subject to the administrative procedures act of 1969.

Rule 1203. A hearing scheduled by the supervisor shall be conducted pursuant to Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, unless a different procedure is authorized by the act or these rules. All hearings shall be conducted in a fair and impartial manner.

History: 1996 AACS.

R 324.1204 Notice of hearing; service; answer.

Rule 1204. (1) The supervisor shall prepare and furnish the notice of hearing to the petitioner, together with instructions for publication and service of the notice. Upon receipt the petitioner shall serve copies of the notice of hearing on the last known addresses of the last record owners, lessees, lessors, or other parties of record in the register of deeds office or assessor's records, if appropriate, who own interests in the lands that are the subject matter of the proposed action, unless otherwise provided in these rules.

(2) If directed by the supervisor, the petitioner shall also serve copies of the notice of hearing at the last known addresses of the last record owners, lessees, lessors, or other parties of record in the register of deeds office who own interests in all or part of the quarter-quarter sections of land directly and diagonally adjacent to the lands or areas that are the subject matter of the proposed action.

(3) The notice of hearing shall be published by the petitioner in an oil and gas industry publication circulated in this state and in a newspaper of general circulation in the county or counties involved with the matter to be heard. Publication shall occur not less than 21 days before the date of the hearing. Affidavits of proof of publication shall be filed with the supervisor before the date of the hearing.

(4) The notices of hearing shall be mailed not less than 21 days before the date of the hearing. Affidavits of proof of mailing by first-class mail or personal service shall be filed with the supervisor before the date of the hearing. An affidavit of proof of mailing shall state that the notice was deposited in the United States mail not less than 21 days before the hearing date, first-class postage prepaid, addressed to each person so served at his or her record address as set forth in the petition pursuant to R 324.1202. Each person so served and his or her address of record shall be specifically identified in the affidavit. The supervisor may require service by certified mail, return receipt requested.

(5) If a hearing is initiated by the supervisor, or if the scope of a hearing requested by a petitioner is enlarged at the initiative of the supervisor, then the supervisor shall publish the notice of hearing and may give additional notification of the hearing by United States mail or personal service.

(6) An interested person shall not be permitted to participate as a party in a hearing conducted pursuant to a petition unless the person files an answer in a timely manner with the supervisor and serves the answer to the petition upon the petitioner. The answer shall be in writing and shall set forth the interested person's positions with regard to the representations made or relief sought in the petition. An interested person is responsible for requesting a copy of the petition from the petitioner at the address set forth in the notice of hearing. The petitioner shall mail or otherwise deliver a copy of the petition and attachments to the interested person within 3 days after receipt of a written request. Failure of the petitioner to mail or otherwise deliver a copy of the petition to an interested person in a timely manner relieves the interested person of the obligation to file an answer and the interested person shall not be precluded from presenting evidence or cross-examining witnesses. An interested person may mail or otherwise deliver his or her answer to the supervisor and the petitioner. To be considered timely an answer must be

received by the supervisor and the petitioner not fewer than 5 days before the date set for the hearing. Failure to file and serve an answer in a timely manner precludes an interested person from presenting evidence at the hearing or cross-examining witnesses. However, an interested person who does not file an answer in a timely manner may make a nonevidentiary statement at the hearing.

(7) The notice of hearing shall contain the following statement:

You can obtain a copy of the written petition by requesting one in writing from the petitioner at_____. Take note that if you wish to participate as a party in the hearing by presenting evidence or cross-examining witnesses, you shall deliver to the petitioner and supervisor, not less than 5 days before the hearing date, an answer to the petition in the manner set forth in R 324.1204(6). Proof of mailing or delivering the answer shall be filed with the supervisor on or before the date of hearing. The answer shall state with specificity the interested person's position with regard to the petition. Failure to prepare and serve an answer in a timely manner shall preclude you from presenting evidence or cross-examining witnesses at the hearing. If an answer to the petition is not filed, the supervisor may elect to consider the petition and enter an order without oral hearing.

(8) Upon a showing that service of notice cannot reasonably be made as provided by this rule, the supervisor may authorize service of the notice of hearing to be made in another manner reasonably calculated to give the interested parties actual notice of the proceeding and an opportunity to be heard. A request for this authorization shall be made by verified motion. The motion shall set forth sufficient facts to establish that service pursuant to subrules (1) to (7) of this rule cannot reasonably be made and shall suggest an alternative method of service.

History: 1996 AACS; 2015 AACS.

Editor's Note: An obvious error in R 324.1204(7) was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in *Michigan Register*, 2015 MR 5. The memorandum requesting the correction was published in *Michigan Register*, 2015 MR 6.

R 324.1205 Types of hearings.

Rule 1205. (1) Upon receipt of a petition, the supervisor, after finding the petition to be complete, reasonable, and appropriate, shall determine whether the petition shall be heard. The supervisor shall give each hearing 1 of the following designations:

(a) A supervisor's evidentiary hearing to consider the adoption of an order having field-wide or statewide application or ramifications.

(b) A supervisor's evidentiary hearing to consider matters of local concern in the administration of these rules or the orders of the supervisor or to consider other matters as may be referred to the supervisor.

(c) A supervisor's uncontested evidentiary hearing to consider matters of local concern in the administration of these rules or the orders of the supervisor or to consider a petition to which an answer was not filed as provided in R 324.1204(6).

(2) If a timely answer is not filed to a petition or if oral hearing is waived by all interested persons present at a hearing, then the supervisor may direct that a petition be

processed under subrule (1)(c) of this rule. In these cases, proceedings pursuant to subrule (1)(c) of this rule may be used if it appears that all issues of material fact may be resolved by means of written materials and that the proceeding can be efficiently handled without oral hearing. Where there is no oral hearing, all substantive evidence shall be presented by verified statement. The supervisor may require supplemental verified statements.

(3) Prehearing conferences may be held at the discretion of the supervisor. A party may request a prehearing conference in his or her petition or in a responsive pleading. A hearing may be converted to a prehearing conference to ensure an orderly and expeditious hearing.

(4) The parties to a proceeding may, by stipulation in writing or entered on the record, agree upon facts, law, or procedure involved in the matter. Stipulations of fact shall be considered as evidence in the proceeding.

(5) The supervisor may, at any time during a proceeding, designate a hearings officer to conduct an evidentiary hearing as provided for under either subrule (1)(a) or subrule (1)(b) of this rule.

(6) The parties to a matter within the jurisdiction of the supervisor may agree to dispose of all or a part of a matter at issue by stipulation and consent order. The supervisor may enter the stipulation as a consent order, place the stipulation on public notice as is appropriate, or reject the stipulation.

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History: 1996 AACS.

R 324.1206 Final decision or order.

Rule 1206. (1) The supervisor shall issue a final decision or order as a result of a hearing held under R 324.1205 or as a result of the procedure pursuant to R 324.1205(1)(c) after giving due consideration to all of the following:

(a) The record.

(b) The supervisor's experience, technical competence, and specialized knowledge.

(c) The proposal for decision, if one is issued, and exceptions to the proposal for decision, replies to exceptions, and, if permitted by the supervisor, oral arguments and briefs.

(d) The advice or recommendations of the representative of the supervisor when required or appropriate.

(e) The stipulations or agreements that the contesting parties have placed on the record at a hearing or submitted in writing to the supervisor or the hearings officer.

(f) The act and rules.

(2) The final written decision or order of the supervisor shall be furnished to the petitioner. The petitioner shall serve copies, by first-class mail, to all persons who were mailed a notice of the hearing, who filed an appearance at the hearing, or who otherwise requested a copy of the final written decision.

(3) When a hearing is scheduled at the initiative of the supervisor, the supervisor shall serve copies of the final written decision or order, by first-class mail, to all persons who filed an answer, who filed an appearance at the hearing, or who otherwise requested a copy.

(4) After the hearing on a petition for an order to pool and after thorough consideration of the evidence and testimony submitted, the supervisor shall either rule that pooling is not necessary to prevent waste or shall enter an order pooling the separately owned tracts and interests within the drilling unit. The pooling order shall authorize 1 of the owners within the affected unit to drill and operate the well within the affected unit and provide that the well shall be commenced within 90 days if drilling of the well has not already commenced, unless otherwise specified in the pooling order. The pooling order is null and void as to all parties and interests with respect to any well that has not commenced within 90 days after the date of the order. The order shall set forth the terms and conditions under which each of the owners may share in the working interest ownership of the well drilled or to be drilled on the pooled unit and for the sharing of any production from the well. The order shall provide for conditions under which each mineral or working interest owner who has not voluntarily agreed to pool all of the owner's mineral or working interest in the pooled unit may share in the working interest share of production or be compensated for the owner's working interest within the pooled unit according to either of the following provisions:

(a) Pay to the party authorized to drill, or who has drilled, the well that owner's proportionate share of the actual cost of drilling, completing, equipping, and operating the well in the pooled unit that the owner elects to participate in, or give bond for the payment of the share of the costs that have been, or are subsequently, actually incurred, whether the well is drilled as a producer or a dry hole.

(b) As to each well that the owner does not elect to participate in as provided in subdivision (a) of this subrule, if the well has been, or is subsequently, completed as a producer, authorize the operator of the well to take out of the nonparticipatory interest's share of production from the well the party's share of the cost of drilling, completing, equipping, and operating the well, plus an additional percentage of the costs that the supervisor considers appropriate compensation for the risks associated with drilling a dry hole and the mechanical and engineering risks associated with the completion and equipping of each well.

(5) Each nonparticipating owner who has not elected to participate in the drilling of any well by agreeing to pay the owner's working interest share of the costs shall make an election, within 10 days of receipt by the owner of the supervisor's certified mail copy of the order, as to which alternative in subrule (4)(a) or (b) of this rule the owner will select. If the nonparticipating party does not notify the supervisor in writing within 10 days of the owner's election as to any well proposed for the pooled unit, then the owner shall be considered to have elected the alternative in subrule (4)(b) of this rule. For the type of statutory pooling order specified in this rule, the owner of an unleased mineral interest shall be treated as a working interest owner to the extent of 100% of the interest owned in the pooled unit. Each nonparticipating owner shall be considered to be subject to a 1/8 royalty interest, which shall be free of any withholding for payment of any costs of drilling, completing, equipping, or operating the well to be drilled. All operations, including, the commencement, drilling, completing, equipping, or operation of a well, upon a portion of a drilling unit for which pooling has been ordered shall be considered for all purposes to be the conducting of operations upon each separately owned tract in the drilling unit. The portion of the production allocated to a separately owned tract or separately owned interest included in a drilling unit shall, when produced, be considered

for all purposes to have been actually produced from the separately owned tract or tracts by a well drilled in the drilling unit.

History: 1996 AACS; 2015 AACS.

R 324.1207 Subpoenas; discovery.

Rule 1207. (1) At any time in a proceeding, the supervisor may order a party or witness to attend and testify orally at the hearing. Subpoenas for attendance at a hearing shall be issued by the supervisor upon application by a party. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated in the subpoena, which shall be specified in detail.

(2) A subpoena shall state the purpose or the title of the proceeding and shall command each person to whom it is directed to attend and comply with the subpoena at a time and place specified in the subpoena. The supervisor, upon a motion made at or before the time specified in the subpoena for compliance with the subpoena, may do either or both of the following:

(a) Quash or modify a subpoena or subpoena duces tecum if it is unreasonable or oppressive or if it requires the production of evidence that is not relevant or material to a matter in issue.

(b) Condition the subpoena, in the case of a subpoena duces tecum, upon the advancement, by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, papers, documents, or tangible things, unless otherwise provided by law.

(3) The supervisor may issue an order to take a deposition, interrogatory, or other discovery either upon a motion by the supervisor or for good cause shown by a party to a proceeding. If a deposition, interrogatory, or other discovery is permitted, it shall be taken according to the rules for conducting discovery in circuit court civil cases under the Michigan rules of court.

History: 1996 AACS.

R 324.1208 Continuance of hearing.

Rule 1208. A hearing, as provided in these rules, may be continued at the discretion of the supervisor or the presiding officer until all required testimony is submitted and all pertinent data and information are received. Further notice of the continuance of the hearing is not required, other than the announcement at the hearing of the date, time, and place of the continued hearing or service of written notice on those persons who filed an appearance at the first hearing.

History: 1996 AACS.

R 324.1209 Failure to give notice of hearing.

Rule 1209. Failure to give notice of the time of a hearing to a person entitled to the notice shall not constitute a bar to conducting of the hearing if the petitioner can demonstrate substantial compliance with the notice requirements.

History: 1996 AACS.

R 324.1210 Administrative complaint; notice of hearing.

Rule 1210. (1) The staff of the supervisor may file an administrative complaint with the supervisor. An administrative complaint shall set forth the nature of the violations complained of and shall specifically cite the provisions of the act, these rules, permit conditions, instructions, or orders of the supervisor allegedly violated. The supervisor shall select a date for the hearing and prepare a notice of hearing. Upon request, the person alleged to be in violation shall provide, to the supervisor, a list of the last known names and addresses of all persons of record with the register of deeds who own oil and gas interests within the unit. The notice of hearing and administrative complaint shall be served by certified mail, return receipt requested, on the person alleged to be in violation, the operator, the surety, and other interested persons as the supervisor shall consider necessary or appropriate. The notice shall be served not less than 21 days before the hearing date. The hearing shall be a hearing before the supervisor.

(2) A hearing held pursuant to an administrative complaint shall be a hearing before the supervisor pursuant to R 324.1205.

History: 1996 AACS.

R 324.1211 Emergency orders and hearings.

Rule 1211. (1) When an emergency order is issued by the supervisor, the person subject to the order shall be served with the order, either personally or by certified, return receipt mail.

(2) An emergency hearing may be scheduled by the supervisor to consider matters of urgency or as a result of the issuance of an emergency order. Notice of hearing shall be served by certified mail, return receipt requested, not less than 10 days before the hearing date, on other interested persons as the supervisor shall consider necessary and appropriate.

History: 1996 AACS.

R 324.1212 Appeals to the director of the department of environmental quality.

Rule 1212. (1) An owner or producer may file an appeal to the director of the department of environmental quality pursuant to section 61503 of the act. The appeal shall be in writing and filed with the director of the department of environmental quality. The appeal shall set forth the basis for the filing of an appeal.

(2) An appeal from an order of the supervisor that is issued after a hearing shall be an appeal on the record. The appealing party shall order and file a transcript of the proceeding before the supervisor. The supervisor shall prepare and file the record of the proceeding.

(3) Upon receipt of an appeal from an order of the supervisor, the director of the department of environmental quality shall set a schedule for the filing of briefs on appeal. Oral argument, if requested, shall be scheduled after the filing of briefs. A prehearing conference may be scheduled for the purpose of establishing a schedule for the appeal.

(4) The producer or owner appealing an order, action, or inaction of the supervisor shall file a petition of appeal to the director of the department of environmental quality. The petition and notice requirements are the same requirements for petitions for a hearing before the supervisor pursuant to R 324.1201 through R 324.1204.

(5) An appeal to the director of the department of environmental quality shall be filed within 28 days of the order, action, inaction, or procedure as provided in section 61503(2) of the act.

History: 1996 AACS.

PART 13. ENFORCEMENT

R 324.1301 Authority of supervisor.

Rule 1301.The supervisor, under section 61506 of the act, may do any of the following:

(a) Enforce all rules, issue orders, determinations, and instructions necessary to enforce the rules and regulations, and do whatever may be necessary with respect to the subject matter stated in these rules to carry out the purposes of these rules and the act, whether or not the orders, determinations, or instructions are indicated, specified, or enumerated in the act or rules.

(b) Order the suspension of any or all components of the oil and gas operations when a violation exists. The suspension time shall continue until a correction is made and a violation no longer exists under section 61516 of the act. The supervisor may also prohibit the purchaser from taking oil, gas, or brine from the lease during the required suspension time.

(c) Order a well plugged for a continuing violation of the act or these rules.

History: 1996 AACS; 2002 AACS.

PART 14. HIGH VOLUME HYDRAULIC FRACTURING

R 324.1401 Definitions.

Rule 1401. As used in these rules:

(a) “Adverse resource impact,” “assessment tool,” “cold-transitional river system,” “cool river system,” “site-specific review,” “warm river system,” “withdrawal,” “zone A withdrawal,” “zone B withdrawal,” “zone C withdrawal,” and “zone D withdrawal,” have the same meanings as in section 32701 of the act.

(b) “Available water source” means a reasonably identifiable fresh water well used for human consumption for which the water well owner has given written consent for sampling and testing and to having the sample data made a part of the department’s public records.

(c) “Chemical Abstracts Service (CAS) Number” means the unique identification number assigned to a chemical by the division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

(d) “Chemical additive” means a product composed of 1 or more chemical constituents that is intentionally added to a primary carrier fluid to enhance the characteristics of hydraulic fracturing fluid.

(e) “Chemical constituent” means a discrete chemical with its own specific name or identity, such as a CAS number, that is contained in a chemical additive.

(f) “Chemical family” means a group of elements or compounds that have similar physical and chemical characteristics and have a common general name.

(g) “Flowback fluid” means hydraulic fracturing fluid and brine recovered from a well after completion of a hydraulic fracturing operation and before the conclusion of test production under R 324.606.

(h) “High volume hydraulic fracturing" means a hydraulic fracturing well completion operation that is intended to use a total volume of more than 100,000 gallons of primary carrier fluid. If the primary carrier fluid consists of a base fluid with 2 or more components, the volume shall be calculated by adding the volumes of the components. If 1 or more of the components is a gas at prevailing temperatures and pressures, the volume of that component or components shall be calculated in the liquid phase.

(i) “Hydraulic fracturing” means a well completion operation that involves pumping fluid and proppants into the target formation under pressure to create or propagate artificial fractures, or enhance natural fractures, for the purpose of improving the deliverability and production of hydrocarbons. Hydraulic fracturing does not include other stimulation completion techniques such as treatments that do not use proppants.

(j) “Hydraulic fracturing fluid” means fluid at a well site that is prepared for injection into a well to achieve a hydraulic fracturing operation, including primary carrier fluid and additives.

(k) "Large volume water withdrawal" means a water withdrawal intended to produce a cumulative total of over 100,000 gallons of water per day when averaged over a consecutive 30-day period.

(l) “Primary carrier fluid” means the base fluid, such as water, into which chemical additives are mixed to form the hydraulic fracturing fluid.

(m) “Proppant” means sand or any natural or man-made material that is used in a hydraulic fracturing completion to prop open the artificially created or enhanced fractures once the treatment is completed.

(n) “Trade secret” has the same meaning as defined in the uniform trade secrets act, 1998 PA 448, MCL 445.1901 to 445.1910.

History: 2015 AACS.

R 324.1402 Permitting of high volume hydraulic fracturing for oil and gas wells.

Rule 1402. (1) In addition to the requirements in R 324.201, a person applying for a permit to drill and operate shall provide a statement as to whether high volume hydraulic fracturing is expected to be utilized in completion of the proposed well.

(2) A permittee of a well shall not begin a large volume water withdrawal for a high volume hydraulic fracturing operation without approval of the supervisor or authorized representative of the supervisor. A permit applicant or permittee shall make a written request for approval to conduct a large volume water withdrawal and shall file the request with the supervisor at least 30 days before the permit applicant or permittee intends to begin the withdrawal. The permittee may file the request with the application for a permit to drill and operate a well or may provide the request separately to the supervisor or authorized representative of the supervisor. The request shall include all of the following information:

(a) A water withdrawal evaluation utilizing the assessment tool accessed at http://www.miwwat.org/ or by a means approved by the supervisor under the conditions described in subrule (6) of this rule.

(b) Information on the proposed withdrawal including all of the following:

(i) Proposed total volume of water needed for hydraulic fracturing well completion operations.

(ii) Proposed number of water withdrawal wells.

(iii) Aquifer type (drift or bedrock).

(iv) Proposed depth of water withdrawal wells, in feet below ground surface.

(v) Proposed pumping rate and pumping schedule of each water withdrawal well.

(vi) Available well logs of all recorded fresh water wells and reasonably identifiable fresh water wells within 1,320 feet of water withdrawal location.

(c) A supplemental plat of the well site showing all of the following:

(i) Proposed location of water withdrawal wells (latitude/longitude).

(ii) Location of all recorded fresh water wells and reasonably identifiable fresh water wells within 1,320 feet of water withdrawal location or locations.

(iii) Proposed fresh water pit impoundment, containment, location, and dimensions.

(d) A contingency plan, if deemed necessary, to prevent or mitigate potential loss of water availability in the fresh water wells identified under subdivision (b)(vi) of this subrule.

(3) An application for change of well status for which a large volume water withdrawal is expected to be utilized for high volume hydraulic fracturing shall include the information required under subrule (1) of this rule.

(4) If the assessment tool designates the proposed withdrawal as a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system, the supervisor shall approve the withdrawal.

(5) If the assessment tool designates the proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the permit applicant or permittee may submit to the supervisor a request for a site-specific review. All of the following apply:

(i) If the site-specific review determines that the proposed withdrawal is a zone A or a zone B withdrawal, the supervisor shall approve the withdrawal.

(ii) If the site-specific review determines that the proposed withdrawal is a zone C withdrawal, the supervisor shall not approve the withdrawal unless the permittee does either of the following:

(A) Self certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures under MCL 324.32708a.

(B) Obtains a water withdrawal permit under MCL 324.32723.

(iii) If the site-specific review determines that the proposed withdrawal is a zone D withdrawal or likely to cause an adverse resource impact, the supervisor shall not approve the withdrawal unless the permittee has obtained a water withdrawal permit under MCL 324.32723.

(6) If the assessment tool is discontinued or replaced as a requirement for designated water withdrawal evaluations under the act, a permittee shall perform a water withdrawal evaluation utilizing an alternative method and criteria approved by the supervisor to satisfy the requirements of subrules (2)(a), (4), and (5) of this rule.

History: 2015 AACS.

R 324.1403 Water supply monitoring and storage.

Rule 1403. (1) If 1 or more fresh water wells are present within 1,320 feet of a proposed large volume water withdrawal, the permittee shall install a monitor well between the water withdrawal well or wells and the nearest fresh water well before beginning the water withdrawal. If more than 1 aquifer is delineated at the site, the monitor well shall be completed in the same aquifer as the water withdrawal well. The permittee shall measure and record the water level in the monitor well daily during water withdrawal and weekly thereafter until the water level stabilizes. The permittee shall report all water level data weekly to the supervisor or authorized representative of the supervisor.

(2) Fresh water storage pits and impoundments shall be constructed as approved by the supervisor and shall be in compliance with all of the following minimum requirements:

(a) Berms shall be designed and constructed to prevent washouts or failures.

(b) Pits shall be constructed with rounded corners and side slopes of not less than 20 degrees measured from the vertical.

(c) Pits shall adhere to applicable soil erosion and sedimentation control measures and may require fencing.

(3) Fresh water storage pits, impoundments, or tanks shall not remain on-site more than 6 months after final completion of the well or wells for which the storage was designed unless approved by the supervisor or authorized representative of the supervisor.

History: 2015 AACS.

R 324.1404 Ground water baseline sampling for high volume hydraulic fracturing.

Rule 1404. (1) A permit applicant or permittee of an oil and gas well for which high volume hydraulic fracturing is proposed shall collect baseline samples from all available water sources, up to a maximum of 10, within a 1/4- mile radius of the well location. All of the following apply:

(a) If more than 10 available water sources are present within a 1/4- mile radius of the proposed well location, the permit applicant or permittee shall select 10 sampling locations based on the following criteria:

(i) Available water sources closest to the proposed well location are preferred.

(ii) To the extent groundwater flow direction is known or reasonably can be inferred, sample locations from both down gradient and up-gradient are preferred over cross-gradient locations. Where groundwater flow direction is uncertain, sample locations should be chosen in a radial pattern from a well.

(iii) Where multiple defined aquifers are present, sampling the deepest and shallowest identified aquifers is preferred.

(b) Initial sampling shall be conducted not fewer than 7 days nor more than 6 months before initiation of drilling operations for a new well or in the case of a re-completion of a well, high volume hydraulic fracturing using new or existing perforations. However, initial sampling shall satisfy sampling requirements for subsequent oil and gas wells on the same or contiguous drilling sites for a period of up to 3 years.

(c) Sampling and analysis shall be conducted at the expense of the permit applicant or permittee and shall conform to all of the following procedures:

(i) Water samples shall be collected by a qualified professional utilizing proper sampling protocol and analyzed by a laboratory certified by the department.

(ii) Samples shall be analyzed for the following minimum parameters using laboratory methods approved by the United States Environmental Protection Agency:

(A) Benzene.

(B) Toluene.

(C) Ethylbenzene.

(D) Xylene.

(E) Total dissolved solids.

(F) Chloride.

(G) Methane.

(iii) The location of the sampled water sources shall be surveyed with a global positioning system device or equivalent with 3 meter or higher accuracy. The latitude and longitude coordinates shall be provided to the supervisor.

(iv) If free gas or a dissolved methane concentration greater than 1.0 milligram per liter is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to identify gas origin.

(v) The permit applicant or permittee shall notify the supervisor immediately if benzene, toluene, ethylbenzene, or xylenes are detected in a water sample.

(2) The permittee shall provide copies of all final laboratory analytical results to the supervisor and the water well owner or landowner within 45 days of collecting the samples.

History: 2015 AACS.

R 324.1405 High volume hydraulic fracturing well completion operations; notification, monitoring, reporting, and fluid containment requirements.

Rule 1405. (1) A permittee shall notify the supervisor or authorized representative of the supervisor a minimum of 48 hours prior to the commencement of a high volume hydraulic fracturing completion. If the well is an H2S well as defined in R 324.1101, a permittee shall also notify the local emergency preparedness coordinator a minimum of 48 hours before the commencement of a high volume hydraulic fracturing completion.

(2) During high volume hydraulic fracturing operations, the permittee shall monitor and record the injection pressure at the surface and the annulus pressure between the injection string and the next string of casing unless the annulus is cemented to surface. If intermediate casing has been set on the well to be stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. The permittee shall do both of the following:

(a) Submit a continuous record of the annulus pressure during the well stimulation within 60 days of completing hydraulic fracturing operations.

(b) If during the hydraulic fracturing operation the injection pressures or annulus pressures, or both, indicate a lack of well integrity, immediately cease hydraulic fracturing operations and notify the supervisor or authorized representative of the supervisor. The permittee of the well shall submit to the supervisor or authorized representative of the supervisor the plan of action the permittee intends to take before continuing hydraulic fracturing operations on the well. The permittee of the well shall not continue hydraulic fracturing in the well until the supervisor or authorized representative of the supervisor approves implementation of the plan of action. The supervisor or authorized representative of the supervisor may require suitable mechanical integrity tests of the casing or the casing tubing annulus or cement bond logs, or both. The permittee shall submit a report containing all details pertaining to the incident, including corrective actions taken, within 60 days of completing hydraulic fracturing operations.

(3) Flowback fluid shall be contained in tanks or in receptacles approved by the supervisor or authorized representative of the supervisor. Flowback fluid shall not be used for ice or dust control or road stabilization purposes. A permittee shall ensure that handling and disposal of flowback fluid does not cause waste as defined in section 61501(q) of the act.

(4) A permittee shall submit a copy of the following service company records within 60 days after completing high volume hydraulic fracturing operations:

(a) The actual total well stimulation treatment volume pumped.

(b) Detail as to each fluid stage pumped, including actual volume by fluid stage, proppant rate or concentration, actual chemical additive name, type, concentration or rate, and amounts.

(c) The actual breakdown pressure as measured at the surface or producing interval.

(d) The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure.

(e) The instantaneous shut-in pressure and the actual 15- minute and 30-minute shut-in pressures when these pressure measurements are available.

(5) A permittee shall report the following for a high volume hydraulic fracturing operation within 60 days of completing hydraulic fracturing operations:

(a) The total volume of water utilized.

(b) The volume and source of the water withdrawn and the dates during which the water was withdrawn.

History: 2015 AACS.

R 324.1406 Disclosure of hydraulic fracturing fluid chemical additives.

Rule 1406. (1) A permittee shall submit information on chemical additives used in a high volume hydraulic fracturing operation using the internet-based FracFocus Chemical Disclosure Registry that is maintained by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission and is accessed at http://fracfocus.org. If the FracFocus Chemical Disclosure Registry is no longer maintained or available, the permittee shall submit the information on a form prescribed by the supervisor or by any other means approved by the supervisor. A permittee shall submit the information within 30 days after completion of a high volume hydraulic fracturing operation. A contractor or supplier performing a high volume hydraulic fracturing operation for a permittee or providing supplies for a high volume hydraulic fracturing operation shall timely provide to the permittee the information required for the permittee to comply with this rule. The information shall include the following:

(a) A list of all chemical additives used during the treatment specified by general type, such as acids, biocides, breakers, corrosion inhibitors, cross-linkers, demulsifiers, friction reducers, gels, iron controls, oxygen scavengers, pH adjusting agents, scale inhibitors, and surfactants.

(b) The specific trade name and supplier of each chemical additive.

(c) A list showing the specific identity of each chemical constituent intentionally added to the primary carrier fluid and its associated CAS number, except that the specific identities and CAS numbers of trade secret chemicals may be withheld under subrule (2) of this rule.

(d) The maximum concentration of each chemical constituent listed expressed as a percent by mass of the total volume of hydraulic fracturing fluids utilized.

(2) If the specific identity of a chemical constituent and its associated CAS number or concentration are a trade secret, the permittee may withhold the specific identity of the chemical constituent and its associated CAS number and concentration, but shall list the chemical family associated with the chemical constituent, or provide a similar description, and provide a statement that a claim of trade secret protection has been made by the entity entitled to make such a claim. If an independent contractor or supplier providing a chemical constituent to a permittee withholds any information required under this rule under a claim of trade secret, the contractor or supplier shall provide the information required for the permittee to timely comply with this subrule.

(3) Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional for the purpose of diagnosis or treatment of a medical condition.

History: 2015 AACS.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 17
MICHIGAN ENVIRONMENTAL PROTECTION ACT

324.1701 Actions for declaratory and equitable relief for environmental protection; parties; standards; judicial action.

Sec. 1701. (1) The attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.

(2) In granting relief provided by subsection (1), if there is a standard for pollution or for an antipollution device or procedure, fixed by rule or otherwise, by the state or an instrumentality, agency, or political subdivision of the state, the court may:

(a) Determine the validity, applicability, and reasonableness of the standard.

(b) If a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1702 Payment of costs or judgment; posting surety bond or cash; amount.

Sec. 1702. If the court has reasonable grounds to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment that might be rendered against him or her in an action brought under this part, the court may order the plaintiff to post a surety bond or cash in an amount of not more than $500.00.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1703 Rebuttal evidence; affirmative defense; burden of proof; referee; costs.

Sec. 1703. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has polluted, impaired, or destroyed or is likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust in these resources, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that his or her conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts apply to actions brought under this part.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his or her findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1704 Granting of relief; administrative, licensing, or other proceedings; adjudication; judicial review.

Sec. 1704. (1) The court may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect the air, water, and other natural resources or the public trust in these resources from pollution, impairment, or destruction.

(2) If administrative, licensing, or other proceedings are required or available to determine the legality of the defendant's conduct, the court may direct the parties to seek relief in such proceedings. Proceedings described in this subsection shall be conducted in accordance with and subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. If the court directs parties to seek relief as provided in this section, the court may grant temporary equitable relief if necessary for the protection of the air, water, and other natural resources or

the public trust in these resources from pollution, impairment, or destruction. In addition, the court retains jurisdiction of the action pending completion of the action to determine whether adequate protection from pollution, impairment, or destruction is afforded.

(3) Upon completion of proceedings described in this section, the court shall adjudicate the impact of the defendant's conduct on the air, water, or other natural resources, and on the public trust in these resources, in accordance with this part. In adjudicating an action, the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this part.

(4) If judicial review of an administrative, licensing, or other proceeding is available, notwithstanding the contrary provisions of Act No. 306 of the Public Acts of 1969 pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1705 Administrative, licensing, or other proceedings; intervenors; determinations; doctrines applicable.

Sec. 1705. (1) If administrative, licensing, or other proceedings and judicial review of such proceedings are available by law, the agency or the court may permit the attorney general or any other person to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that has, or is likely to have, the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust in these resources.

(2) In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1706 Part as supplement.

Sec. 1706. This part is supplementary to existing administrative and regulatory procedures provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 1
GENERAL PROVISIONS

24.201 Administrative procedures; short title.

Sec. 1. This act shall be known and may be cited as the "administrative procedures act of 1969".

History: 1969, Act 306, Eff. July 1, 1970.

Compiler's note: For transfer of powers and duties of office of regulatory reform from the executive office of the governor to the department of management and budget, see E.R.O. No. 2002-7, compiled at MCL 10.153 of the Michigan Compiled Laws.

Popular name: Act 306

Popular name: APA

24.203 Definitions; A to G.

Sec. 3. (1) "Adoption of a rule" means that step in the processing of a rule consisting of the formal action of an agency establishing a rule before its promulgation.

(2) "Agency" means a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action. Agency does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, the state civil service commission, or an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(3) "Contested case" means a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are considered a continuous proceeding as though before a single agency.

(4) "Committee" means the joint committee on administrative rules.

(5) "Court" means the circuit court.

(6) "Decision record" means, in regard to a request for rule-making where an agency receives recommendations or comments by an advisory committee or other advisory entity created by statute, both of the following:

(a) The minutes of all meetings related to the request for rule-making.

(b) The votes of members.

(7) "Guideline" means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1988, Act 277, Imd. Eff. July 27, 1988; Am. 2011, Act 239, Imd. Eff. Dec. 1, 2011.

Compiler's note: Section 2 of Act 277 of 1988 provides:

"The amendment to section 3 of Act No. 306 of the Public Acts of 1969, being section 24.203 of the Michigan Compiled Laws, pursuant to this amendatory act is intended to codify, approve, and validate the actions and long-standing practices taken by the associations and facilities mentioned in this amendatory act retroactively to the time of their original creation. It is the intent of this amendatory act to rectify the misconstruction of the applicability of the administrative procedures act of 1969 by the court of appeals in League General Insurance Company v Catastrophic Claims Association, Case No. 93744, December 21, 1987, with respect to the imposition of rule promulgation requirements on the catastrophic claims association as a state agency, and to further assure that the associations and facilities mentioned in this amendatory act, and their respective boards of directors, shall not hereafter be treated as a state agency."

Popular name: Act 306

Popular name: APA

24.205 Definitions; L to R.

Sec. 5. As used in this act:

(a) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or similar form of permission required by law. License does not include a license required solely for revenue purposes or a license or registration issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(b) "Licensing" includes agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.

(c) "Michigan register" means the publication described in section 8.

(d) "Notice" means a written or electronic record that informs a person of past or future action of the person generating the record.

(e) "Notice of objection" means the record adopted by the committee that indicates the committee's formal objection to a proposed rule.

(f) "Office" means, unless expressly stated otherwise, the office of performance and transformation.

(g) "Office of regulatory reform", "state office of administrative hearings and rules", and "office of regulatory reinvention" mean the office.

(h) "Party" means a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case. In a contested case regarding an application for a license, party includes the applicant for the license.

(i) "Person" means an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling, or contested case.

(j) "Processing of a rule" means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule's adoption, and ending with the rule's promulgation.

(k) "Promulgation of a rule" means that step in the processing of a rule consisting of the filing of the rule with the secretary of state.

(*l*) "Record" means information that is inscribed on a paper or electronic medium.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2006, Act 460, Imd. Eff. Dec. 20, 2006; Am. 2016, Act 513, Imd. Eff. Jan. 9, 2017.

Compiler's note: Enacting section 1 of Act 460 of 2006 provides:

"Enacting section 1. Section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205, as amended by this amendatory act, is curative and intended to express the original intent of the legislature regarding the application of section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205, as amended by 2004 PA 23."

Popular name: Act 306

Popular name: APA

24.207 "Rule" defined.

Sec. 7. "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:

(a) A resolution or order of the state administrative board.

(b) A formal opinion of the attorney general.

(c) A rule or order establishing or fixing rates or tariffs.

(d) A rule or order pertaining to game and fish and promulgated under parts 401, 411, and 487 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to 324.40120, 324.41101 to 324.41105, and 324.48701 to 324.48740.

(e) A rule relating to the use of streets or highways, the substance of which is indicated to the public by means of signs or signals.

(f) A determination, decision, or order in a contested case.

(g) An intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.

(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.

(i) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.

(j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.

(k) Unless another statute requires a rule to be promulgated under this act, a rule or policy that only concerns the inmates of a state correctional facility and does not directly affect other members of the public, except that a rule that only concerns inmates that was promulgated before December 4, 1986, is a rule and remains in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections.

(*l*) A rule establishing special local watercraft controls promulgated under former 1967 PA 303. A rule described in this subdivision may be rescinded as provided in section 80113(2) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80113.

(m) All of the following, after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215, or the statewide health coordinating council under former section 22217 of the public health code, 1978 PA 368:

(*i*) The designation, deletion, or revision of covered medical equipment and covered clinical services.

(*ii*) Certificate of need review standards.

(*iii*) Data reporting requirements and criteria for determining health facility viability.

(*iv*) Standards used by the department of health and human services in designating a regional certificate of need review agency.

(*v*) The modification of the 100 licensed bed limitation for extended care services programs set forth in section 22210 of the public health code, 1978 PA 368, MCL 333.22210.

(n) A policy developed by the department of health and human services under section 6(3) of the social welfare act, 1939 PA 280, MCL 400.6, setting income and asset limits, types of income and assets to be considered for eligibility, and payment standards for administration of assistance programs under that act.

(o) A policy developed by the department of health and human services under section 6(4) of the social welfare act, 1939 PA 280, MCL 400.6, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds.

(p) The provisions of an agency's contract with a public or private entity including, but not limited to, the provisions of an agency's standard form contract.

(q) A policy developed by the department of health and human services under the authority granted in section 111a of the social welfare act, 1939 PA 280, MCL 400.111a, to implement policies and procedures necessary to operate its health care programs in accordance with an approved state plan or in compliance with state statute.

(r) A minimum standard approved or established under authority granted by the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 to 780.1003.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1986, Act 243, Imd. Eff. Dec. 4, 1986; Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988; Am. 1988, Act 363, Imd. Eff. Dec. 16, 1988; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989; Am. 1995, Act 224, Eff. Mar. 28, 1996; Am. 1996, Act 489, Eff. Mar. 31, 1997; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2000, Act 216, Imd. Eff. June 27, 2000; Am. 2011, Act 52, Imd. Eff. June 8, 2011; Am. 2016, Act 444, Imd. Eff. Jan. 4, 2017.

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

24.207a "Small business" defined.

Sec. 7a. "Small business" means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than $6,000,000.00.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.

Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under

section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

History: Add. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1984, Act 273, Eff. Mar. 29, 1985; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.211 Construction of act.

Sec. 11. This act shall not be construed to repeal additional requirements imposed by law.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 2
GUIDELINES

24.221-24.223 Repealed. 1976, Act 442, Eff. Apr. 13, 1977.

Compiler's note: The repealed sections pertained to public inspection of certain documents.

Popular name: Act 306

Popular name: APA

24.224 Adoption of guideline; notice.

Sec. 24. (1) Before the adoption of a guideline, an agency shall give electronic notice of the proposed guideline to the committee, the office of regulatory reform, and each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. The committee shall electronically provide the notice of the proposed guideline not later than the next business day after receipt of the notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed guideline. The notice shall be given by mail, in writing, or electronically transmitted to the last address specified by the person requesting the agency for advanced notice of proposed action that may affect that person. A request for notice is renewable each December. Any notice under this section to any member or agency of the legislative and executive branches shall be given electronically.

(2) The notice required by subsection (1) shall include all of the following:

(a) A statement of the terms or substance of the proposed guideline, a description of the subjects and issues involved, and the proposed effective date of the guideline.

(b) A statement that the addressee may express any views or arguments regarding the proposed guideline or the guideline's effect on a person.

(c) The address to which written comments may be sent and the date by which comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision about which the proposed guideline states a policy.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.225 Guidelines as public record; distribution of copies.

Sec. 25. When adopted, a guideline is a public record. Copies of guidelines shall be sent to the committee, the office of regulatory reform, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.226 Adoption of guidelines in lieu of rules prohibited.

Sec. 26. An agency shall not adopt a guideline in lieu of a rule.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978.

Popular name: Act 306

Popular name: APA

24.227 Validity of guidelines; contesting guideline.

Sec. 27. (1) A guideline adopted after the effective date of this section is not valid unless processed in substantial compliance with sections 24, 25, and 26. However, inadvertent failure to give notice to any person as required by section 24 does not invalidate a guideline which was otherwise processed in substantial

compliance with sections 24, 25, and 26.

(2) A proceeding to contest a guideline on the grounds of noncompliance with sections 24, 25, and 26 shall be commenced within 2 years after the effective date of the guideline.

History: Add. 1986, Act 292, Imd. Eff. Dec. 22, 1986.

Popular name: Act 306

Popular name: APA

24.228 Adoption of standard form contract; notice.

Sec. 28. (1) Before the adoption of a standard form contract that would have been considered a rule but for the exemption from rule-making under section 7(p) or a policy exempt from rule-making under section 7(q), an agency shall give electronic notice of the proposed standard form contract or policy to the committee and the office of regulatory reform. The committee shall provide an electronic copy of the notice not later than the next business day after receipt of the electronic notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed standard form contract or policy.

(2) The electronic notice required by subsection (1) shall include all of the following:

(a) A statement of the terms of substance of the proposed standard form contract or policy, a description of the subjects and issues involved, and the proposed effective date of the standard form contract or policy.

(b) A statement that the addressee may express any views or arguments regarding the proposed standard form contract or policy or the standard form contract's or policy's effect on a person.

(c) The address to which comments may be sent and the date by which the comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision under which the standard form contract or policy is issued.

(3) If the value of a proposed standard form contract exempt from rule-making under section 7(p) is $10,000,000.00 or more, the electronic notice required under subsection (1) shall include an electronic copy of the proposed standard form contract. If the value of the proposed standard form contract exempt from rule-making under section 7(p) is less than $10,000,000.00, the agency shall provide an electronic or paper copy of the proposed standard form contract or policy to any legislator requesting a copy.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 3

PROCEDURES FOR PROCESSING AND PUBLISHING RULES

24.231 Rules; continuation; amendment; rescission.

Sec. 31. (1) Rules which became effective before July 1, 1970 continue in effect until amended or rescinded.

(2) When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or rescinded, and the agency or successor agency may rescind any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically rescinded as of the effective date of the repeal of such law or the abolition of the agency.

(3) The rescission of a rule does not revive a rule which was previously rescinded.

(4) The amendment or rescission of a valid rule does not defeat or impair a right accrued, or affect a penalty incurred, under the rule.

(5) Except in the case of the amendment of rules concerning inmates as described in section 7(k), a rule may be amended or rescinded by another rule which constitutes the whole or a part of a filing of rules or as a result of an act of the legislature.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA

24.232 Statutory construction; discrimination; crimes; adoption by reference; effect of guideline, operational memorandum, bulletin, interpretive statement, or form with instructions; agency order; limitation on rule-making delegation.

Sec. 32. (1) Definitions of words and phrases and rules of construction prescribed in any statute that are made applicable to all statutes of this state also apply to rules unless clearly indicated to the contrary.

(2) A rule or exception to a rule shall not discriminate in favor of or against any person. A person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

(3) The violation of a rule is a crime when so provided by statute. A rule shall not make an act or omission to act a crime or prescribe a criminal penalty for violation of a rule.

(4) An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation that has been adopted by an agency of the United States or by a nationally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and distribution to the public at cost and the rules shall state where copies of the adopted matter are available from the agency and the agency of the United States or the national organization or association and the cost of a copy as of the time the rule is adopted.

(5) A guideline, operational memorandum, bulletin, interpretive statement, or form with instructions is not enforceable by an agency, is considered merely advisory, and shall not be given the force and effect of law. An agency shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to support the agency's decision to act or refuse to act if that decision is subject to judicial review. A court shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to uphold an agency decision to act or refuse to act.

(6) Where a statute provides that an agency may proceed by rule-making or by order and an agency proceeds by order in lieu of rule-making, the order shall not be given general applicability to persons who were not parties to the proceeding or contested case before the issuance of the order, unless the order was issued after public notice and a public hearing.

(7) A rule shall not exceed the rule-making delegation contained in the statute authorizing the rule-making.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 2011, Act 270, Imd. Eff. Dec. 19, 2011.

Popular name: Act 306

Popular name: APA

24.233 Rules; organization; operations; procedures.

Sec. 33. (1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations and may include therein forms with instructions. Sections 41, 42, 45, and 45a do not apply to such rules.

(2) An agency shall promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests.

(3) An agency may promulgate rules not inconsistent with this act or other applicable statutes prescribing procedures for contested cases.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Administrative rules: R 11.1 et seq.; R 24.61 et seq.; R 28.4011 et seq.; R 32.11 et seq.; R 35.1 et seq.; R 38.1 et seq.; R 169.1 et seq.; R 209.1 et seq.; R 211.401 et seq.; R 225.1 et seq.; R 247.1 et seq.; R 257.31 et seq.; R 257.301 et seq.; R 257.1001 et seq.; R 285.900.1; R 299.2901 et seq.; R 299.2903 et seq.; R 299.5001 et seq.; R 299.5101 et seq.; R 299.51001 et seq.; R 323.1001 et seq.; R 324.1 et seq.; R 325.10101 et seq.; R 330.1001 et seq.; R 340.1351 et seq.; R 349.291; R 390.621; R 400.1 et seq.; R 408.20001 et seq.; R 408.21401 et seq.; R 418.10101 et seq.; R 418.10104 et seq.; R 432.1001 et seq.; R 436.1951 et seq.; R 436.1963; R 451.1901 et seq.; R 451.2101 et seq.; R 501.351 et seq.; and R 722.1 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

24.234 Office of regulatory reform; agency; powers and duties.

Sec. 34. (1) The office of regulatory reform is an independent and autonomous type 1 agency within the department of management and budget. The office of regulatory reform has the powers and duties as set forth in executive order no. 1995-6 (executive reorganization order no. 1995-5), MCL 10.151, and shall exercise the powers and perform the duties prescribed by subsection (2) independently of the principal executive departments of this state, including, but not limited to, personnel, budgeting, procurement, and management-related functions.

(2) In addition to any other powers and duties described in subsection (1), the office of regulatory reform shall review proposed rules, coordinate processing of rules by agencies, work with the agencies to streamline the rule-making process, and consider efforts designed to improve public access to the rule-making process.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Compiler's note: For transfer of powers and duties of the office of regulatory reform from the department of management and budget to the office of regulatory reform, see E.R.O. No. 2000-1, compiled at MCL 10.152 of the Michigan compiled laws.

Popular name: Act 306

Popular name: APA

24.235 Joint committee on administrative rules; creation; appointment and terms of members; chairperson; expenses; meetings; hearings; action by committee; report; hiring and supervision of staff and related functions.

Sec. 35. (1) The joint committee on administrative rules is created and consists of 5 members of the senate and 5 members of the house of representatives appointed in the same manner as standing committees are appointed for terms of 2 years. Of the 5 members in each house, 3 shall be from the majority party and 2 shall be from the minority party. The chairperson of the committee shall alternate between houses each year. Members of the committee shall serve without compensation but shall be reimbursed for expenses incurred in the business of the committee. The expenses of the members of the senate shall be paid from appropriations to the senate and the expenses of the members of the house of representatives shall be paid from appropriations to the house of representatives. The committee may meet during a session of the legislature and during an interim between sessions. The committee may hold a hearing on a rule transmitted to the committee, any rule previously filed with the secretary of state, or any other matter the committee considers appropriate. Action by the committee, including action taken under section 52, shall be by concurring majorities of the members from each house. The committee shall report its activities and recommendations to the legislature at each regular session.

(2) The committee may hire staff to assist the committee under this act. However, the supervision of staff, budgeting, procurement, and related functions of the committee shall be performed by the council administrator under section 104a of the legislative council act, 1986 PA 268, MCL 4.1104a.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1978, Act 243, Imd. Eff. June 19, 1978; Am. 1987, Act 13, Imd. Eff. Apr. 6, 1987

; Am. 1990, Act 290, Eff. Jan. 1, 1991; Am. 1995, Act 178, Imd. Eff. Oct. 17, 1995; Am. 2011, Act 245, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.235a Repealed. 1993, Act 7, Eff. Dec. 8, 1994.

Compiler's note: The repealed section pertained to membership of joint committee on administrative rules beginning January 13, 1993.

Popular name: Act 306

Popular name: APA

24.236 Office of regulatory reform procedures and standards for rules.

Sec. 36. The office of regulatory reform may prescribe procedures and standards not inconsistent with this act or other applicable statutes for the drafting of rules, publication of required notices, and distribution of rules. The office of regulatory reform may prescribe procedures and standards not inconsistent with this act or other applicable statutes for the processing of rules within the executive branch. The procedures and standards shall be included in a manual which the office of regulatory reform shall publish and distribute in reasonable quantities to the state departments and the committee.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.238 Filing of requests by individuals for promulgation of certain rules.

Sec. 38. A person may request an agency to promulgate a rule. Within 90 days after filing of a request, the agency shall initiate the processing of a rule or issue a concise written statement of its principal reasons for denial of the request. The denial of a request is not subject to judicial review.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.239 Request for rule-making.

Sec. 39. (1) Before initiating any changes or additions to rules, an agency shall electronically file with the office of regulatory reinvention a request for rule-making in a format prescribed by the office of regulatory reinvention. The request for rule-making shall include the following:

(a) The state or federal statutory or regulatory basis for the rule.

(b) The problem the rule intends to address.

(c) An assessment of the significance of the problem.

(d) If applicable, the decision record.

(2) If an agency receives recommendations or comments by any advisory committee or other advisory entity created by statute regarding a request for rule-making, the advisory committee or entity shall issue to the agency a decision record.

(3) An agency shall not proceed with the processing of a rule outlined in this chapter unless the office of regulatory reinvention has approved the request for rule-making. The office of regulatory reinvention is not required to approve a request for rule-making and shall do so only after it has indicated in its response to the request for rule-making submitted by an agency that there are appropriate and necessary policy and legal bases for approving the request for rule-making.

(4) The office of regulatory reinvention shall record the receipt of all requests for rule-making on the internet and shall make electronic or paper copies of approved requests for rule-making available to members of the general public. The office of regulatory reinvention shall issue a written or electronic response to the request for rule-making that specifically addresses whether the request has appropriate and necessary policy and legal bases for approving the request for rule-making.

(5) The office of regulatory reinvention shall immediately make available to the committee electronic copies of the request for rule-making submitted to the office of regulatory reinvention. On a weekly basis, the office of regulatory reinvention shall electronically provide to the committee a listing of all requests for rule-making approved or denied during the previous week. The committee shall electronically provide a copy of the approved and denied requests for rule-making, not later than the next business day after receipt of the notice from the office of regulatory reinvention, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2011, Act 239, Imd. Eff. Dec.

1, 2011.

Popular name: Act 306

Popular name: APA

24.239a Notice of public hearing; approval by office of regulatory reform; copies.

Sec. 39a. (1) An agency may publish the notice of hearing under section 42 only if the office of regulatory reform has received draft proposed rules and has given the agency approval to proceed with a public hearing.

(2) After a grant of approval to hold a public hearing by the office of regulatory reform under subsection (1), the office of regulatory reform shall immediately provide a copy of the proposed rules to the committee. The committee shall provide a copy of the proposed rules, not later than the next business day after receipt of the notice from the office of regulatory reform, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2011, Act 243, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.241 Notice of public hearing before adoption of rule; opportunity to present data, views, questions, and arguments; time, contents, and transmittal of notice; renewal of requests for notices; provisions governing public hearing; presence and participation of certain persons at public hearing required.

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency, or the office of regulatory reform, shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1).

(2) The notice described in subsection (1) shall include all of the following:

(a) A reference to the statutory authority under which the action is proposed.

(b) The time and place of the public hearing and a statement of the manner in which data, views, questions,

and arguments may be submitted by a person to the agency at other times.

(c) A statement of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date of the rule.

(3) The agency, or the office of regulatory reform acting on behalf of an agency, shall transmit copies of the notice to each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice shall be by mail, in writing, or electronically to the last address specified by the person.

(4) The public hearing shall comply with any applicable statute, but is not subject to the provisions governing a contested case.

(5) The head of the promulgating agency or 1 or more persons designated by the head of the agency who have knowledge of the subject matter of the proposed rule shall be present at the public hearing and shall participate in the discussion of the proposed rule.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989; Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.241a Request by legislator for copies of proposed rules or changes in rules.

Sec. 41a. A member of the legislature may annually submit a written or electronic request to the office of regulatory reform requesting that a copy of all proposed rules or changes in rules, or any designated proposed rules or changes in rules submitted to the office of regulatory reform for its approval, be mailed or electronically transmitted to the requesting member upon his or her receipt by the office of regulatory reform.

History: Add. 1971, Act 171, Imd. Eff. Dec. 2, 1971; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.242 Notice of public hearing; publication requirements; submission of copy to office of regulatory reform; publication of notice in Michigan register; distribution of copies of notice of public hearing; meeting of joint committee on administrative rules.

Sec. 42. (1) Except as provided in section 44, at a minimum, an agency, or the office of regulatory reform acting on behalf of the agency, shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency, or the office of regulatory reform acting on behalf of the agency, shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula.

(2) Additional methods that may be employed by the agency, or the office of regulatory reform acting on behalf of the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications or posting on the website of the agency or the office of regulatory reform.

(3) In addition to the requirements of subsection (1), the agency shall electronically submit a copy of the notice of public hearing to the office of regulatory reform for publication in the Michigan register. If the office of regulatory reform submitted the notice of public hearing on behalf of the agency, the office of regulatory reform shall publish the notice of public hearing in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall electronically file a copy of the notice of public hearing with the office of regulatory reform. Within 7 days after receipt of the notice of public hearing, the office of regulatory reform shall do all of the following before the public hearing:

(a) Electronically transmit a copy of the notice of public hearing to the committee.

(b) Provide notice electronically through publicly accessible internet media.

(4) After the office of regulatory reform electronically transmits a copy of the notice of public hearing to the committee, the committee shall electronically transmit copies of the notice of public hearing, not later than the next business day after receipt of the notice from the office of regulatory reform, to each member of the committee and to the members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

(5) After receipt of the notice of public hearing filed under subsection (3), the committee may meet to

consider the proposed rule, take testimony, and provide the agency with the committee's informal response to the rule.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989; Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.243 Compliance required; contesting rule on ground of noncompliance.

Sec. 43. (1) Except in the case of an emergency rule promulgated in the manner described in section 48, a rule is not valid unless processed in compliance with section 42 and unless in substantial compliance with section 41(2), (3), (4), and (5).

(2) A proceeding to contest a rule on the ground of noncompliance with the requirements of sections 41 and 42 shall be commenced within 2 years after the effective date of the rule.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA

24.244 Notice of public hearings on rules; exceptions to requirements; applicability of MCL 24.241 and 24.242 to rules promulgated under Michigan occupational safety and health act or determination under MCL 24.245c(3); “substantially similar” defined.

Sec. 44. (1) Sections 41 and 42 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the legislative service bureau certificate of approval of the rule.

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596. However, notice of the proposed rule must be published in the Michigan register at least 35 days before the submission of the rule to the secretary of state under section 46(1). A reasonable period, not to exceed 21 days, must be provided for the submission of written or electronic comments and views following publication in the Michigan register.

(3) Sections 41 and 42 do not apply to a change to a proposed rule by an agency during processing of the rule if the office determines under section 45c(3) that the regulatory impact and impact on small businesses of the changed proposed rule are not more burdensome than the regulatory impact and impact on small businesses of the original proposed rule.

(4) For purposes of subsection (2), "substantially similar" means identical, with the exception of style or format differences needed to conform to this or other state laws, as determined by the office.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2016, Act 513, Imd. Eff. Jan. 9, 2017.

Popular name: Act 306

Popular name: APA

24.245 Approval of rules by legislative service bureau and office; agency reports; regulatory impact statement; fiscal agency reports; exceptions.

Sec. 45. (1) Except as otherwise provided in this subsection, an agency shall electronically submit a proposed rule to the legislative service bureau for its formal certification. If requested by the legislative service bureau, the office shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement. If the legislative service bureau fails to issue a certificate of approval within 21 calendar days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the agency before the expiration of the 21-calendar-day time period, the 21-calendar-day time period is tolled until the rule is resubmitted by the agency. After resubmission, the legislative service bureau has the remainder of the

21-calendar-day time period or 6 calendar days, whichever is longer, to consider the formal certification of the rule. The office may approve a proposed rule if it considers the proposed rule to be legal and appropriate.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a synopsis of the comments contained in the public hearing record, a copy of the request for rule-making, and the regulatory impact statement required under subsection (3). In the report, the agency shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office shall transmit by notice of transmittal to the committee copies of the rule, the agency reports containing the request for rule-making, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office. The office shall also electronically submit to the committee a copy of the rule, any agency reports required under this subsection, any regulatory impact statements required under subsection (3), and any certificates of approval required under subsection (1). The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule.

(3) Except as provided in subsection (6), an agency shall prepare and include with a notice of transmittal under subsection (2) the request for rule-making and the response from the office, a small business impact statement prepared under section 40, and a regulatory impact statement. The regulatory impact statement must contain all of the following information:

(a) A comparison of the proposed rule to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

(b) If requested by the office or the committee, a comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

(c) An identification of the behavior and frequency of behavior that the rule is designed to alter.

(d) An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.

(e) An estimate of the change in the frequency of the targeted behavior expected from the rule.

(f) An identification of the businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule.

(g) An identification of any reasonable alternatives to regulation pursuant to the proposed rule that would achieve the same or similar goals.

(h) A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms.

(i) An estimate of the cost of rule imposition on the agency promulgating the rule.

(j) An estimate of the actual statewide compliance costs of the proposed rule on individuals.

(k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.

(*l*) An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.

(m) An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.

(n) An identification of the nature of any report required and the estimated cost of its preparation by small businesses required to comply with the proposed rule.

(o) An analysis of the costs of compliance for all small businesses affected by the proposed rule, including costs of equipment, supplies, labor, and increased administrative costs.

(p) An identification of the nature and estimated cost of any legal consulting and accounting services that small businesses would incur in complying with the proposed rule.

(q) An estimate of the ability of small businesses to absorb the costs estimated under subdivisions (n) to (p) without suffering economic harm and without adversely affecting competition in the marketplace.

(r) An estimate of the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

(s) An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

(t) A statement describing the manner in which the agency reduced the economic impact of the rule on small businesses or a statement describing the reasons such a reduction was not feasible.

(u) A statement describing how the agency has involved small businesses in the development of the rule.

(v) An estimate of the primary and direct benefits of the rule.

(w) An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental

units as a result of the rule.

(x) An estimate of any increase in revenues to state or local governmental units as a result of the rule.

(y) An estimate of any secondary or indirect benefits of the rule.

(z) An identification of the sources the agency relied on in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.

(aa) A detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule upon small businesses as described in section 40(1)(a) to (d).

(bb) Any other information required by the office.

(4) The agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office at least 28 days before the public hearing required under section 41. The agency shall not hold the public hearing until the regulatory impact statement has been reviewed and approved by the office. The agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the regulatory impact statement on its website at least 10 days before the date of the public hearing.

(5) The committee shall electronically transmit to the senate fiscal agency and the house fiscal agency a copy of each rule and regulatory impact statement filed with the committee and a copy of the agenda identifying the proposed rules to be considered by the committee. The senate fiscal agency and the house fiscal agency shall analyze each proposed rule for possible fiscal implications that, if the rule were adopted, would result in additional appropriations in the current fiscal year or commit the legislature to an appropriation in a future fiscal year. The senate fiscal agency and the house fiscal agency shall electronically report their findings to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.

(6) Subsections (2), (3), and (4) do not apply to a rule that is promulgated under section 33 or 48 or a rule to which sections 41 and 42 do not apply as provided in section 44.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1978, Act 243, Imd. Eff. June 19, 1978; Am. 1980, Act 455, Imd. Eff. Jan. 15, 1981; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1983, Act 202, Imd. Eff. Nov. 10, 1983; Am. 1984, Act 273, Eff. Mar. 29, 1985; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1987, Act 13, Imd. Eff. Apr. 6, 1987; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989; Am. 1990, Act 38, Imd. Eff. Mar. 28, 1990; Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005; Am. 2011, Act 242, Imd. Eff. Dec. 8, 2011; Am. 2013, Act 200, Eff. Mar. 19, 2014; Am. 2016, Act 513, Imd. Eff. Jan. 9, 2017.

Constitutionality: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103; 611 NW2d 530 (2000).

Compiler's note: For transfer of powers and duties pertaining to small business economic impact statements under MCL 24.245 from the department of commerce to the office of regulatory reform in the executive office of the governor, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For creation of the office of regulatory reform within the executive office of the governor and transfer of the attorney general's duties to the office of regulatory reform, see E.R.O. No. 1995-5, compiled at MCL 10.151 of the Michigan Compiled Laws.

Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.245a Joint committee on administrative rules; consideration of rule; actions; filing of rule by office; effective date of rule; withdrawal and resubmission of rule; tolling; "session day" defined.

Sec. 45a. (1) Except as otherwise provided in subsections (10) to (12), after the committee has received a notice of transmittal under section 45(2), the committee has 15 session days in which to consider the rule and do 1 of the following:

(a) Object to the rule by approving a notice of objection under subsection (2) and filing the notice with the office.

(b) Propose that the rule be changed. If the committee proposes that a rule be changed under this

subdivision, section 45c applies.

(c) Decide to introduce bills under subsection (5) to enact the subject of the rule into law.

(d) Waive any remaining session days. If the committee waives the remaining session days, the clerk of the committee shall promptly notify the office of the waiver by electronic transmission.

(2) To approve a notice of objection under subsection (1)(a), a concurrent majority of the committee, as provided in section 35, must affirmatively determine that 1 or more of the following conditions exist:

(a) The agency lacks statutory authority for the rule.

(b) The agency is exceeding the statutory scope of its rule-making authority.

(c) There exists an emergency relating to the public health, safety, and welfare that would warrant disapproval of the rule.

(d) The rule conflicts with state law.

(e) A substantial change in circumstances has occurred since enactment of the law on which the proposed rule is based.

(f) The rule is arbitrary or capricious.

(g) The rule is unduly burdensome to the public or to a licensee licensed under the rule.

(3) If the committee does not approve a notice of objection, propose that the rule be changed, or decide to introduce bills under subsection (5) within the time period prescribed in subsection (1), or if the committee waives the remaining session days under subsection (1), the office may immediately file the rule, with the certificate of approval required under section 45(1), with the secretary of state. The rule takes effect immediately on being filed with the secretary of state unless a later date is indicated in the rule.

(4) If the committee files a notice of objection under subsection (1)(a), the committee chair, the alternate chair, or any member of the committee shall introduce bills in both houses of the legislature, simultaneously to the extent practicable. Each house shall place the bill or bills directly on its calendar. The bills must contain 1 or more of the following:

(a) A rescission of a rule upon its effective date.

(b) A repeal of the statutory provision under which the rule was authorized.

(c) A bill staying the effective date of the proposed rule for up to 1 year.

(5) If the committee decides to proceed under this subsection as provided in subsection (1)(c), the committee chair and the alternate chair shall, as soon as the bills have been prepared, introduce or cause to be introduced in both houses of the legislature bills to enact into law the subject of the proposed rule. The language of a bill introduced under this subsection is not required to be identical to the language of the proposed rule. The legislative service bureau shall give priority to the preparation of the bills.

(6) The office shall not file with the secretary of state a rule as to which the committee has filed a notice of objection under subsection (1)(a) until after whichever of the following applies:

(a) Unless subdivision (b) applies, 15 session days after the date the notice is filed.

(b) The date of a rescission of the notice of objection as provided in this subdivision. The committee may rescind a notice of objection filed under subsection (1)(a). If the committee rescinds a notice of objection under this subdivision, the clerk of the committee shall promptly notify the office by electronic transmission of the rescission.

(7) If the committee decides to introduce bills under subsection (5) with respect to the subject of a rule, the office shall not file the rule with the secretary of state until 270 days after the bills were introduced.

(8) If legislation introduced under subsection (4) or (5) is defeated in either house and if the vote by which the legislation failed to pass is not reconsidered in compliance with the rules of that house, or if legislation introduced under subsection (4) or (5) is not adopted by both houses within the applicable period specified in subsection (6) or (7), the office may file the rule with the secretary of state. The rule takes effect immediately on being filed with the secretary of state unless a later date is specified in the rule.

(9) If legislation introduced under subsection (4) or (5) is enacted by the legislature and presented to the governor within the 15-session-day period under subsection (6) or before the expiration of 270 days under subsection (7), the rule does not take effect unless the legislation is vetoed by the governor as provided by law. If the governor vetoes the legislation, the office may file the rule with the secretary of state immediately. The rule takes effect 7 days after the date it is filed with the secretary of state unless a later effective date is indicated in the rule.

(10) An agency may withdraw a proposed rule under the following conditions:

(a) With permission of the committee chair and alternate chair, the agency may withdraw the rule to change the rule and resubmit it as changed. If permission to withdraw is granted, the 15-session-day period described in subsection (1) is tolled until the rule is resubmitted. However, the committee must have at least 6 session days after resubmission to consider the resubmitted rule, and if necessary, the period under subsection (1) is extended to give the committee the 6 days.

(b) Without permission of the committee chair and alternate chair, the agency may withdraw the rule to change the rule and resubmit it as changed. If permission to withdraw is not granted, a new and untolled 15-session-day time period described in subsection (1) begins on resubmission of the rule to the committee for consideration.

(11) This section does not apply to rules adopted under section 33 or 48 or a rule to which sections 41 and 42 do not apply as provided in section 44(1) or (2).

(12) An agency shall withdraw any rule pending before the committee at the final adjournment of a regular session held in an even-numbered year and resubmit the rule. A new and untolled 15-session-day period described in subsection (1) begins on resubmission of the rule to the committee for consideration.

(13) As used in this section only, "session day" means a day in which both the house of representatives and the senate convene in session and a quorum is recorded.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005; Am. 2011, Act 245, Imd. Eff. Dec. 8, 2011; Am. 2016, Act 513, Imd. Eff. Jan. 9, 2017.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

(a) The regulatory impact statement required under section 45(3).

(b) Instructions on any existing administrative remedies or appeals available to the public.

(c) Instructions regarding the method of complying with the rules, if available.

(d) Any rules filed with the secretary of state and the effective date of those rules.

(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

History: Add. 2011, Act 247, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.245c Proposal by committee that proposed rule be changed; actions by agency; review and determination by office; notice to committee.

Sec. 45c. (1) If the committee proposes that a proposed rule be changed under section 45a(1), the agency shall, within 30 days, do 1 of the following:

(a) Decide to change the rule and, within the 30 days, resubmit the rule, as changed, to the committee. If the agency decides to change the rule, subsections (2) to (5) apply.

(b) Decide to not change the rule. If the agency decides to not change the rule, subsection (6) applies.

(2) If an agency decides to change a proposed rule under subsection (1), the agency shall withdraw the rule. A withdrawal under this subsection is a withdrawal with permission under section 45a(10). After withdrawing the rule under this subsection, the agency shall give notice to the office for publication of the proposed rule, as changed, under section 8. The notice must include the text of the rule as changed.

(3) After receiving the text of a proposed rule as changed under subsection (2), the office shall review the rule as changed and determine whether the regulatory impact or the impact on small businesses of the rule as changed would be more burdensome than the regulatory impact or the impact on small businesses of the rule as originally proposed. If the language of the rule as changed is identical to the language of the corresponding rule promulgated and in effect at the time of the review, the regulatory impact and impact on small businesses of the rule as changed are not more burdensome. The office shall notify the agency of its determination under this subsection.

(4) If the office's determination under subsection (3) is that the regulatory impact and the impact on small businesses of the rule as changed would not be more burdensome, the agency is not required to prepare a new agency report under section 45(2) or conduct a new public hearing on the rule as changed. If the determination is that the regulatory impact and the impact on small businesses of the rule as changed would be more burdensome, the agency shall prepare a new agency report under section 45(2) and conduct a new public hearing.

(5) After receiving the office's determination under subsection (3), the agency shall submit a supplement to

the agency report under section 45(2) that includes all of the following:

(a) A statement of the determination of the office under subsection (3) and whether a new agency report under section 45(2) and public hearing are required.

(b) An explanation for the proposed changed rule.

(6) If an agency decides to not change a rule under subsection (1), the agency shall within the 30-day period under subsection (1) notify the committee of the decision and the reasons for the decision and file the notice with the office. After the notice is filed, the committee has 15 session days in which to consider the agency's decision and take 1 of the actions listed in section 45a(1).

History: Add. 2016, Act 513, Imd. Eff. Jan. 9, 2017.

Popular name: Act 306

Popular name: APA

24.246 Promulgation of rules; procedure; arrangement, binding, certification, and inspection of rules.

Sec. 46. (1) To promulgate a rule the state office of administrative hearings and rules shall file in the office of the secretary of state 3 copies of the rule bearing the required certificates of approval and adoption, true copies of the rule without the certificates, and 1 electronic copy. The state office of administrative hearings and rules shall not file a rule, except an emergency rule under section 48 and rules processed under sections 33 and 44, until the time periods for committee and legislative consideration described in section 45a have elapsed.

(2) The secretary of state shall endorse the date and hour of filing of rules on the 3 copies of the filing bearing the certificates and shall maintain a file containing 1 copy for public inspection.

(3) The secretary of state, as often as he or she considers it advisable, shall cause to be arranged and bound in a substantial manner the rules hereafter filed in his or her office with their attached certificates and published in a supplement to the Michigan administrative code. The secretary of state shall certify under his or her hand and seal of the state on the frontispiece of each volume that it contains all of the rules filed and published for a specified period. The rules, when so bound and certified, shall be kept in the office of the secretary of state and no further record of the rules is required to be kept. The bound rules are subject to public inspection.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2006, Act 247, Imd. Eff. July 3, 2006.

Constitutionality: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103; 611 NW2d 530 (2000).

Popular name: Act 306

Popular name: APA

24.247 Effective date of rules; withdrawal or rescission of promulgated rules; notice of withdrawal.

Sec. 47. (1) Except in case of a rule processed under section 48, a rule becomes effective on the date fixed in the rule, which shall not be earlier than 7 days after the date of its promulgation, or if a date is not so fixed then 7 days after the date of promulgation.

(2) Except in case of a rule processed under section 48, an agency may withdraw a promulgated rule which has not become effective by filing a written request stating reasons for withdrawal to the secretary of state on or before the last day for filing rules for the interim period in which the rules were first filed, or by filing a written request for withdrawal to the secretary of state and the office of regulatory reform, within a reasonable time as determined by the office of regulatory reform, after the last day for filing and before publication of the rule in the next supplement to the code. In any other case an agency may abrogate its rule only by rescission. When an agency has withdrawn a promulgated rule, it shall give notice, stating reasons, to the committee that the rule has been withdrawn.

(3) Sections 45 and 45a apply to rules for which a public hearing has not been held by April 1, 2000.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.248 Emergency rules; scheduling substance as controlled substance; numbering and compilation; "administrator" defined.

Sec. 48. (1) If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency's reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies shall be attached the certificates prescribed by section 45 and the governor's certificate concurring in the finding of emergency. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or 6 months after the date of its filing, whichever is earlier. The rule may be extended once for not more than 6 months by the filing of a governor's certificate of the need for the extension with the office of the secretary of state before expiration of the emergency rule.

(2) If the director of the department of community health determines that an imminent danger to the health or lives of individuals in this state can be prevented or controlled by scheduling a substance as a controlled substance under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and the administrator determines that the substance should be scheduled or rescheduled as a controlled substance, the department of licensing and regulatory affairs may dispense with all or part of the procedures required by sections 41 and 42 and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies shall be attached the certificate of approval and the director of the department of community health's notification under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251. The office of regulatory reinvention shall submit the emergency rule draft language to the legislative service bureau for its formal certification within 7 business days of receipt from the department of licensing and regulatory affairs. The legislative service bureau shall issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement within 7 business days after receiving the submission and return the rule to the office of regulatory reinvention. If the legislative service bureau fails to issue a certificate of approval within 7 business days after receipt of the submission for formal certification, the office of regulatory reinvention may issue a certificate of approval. If the legislative service bureau returns the submission to the office of regulatory reinvention before the expiration of the 7-business-day time period, the 7-business-day time period is tolled until the rule is returned by the office of regulatory reinvention. The legislative service bureau shall have the remainder of the 7-business-day time period to consider the formal certification of the rule. Upon receipt from the legislative service bureau, the office of regulatory reinvention shall, within 7 business days, approve the proposed rule if it considers the proposed rule to be legal and appropriate. An emergency rule adopted under this subsection remains in effect until the earlier date of the following:

(a) An identical or similar rule is promulgated.

(b) An identical or similar bill is enacted into law.

(c) The administrator determines that the emergency rule is no longer necessary.

(d) Six months after the date of its filing, which may be extended for not more than 6 months by the administrator upon filing a certificate of extension with the office of secretary of state before the expiration of 6 months after the date of its filing.

(3) An emergency rule shall not be numbered and shall not be compiled in the Michigan administrative code, but shall be noted in the annual supplement to the code. The emergency rule shall be published in the Michigan register pursuant to section 8.

(4) If the agency desires to promulgate an identical or similar rule with an effectiveness beyond the final effective date of an emergency rule, the agency shall comply with the procedures prescribed by this act for the processing of a rule which is not an emergency rule. The rule shall be published in the Michigan register and in the code.

(5) As used in this section, "administrator" means that term as defined in section 7103 of the public health code, 1978 PA 368, MCL 333.7103.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1977, Act 82, Imd. Eff. Aug. 2, 1977; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2012, Act 181, Imd. Eff. June 19, 2012.

Popular name: Act 306

Popular name: APA

24.249 Filed rules; transmission.

Sec. 49. (1) The secretary of state shall transmit, after copies of rules are filed in his or her office, the

following:

(a) To the secretary of the committee and the state office of administrative hearings and rules, a paper copy upon which the day and hour of that filing have been endorsed.

(b) To the secretary of the senate and the clerk of the house of representatives, an electronic copy for distribution or transmittal by them to each member of the senate and the house of representatives. When the legislature is not in session, or is in session but will not meet for more than 10 days after the secretary and clerk have received the rules, the secretary and clerk shall mail or electronically transmit 1 copy to each member of the legislature at his or her home address.

(2) The secretary of the senate and clerk of the house of representatives shall present the rules to the senate and the house of representatives.

History: 1969, Act 306, Eff. July 1, 1970; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2006, Act 247, Imd. Eff. July 3, 2006.

Popular name: Act 306

Popular name: APA

24.250 Legislative standing committees; functions.

Sec. 50. (1) When the legislature is in session, the committee shall electronically notify the appropriate standing committee of each house of the legislature when rules have been transmitted to the committee by the secretary of state. If the committee determines that a hearing on those rules is to be held, it shall electronically notify the chairs of the standing committees. All members of the standing committees may be present and take part in the hearing.

(2) The chair or a designated member of the standing committee should be present at the hearing, but his or her absence does not affect the validity of the hearing.

History: 1969, Act 306, Eff. July 1, 1970; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.251 Amendment and rescission of rules by legislature; introduction of bill.

Sec. 51. If the committee, an appropriate standing committee, or a member of the legislature believes that a promulgated rule or any part thereof is unauthorized, is not within legislative intent, or is inexpedient, the committee or member may introduce a bill at a regular session, or special session if included in a governor's message, which in effect amends or rescinds the rule.

History: 1969, Act 306, Eff. July 1, 1970; Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.252 Suspension of rules.

Sec. 52. (1) If authorized by concurrent resolution of the legislature, the committee, acting between regular sessions, may suspend a rule or a part of a rule promulgated during the interim between regular sessions.

(2) The committee shall electronically notify the agency promulgating the rule, the secretary of state, and the office of regulatory reform of any rule or part of a rule the committee suspends. A rule or part of a rule suspended under this section shall not be published in the Michigan register or in the Michigan administrative code while suspended.

(3) A rule suspended by the committee continues to be suspended not longer than the end of the next regular legislative session.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.253 Annual regulatory plan; link to website of office of regulatory reinvention.

Sec. 53. (1) Each agency shall prepare an annual regulatory plan that reviews the agency's rules. The annual regulatory plan shall be electronically transmitted to the office of regulatory reinvention.

(2) In completing the annual regulatory plan required by this section, the agency shall identify the rules the agency expects to review under subsection (4) in the next year, the rules it reasonably expects to process in the next year, the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year.

(3) The annual regulatory plans completed under this section are advisory only and do not otherwise bind the agency or in any way prevent additional action.

(4) In completing a review of rules pursuant to the annual regulatory plans under this section, first priority shall be given to those rules that directly affect the greatest number of businesses, groups, and individuals and those rules that have the greatest actual statewide compliance costs for businesses, groups, and individuals. A review of rules under this subsection shall state the following:

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

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

(c) The complexity of complying with the rules.

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

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

(5) Annual regulatory plans completed under subsection (1) shall be electronically filed with the office of regulatory reinvention by July 1 of each year. After the office of regulatory reinvention approves the plan for review, the office of regulatory reinvention shall electronically provide a copy of the plan of review to the committee. The committee shall electronically provide a copy of each agency plan of review, not later than the next business day after receipt of the plan of review from the office of regulatory reinvention, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of rules the agency may propose.

(6) Each agency shall provide on its website a link to the website of the office of regulatory reinvention.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004; Am. 2011, Act 238, Imd. Eff. Dec. 1, 2011.

Popular name: Act 306

Popular name: APA

24.254 Failure of committee to provide notice.

Sec. 54. Failure of the committee to provide any notices required under section 24, 28, 39, 39a, or 42 does not affect the validity of the processing or adoption of a rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.255 Annual supplement to Michigan administrative code; electronic publication by office of regulatory reform; contents.

Sec. 55. The office of regulatory reform annually shall publish an electronic supplement to the Michigan administrative code. The annual supplement shall contain all promulgated rules published in the Michigan register during the current year, except emergency rules, a cumulative numerical listing of amendments and additions to, and rescissions of rules since the last printed compilation of the Michigan administrative code, and a cumulative alphabetical index.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1977, Act 108, Eff. Jan. 1, 1978; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2003, Act 53, Imd. Eff. July 14, 2003.

Popular name: Act 306

Popular name: APA

24.256 Editorial work for Michigan register, Michigan administrative code, and code supplements; uniformity; conformity with Michigan compiled laws; correction of obvious errors; publication of Michigan administrative code; time for publishing supplements.

Sec. 56. (1) The office of regulatory reform shall perform the editorial work for the Michigan register and the Michigan administrative code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the office of regulatory reform, shall be uniform,

and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The office of regulatory reform may correct in the publications obvious errors in rules when requested by the promulgating agency to do so. The office of regulatory reform may provide for publishing all or any part of the Michigan administrative code in bound volume, pamphlet, electronic, or loose-leaf form. This subsection does not prevent a legislator from providing a copy or reproduction of a rule to a member of the general public.

(2) An annual supplement to the Michigan administrative code shall be published at the earliest practicable date.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.257 Omission of rules from Michigan register, Michigan administrative code, and code supplements; conditions; prorating publication and distribution cost of materials published in Michigan register and annual supplement; payment.

Sec. 57. (1) The office of regulatory reform may omit from the Michigan register, the Michigan administrative code, and the Michigan administrative code's annual supplement any rule, the publication of which would be unreasonably expensive or lengthy if the rule in printed or reproduced form is made available on application to the promulgating agency, if the Michigan administrative code publication and the Michigan register contain a notice stating the general subject of the omitted rule and how a copy of the rule may be obtained.

(2) The cost of publishing and distributing annual supplements to the Michigan administrative code and proposed rules, notices of public hearings on proposed rules, rules and emergency rules filed with the secretary of state, notices of proposed and adopted agency guidelines, and the items listed in section 7(*l*) in the Michigan register may be prorated by the office of regulatory reform on the basis of the volume of these materials published for each agency in the Michigan register and annual supplement to the Michigan administrative code, and the cost of publishing and distribution shall be paid out of appropriations to the agencies.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.258 Request for preparation of reproduction proofs or negatives of rules; reimbursement; publication of rules electronically or in pamphlets; cost.

Sec. 58. (1) When requested by an agency, the office of regulatory reform shall prepare reproduction proofs or negatives of the rules, or a portion of the rules, of the agency. The requesting agency shall reimburse the office of regulatory reform for preparing the reproduction proofs or negatives, and the cost of the preparation shall be paid out of appropriations to the agency.

(2) The Michigan administrative code may be arranged and printed to make convenient the publication electronically or in separate pamphlets of the parts of the Michigan administrative code relating to different agencies. Agencies may order the separate pamphlets, and the cost of the pamphlets shall be paid out of appropriations to the agencies.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.259 Copies of Michigan register, Michigan administrative code, and code supplements; distribution; official use.

Sec. 59. (1) The office of regulatory reform shall publish the Michigan register, the Michigan administrative code, and the annual supplement to the Michigan administrative code free of charge on the office of regulatory reform's internet website and may publish these documents in printed or other electronic format for public subscription at a fee, determined by the department of management and budget, that is reasonably calculated to cover, but not to exceed, the publication and distribution costs. Any money collected by the department of management and budget from subscriptions shall be deposited into the general fund.

(2) The official Michigan administrative code is that published or made available on the office of

regulatory reform's internet website free of charge.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984; Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986; Am. 1995, Act 178, Imd. Eff. Oct. 17, 1995; Am. 1999, Act 262, Eff. Apr. 1, 2000; Am. 2003, Act 53, Imd. Eff. July 14, 2003.

Popular name: Act 306

Popular name: APA

24.261 Filing and publication of rules; presumptions arising therefrom; judicial notice.

Sec. 61. (1) The filing of a rule under this act raises a rebuttable presumption that the rule was adopted, filed with the secretary of state, and made available for public inspection as required by this act.

(2) The publication of a rule in the Michigan register, the Michigan administrative code, or in an annual supplement to the code raises a rebuttable presumption that:

(a) The rule was adopted, filed with the secretary of state, and made available for public inspection as required by this act.

(b) The rule printed in the publication is a true and correct copy of the promulgated rule.

(c) All requirements of this act relative to the rule have been complied with.

(3) The courts shall take judicial notice of a rule which becomes effective under this act.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1982, Act 413, Eff. Jan. 1, 1984.

Popular name: Act 306

Popular name: APA

24.263 Declaratory ruling by agency as to applicability of rule.

Sec. 63. On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

History: 1969, Act 306, Eff. July 1, 1970.

Administrative rules: R 32.11 et seq.; R 38.131 et seq.; R 299.5001 et seq.; R 323.1001 et seq.; R 324.1 et seq.; R 325.1211; R 325.10101 et seq.; R 338.81; R 340.1351 et seq.; R 400.1 et seq.; R 408.20001 et seq.; and R 436.1971 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

24.264 Declaratory judgment as to validity or applicability of rule.

Sec. 64. Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

History: 1969, Act 306, Eff. July 1, 1970; Am. 2011, Act 243, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 4

PROCEDURES IN CONTESTED CASES

24.271 Parties in contested case; time and notice of hearing; service of notice or other process on legislator.

Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(2) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(a) A statement of the date, hour, place, and nature of the hearing. Unless otherwise specified in the notice the hearing shall be held at the principal office of the agency.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is given, the initial notice may state the issues involved. Thereafter on application the agency or other party shall furnish a more definite and detailed statement on the issues.

(3) A member of the legislature shall not be privileged from service of notice or other process pursuant to this chapter except on a day on which there is a scheduled meeting of the house of which he or she is a member. However, a member of the legislature shall not be privileged from service of notice or other process pursuant to this chapter on a day on which there is a scheduled meeting of the house of which he or she is a member, if such service of notice or process is executed by certified mail, return receipt requested.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1984, Act 28, Imd. Eff. Mar. 12, 1984.

Constitutionality: Administrative hearings under the Administrative Procedures Act, however informal, comport with the procedural fairness required by due process in the absence of an explicit statutory requirement that a contested evidentiary hearing be held. *Convalescent Center v Blue Cross*, 414 Mich 247; 324 NW2d 851 (1982).

Popular name: Act 306

Popular name: APA

24.272 Defaults, written answers, evidence, argument, cross-examination.

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(2) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(3) The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

(4) A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.273 Subpoenas; issuance; revocation.

Sec. 73. An agency authorized by statute to issue subpoenas, when a written request is made by a party in a contested case, shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid to subpoenaed witnesses in accordance with section 2552 of Act No. 236 of the Public Acts of 1961, as amended, being section 600.2552 of the Compiled Laws of 1948. In case of refusal to comply with a subpoena, the party on whose behalf it was issued may file a petition, in the circuit court for Ingham county or for the county in which the agency hearing is held, for an order requiring compliance.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.274 Oaths; depositions; disclosure of agency records.

Sec. 74. (1) An officer of an agency may administer an oath or affirmation to a witness in a matter before the agency, certify to official acts and take depositions. A deposition may be used in lieu of other evidence when taken in compliance with the general court rules. An agency authorized to adjudicate contested cases may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

(2) An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of his testimony, shall make such statements or reports available to opposing parties for use on cross-examination. On a request for identifiable agency records, with respect to disputed material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.275 Evidence; admissibility, objections, submission in written form.

Sec. 75. In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.275a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.

Sec. 75a. (1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a contested case in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The agency shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the

witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

History: Add. 1987, Act 46, Eff. Jan. 1, 1988; Am. 1998, Act 327, Imd. Eff. Aug. 3, 1998.

Popular name: Act 306

Popular name: APA

24.276 Evidence to be entered on record; documentary evidence.

Sec. 76. Evidence in a contested case, including records and documents in possession of an agency of which it desires to avail itself, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under section 77. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.277 Official notice of facts; evaluation of evidence.

Sec. 77. An agency in a contested case may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within the agency's specialized knowledge. The agency shall notify parties at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the parties shall be given an opportunity before final decision to dispute the fact or its materiality. An agency may use its experience, technical competence and specialized knowledge in the evaluation of evidence presented to it.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.278 Stipulations; disposition of cases, methods.

Sec. 78. (1) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties are requested to thus agree upon facts when practicable.

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.279 Presiding officers; designation; disqualification, inability.

Sec. 79. An agency, 1 or more members of the agency, a person designated by statute or 1 or more hearing officers designated and authorized by the agency to handle contested cases, shall be presiding officers in contested cases. Hearings shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.280 Presiding officer; powers and duties; “nonmeeting day” defined.

Sec. 80. (1) A presiding officer may do all of the following:

(a) Administer oaths and affirmations.

(b) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence.

(c) Provide for the taking of testimony by deposition.

(d) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

(e) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(f) Act upon an application for an award of costs and fees under sections 121 to 127.

(2) In order to assure adequate representation for the people of this state, when the presiding officer knows that a party in a contested case is a member of the legislature of this state, and the legislature is in session, the contested case shall be continued by the presiding officer to a nonmeeting day.

(3) In order to assure adequate representation for the people of this state, when the presiding officer knows that a party to a contested case is a member of the legislature of this state who serves on a legislative committee, subcommittee, commission, or council that is scheduled to meet during the legislative session while the legislature is temporarily adjourned, or that is scheduled to meet during the interim between legislative sessions after the legislature has adjourned sine die, or when the partisan caucus of which the legislator is a member is scheduled to meet, the contested case shall be continued to a nonmeeting day.

(4) In order to assure adequate representation for the people of this state, when the presiding officer knows that a witness in a contested case is a member of the legislature of this state, and the legislature is in session, or the member is serving on a legislative committee, subcommittee, commission, or council that is scheduled to meet during the legislative session while the legislature is temporarily adjourned or during the interim between legislative sessions after the legislature has adjourned sine die, or when the partisan caucus of which the legislator is a member is scheduled to meet the contested case need not be continued, but the taking of the legislator's testimony, as a witness shall be postponed to the earliest practicable nonmeeting day.

(5) The presiding officer shall notify all parties to the contested case, and their attorneys, of any continuance granted pursuant to this section.

(6) As used in this section, “nonmeeting day” means a day on which there is not a scheduled meeting of the house of which the party or witness is a member, nor a legislative committee meeting or public hearing scheduled by a committee, subcommittee, commission, or council of which he or she is a member, nor a scheduled partisan caucus of the members of the house of which he or she is a member.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1984, Act 28, Imd. Eff. Mar. 12, 1984; Am. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.281 Proposals for decision; contents.

Sec. 81. (1) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision. Oral argument may be permitted with consent of the agency.

(2) The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision, prepared by a person who conducted the hearing or who has read the record.

(3) The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule. On appeal from or review of a proposal of decision the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have if it had presided at the hearing.

(4) The parties, by written stipulation or at the hearing, may waive compliance with this section.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.282 Communications by agency staff; limitations; exceptions.

Sec. 82. Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the

agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.285 Final decision and order.

Sec. 85. A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1993, Act 83, Eff. Apr. 1, 1994.

Popular name: Act 306

Popular name: APA

24.286 Official records of hearings.

Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include:

(a) Notices, pleadings, motions and intermediate rulings.

(b) Questions and offers of proof, objections and rulings thereon.

(c) Evidence presented.

(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.

(2) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.287 Rehearings.

Sec. 87. (1) An agency may order a rehearing in a contested case on its own motion or on request of a party.

(2) Where for justifiable reasons the record of testimony made at the hearing is found by the agency to be inadequate for purposes of judicial review, the agency on its own motion or on request of a party shall order a rehearing.

(3) A request for a rehearing shall be filed within the time fixed by this act for instituting proceedings for judicial review. A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for agency reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 5
LICENSES

24.291 Licensing; applicability of contested case provisions; expiration of license.

Sec. 91. (1) When licensing is required to be preceded by notice and an opportunity for hearing, the provisions of this act governing a contested case apply.

(2) When a licensee makes timely and sufficient application for renewal of a license or a new license with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order or a later date fixed by order of the reviewing court. This subsection does not affect valid agency action then in effect summarily suspending such license under section 92.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.292 License; suspension, revocation, and amendment proceedings; summary suspension.

Sec. 92. (1) Before beginning proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct that warrants the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license except as otherwise provided in any of the following:

(a) The support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

(b) The regulated occupation support enforcement act, 1996 PA 236, MCL 338.3431 to 338.3436.

(c) Section 41309 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.41309.

(2) If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1996, Act 237, Eff. Jan. 1, 1997; Am. 2014, Act 540, Eff. Apr. 15, 2015.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 6
JUDICIAL REVIEW

24.301 Judicial review as of right or by leave.

Sec. 101. When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law. Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require the filing before judicial review is sought. A preliminary, procedural or intermediate agency action or ruling is not immediately reviewable, except that the court may grant leave for review of such action if review of the agency's final decision or order would not provide an adequate remedy.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.302 Judicial review; method.

Sec. 102. Judicial review of a final decision or order in a contested case shall be by any applicable special statutory review proceeding in any court specified by statute and in accordance with the general court rules. In the absence or inadequacy thereof, judicial review shall be by a petition for review in accordance with sections 103 to 105.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.303 Petition for review; filing; contents; copy of agency decision or order.

Sec. 103. (1) Except as provided in subsection (2), a petition for review shall be filed in the circuit court for the county where petitioner resides or has his or her principal place of business in this state, or in the circuit court for Ingham county.

(2) As used in this subsection, “adoptee” means a child who is to be or who is adopted. In the case of an appeal from a final determination of the office of youth services within the department of social services regarding an adoption subsidy, a petition for review shall be filed:

(a) For an adoptee residing in this state, in the probate court for the county in which the petition for adoption was filed or in which the adoptee was found.

(b) For an adoptee not residing in this state, in the probate court for the county in which the petition for adoption was filed.

(3) A petition for review shall contain a concise statement of:

(a) The nature of the proceedings as to which review is sought.

(b) The facts on which venue is based.

(c) The grounds on which relief is sought.

(d) The relief sought.

(4) The petitioner shall attach to the petition, as an exhibit, a copy of the agency decision or order of which review is sought.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1980, Act 289, Eff. Oct. 17, 1980.

Popular name: Act 306

Popular name: APA

24.304 Petition for review; filing, time; stay; record; scope.

Sec. 104. (1) A petition shall be filed in the court within 60 days after the date of mailing notice of the final decision or order of the agency, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon. The filing of the petition does not stay enforcement of the agency action but the agency may grant, or the court may order, a stay upon appropriate terms.

(2) Within 60 days after service of the petition, or within such further time as the court allows, the agency shall transmit to the court the original or certified copy of the entire record of the proceedings, unless parties

to the proceedings for judicial review stipulate that the record be shortened. A party unreasonably refusing to so stipulate may be taxed by the court for the additional costs. The court may permit subsequent corrections to the record.

(3) The review shall be conducted by the court without a jury and shall be confined to the record. In a case of alleged irregularity in procedure before the agency, not shown in the record, proof thereof may be taken by the court. The court, on request, shall hear oral arguments and receive written briefs.

History: 1969, Act 306, Eff. July 1, 1970; Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.305 Inadequate record; additional evidence, modification of findings, decision order.

Sec. 105. If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper. The agency may modify its findings, decision or order because of the additional evidence and shall file with the court the additional evidence and any new findings, decision or order, which shall become part of the record.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.306 Grounds for reversals.

Sec. 106. (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 7
MISCELLANEOUS PROVISIONS

24.311 Repeals.

Sec. 111. Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, are repealed.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.312 References to repealed acts.

Sec. 112. A reference in any other law to Act No. 88 of the Public Acts of 1943, as amended, or Act No. 197 of the Public Acts of 1952, as amended, is deemed to be a reference to this act.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.313 Effective date and applicability.

Sec. 113. This act is effective July 1, 1970, and except as to proceedings then pending applies to all agencies and agency proceedings not expressly exempted.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.314 Rules in process.

Sec. 114. When an agency has completed any or all of the processing of a rule pursuant to Act No. 88 of the Public Acts of 1943, as amended, before July 1, 1970, similar processing required by this act need not be completed and the balance of the processing and the publication of the rule shall be completed pursuant to this act. An effective date may be added to such a rule although it was not included in the notice of hearing on the rule pursuant to subsection (1) of section 41, when such notice was given before July 1, 1970.

History: Add. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.315 Exemptions.

Sec. 115. (1) Chapters 4 and 6 do not apply to proceedings conducted under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(2) Chapters 4 and 8 do not apply to a hearing conducted by the department of corrections pursuant to chapter IIIA of Act No. 232 of the Public Acts of 1953, being sections 791.251 to 791.256 of the Michigan Compiled Laws.

(3) Chapter 8 does not apply to any of the following:

(a) A contested case or other proceeding regarding the granting or renewing of an operator's or chauffeur's license by the secretary of state.

(b) Proceedings conducted by the Michigan employment relations commission.

(c) Worker's disability compensation proceedings under Act No. 317 of the Public Acts of 1969.

(d) Unemployment compensation hearings under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, being sections 421.1 to 421.75 of the Michigan Compiled Laws.

(e) Family independence agency public assistance hearings under section 9 of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.9 of the Michigan Compiled Laws.

(4) Chapter 6 does not apply to final decisions or orders rendered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

(5) Chapters 2, 3, and 5 do not apply to the municipal employees retirement system and retirement board

created by the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws, on and after August 15, 1996.

(6) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 401(k) of the internal revenue code under the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being sections 38.1 to 38.69 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(7) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 403(b) of the internal revenue code under the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1437 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(8) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to the internal revenue code under the Michigan legislative retirement system act, Act No. 261 of the Public Acts of 1957, being sections 38.1001 to 38.1080 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

History: Add. 1970, Act 40, Imd. Eff. July 1, 1970; Am. 1979, Act 139, Imd. Eff. Nov. 7, 1979; Am. 1984, Act 196, Imd. Eff. July 3, 1984; Am. 1988, Act 85, Imd. Eff. Mar. 29, 1988; Am. 1993, Act 83, Eff. Apr. 1, 1994; Am. 1996, Act 222, Eff. Aug. 15, 1996; Am. 1996, Act 489, Eff. Mar. 31, 1997.

Compiler's note: Section 2 of Act 85 of 1988 provides: "This amendatory act shall apply to any matter or proceeding pending on the effective date of this amendatory act and to any matter for which an application under section 847 of Act No. 317 of the Public Acts of 1969, being section 418.847 of the Michigan Compiled Laws, has been filed after March 31, 1986."

Popular name: Act 306

Popular name: APA

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

CHAPTER 8

24.321 Meanings of words and phrases.

Sec. 121. For the purposes of this chapter, the words and phrases described in section 122 have the meanings ascribed to them in that section.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.322 Definitions.

Sec. 122. (1) "Contested case" means a contested case as defined in section 3 but does not include a case that is settled or in which a consent agreement is entered into or a proceeding for establishing a rate or approving, disapproving, or withdrawing approval of a form.

(2) "Costs and fees" means the normal costs incurred, after a party has received notice of an initial hearing under section 71, in being a party in a contested case under this act and include all of the following:

(a) The reasonable and necessary expenses of expert witnesses as determined by the presiding officer.

(b) The reasonable cost of any study, analysis, engineering report, test, or project that is determined by the presiding officer to have been necessary for the preparation of a party's case.

(c) Reasonable and necessary attorney or agent fees including those for purposes of appeal.

(3) "Party" means a party as defined in section 5, but does not include any of the following:

(a) An individual whose net worth was more than $500,000.00 at the time the contested case was initiated.

(b) The sole owner of an unincorporated business or any partnership, corporation, association, or organization whose net worth exceeded $3,000,000.00 at the time the contested case was initiated and that is not either exempt from taxation pursuant to section 501(c)(3) of the internal revenue code, 26 USC 501, or a cooperative association as defined in section 15(a) of the agricultural marketing act, 12 USC 1141j(a).

(c) The sole owner of an unincorporated business or any partnership, corporation, association, or organization that had more than 250 full-time equivalent employees, as determined by the total number of employees multiplied by their working hours divided by 40, at the time the contested case was initiated.

(d) As used in this subsection "net worth" means the amount remaining after the deduction of liabilities from assets as determined according to generally accepted accounting principles.

(4) "Presiding officer" means an agency, 1 or more members of the agency, a person designated by statute to conduct a contested case, or a hearing officer designated and authorized by the agency to conduct a contested case.

(5) "Prevailing party" means either of the following, as applicable:

(a) In an action involving several remedies, or issues or counts that state different causes of actions or defenses, the party prevailing as to each remedy, issue, or count.

(b) In an action involving only 1 issue or count stating only 1 cause of action or defense, the party prevailing on the entire record.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984; Am. 2011, Act 247, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.323 Awarding costs and fees; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.

Sec. 123. (1) The presiding officer that conducts a contested case shall award to a prevailing party, other than an agency, the costs and fees incurred by the party in connection with that contested case, if the presiding officer finds that the position of the agency to the proceeding was frivolous. To find that an agency's position was frivolous, the presiding officer shall determine that at least 1 of the following conditions has been met:

(a) The agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.

(b) The agency had no reasonable basis to believe that the facts underlying its legal position were in fact true.

(c) The agency's legal position was devoid of arguable legal merit.

(2) If the parties to a contested case do not agree on the awarding of costs and fees under this section, a hearing shall be held if requested by a party, regarding the awarding of costs and fees and the amount thereof.

The party seeking an award of costs and fees shall present evidence establishing all of the following:

(a) That the position of the agency was frivolous.

(b) That the party is a prevailing party.

(c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.

(d) That the party is eligible to receive an award under this section. Financial records of a party shall be exempt from public disclosure if requested by the party at the time the records are submitted pursuant to this section.

(e) That a final order not subject to further appeal other than for the judicial review of costs and fees provided for in section 125 has been entered in the contested case regarding the subject matter of the contested case.

(3) The presiding officer may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the contested case.

(4) The final action taken by the presiding officer under this section in regard to costs and fees shall include written findings as to that action and the basis for the findings.

(5) Subject to subsection (6), the amount of costs and fees awarded under this section shall include those reasonable and necessary costs actually incurred by the party and any costs allowed by law or by a rule promulgated under this act. Subject to subsection (6), the amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished, subject to the following:

(a) The expenses paid for an expert witness shall be reasonable and necessary as determined by the presiding officer.

(b) An attorney or agent fee shall not be awarded at a rate of more than $75.00 per hour unless the presiding officer determines that special circumstances existed justifying a higher rate or an applicable rule promulgated by the agency provides for the payment of a higher rate because of special circumstances.

(6) The costs and fees awarded under this section shall only be awarded to the extent and amount that the agency caused the prevailing party to incur those costs and fees.

(7) This section does not apply to any agency in its role of hearing or adjudicating a case. Unless an agency has discretion to proceed, this section does not apply to an agency acting ex rel on the information and at the instigation of a nonagency person who has a private interest in the matter nor to an agency required by law to commence a case upon the action or request of another nonagency person.

(8) This section does not apply to an agency that has such a minor role as a party in the case in comparison to other nonprevailing parties so as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.324 Delaying entry of final order prohibited.

Sec. 124. An application for costs and fees and the awarding thereof under this chapter shall not delay the entry of a final order in a contested case.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.325 Judicial review; modification of final action; making award pursuant to MCL 600.2421d.

Sec. 125. (1) A party that is dissatisfied with the final action taken by the presiding officer under section 123 in regard to costs and fees may seek judicial review of that action pursuant to chapter 6.

(2) The court reviewing the final action of a presiding officer pursuant to subsection (1) may modify that action only if the court finds that the failure to make an award or the making of an award was an abuse of discretion, or that the calculation of the amount of the award was not based on substantial evidence.

(3) An award of costs and fees made by a court under this section shall only be made pursuant to section 2421d of Act No. 236 of the Public Acts of 1961, being section 600.2421d of the Michigan Compiled Laws.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.326 Annual report; payment of costs and fees.

Sec. 126. (1) The director of the department of management and budget shall report annually to the legislature regarding the amount of costs and fees paid by the state under this chapter during the preceding fiscal year. The report shall describe the number, nature, and amount of the awards; the claims involved; and any other relevant information which would aid the legislature in evaluating the scope and impact of the awards. Each agency shall provide the director of the department of management and budget with information as is necessary for the director to comply with the requirements of this section.

(2) If costs and fees are awarded under this chapter to a prevailing party, the agency or agencies over which the party prevailed shall pay those costs and fees.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.327 Recovery of same costs under other law prohibited.

Sec. 127. If a prevailing party recovers costs and fees under this chapter in a contested case, the prevailing party is not entitled to recover those same costs for that contested case under any other law.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.328 Applicability of MCL 24.321 to 24.327 to contested cases.

Sec. 128. Sections 121 to 127 shall apply to contested cases commenced after September 30, 1984.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984; Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA

REVISED JUDICATURE ACT OF 1961
Act 236 of 1961

AN ACT to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts.
History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 52, Imd. Eff. Mar. 26, 1974;—Am. 1999, Act 239, Imd. Eff. Dec. 28, 1999;—Am. 2009, Act 29, Eff. July 5, 2009.

Excerpt MCL 600.631:

600.631 Appeal from order, decision, or opinion of state board, commission, or agency.

Sec. 631. An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court.
History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 13
PERMITS

324.1301 Definitions.

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit. As used in sections 1315 to 1317, "department" means the department of environmental quality.

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee. As used in sections 1313 to 1317, "director" means the director of the department of environmental quality.

(d) "Environmental permit review commission" or "commission" means the environmental permit review commission established under section 1313(1).

(e) "Environmental permit panel" or "panel" means a panel of the environmental permit review commission, appointed under section 1315(2).

(f) "Permit", except as provided in subdivision (g), means a permit or operating license required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance referred to in that section:

(*i*) Section 3104, floodplain alteration permit.

(*ii*) Section 3503, permit for use of water in mining iron ore.

(*iii*) Section 4105, sewerage system construction permit.

(*iv*) Section 6516, vehicle testing license.

(*v*) Section 6521, motor vehicle fleet testing permit.

(*vi*) Section 8310, restricted use pesticide dealer license.

(*vii*) Section 8310a, agricultural pesticide dealer license.

(*viii*) Section 8504, license to manufacture or distribute fertilizer.

(*ix*) Section 9112, local soil erosion and sedimentation control permit.

(*x*) Section 11509, solid waste disposal area construction permit.

(*xi*) Section 11512, solid waste disposal area operating license.

(*xii*) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.

(*xiii*) Section 11702, septage waste servicing license or septage waste vehicle license.

(*xiv*) Section 11709, septage waste site permit.

(*xv*) Section 30104, inland lakes and streams project permit.

(*xvi*) Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.

(*xvii*) Section 31509, dam construction, repair, or removal permit.

(*xviii*) Section 32312, flood risk, high risk, or environmental area permit.

(*xix*) Section 32512, permit for dredging and filling bottomland.

(*xx*) Section 32603, permit for submerged log removal from Great Lakes bottomlands.

(*xxi*) Section 35304, department permit for critical dune area use.

(*xxii*) Section 36505, endangered species permit.

(*xxiii*) Section 41702, game bird hunting preserve license.

(*xxiv*) Section 42101, dog training area permit.

(*xxv*) Section 42501, fur dealer's license.

(*xxvi*) Section 42702, game dealer's license.

(*xxvii*) Section 44513, charter boat operating permit under reciprocal agreement.

(*xxviii*) Section 44516, boat livery operating permit.

(*xxix*) Section 45902, game fish propagation license.

(*xxx*) Section 45906, game fish import license.

(*xxxi*) Section 48705, permit to take amphibians and reptiles for scientific or educational use.

(*xxxii*) Section 61525, oil or gas well drilling permit.

(*xxxiii*) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well

drilling permit.

(*xxxiv*) Section 63103a, ferrous mineral mining permit.

(*xxxv*) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit, respectively.

(*xxxvi*) Section 63704, sand dune mining permit.

(*xxxvii*) Section 72108, use permits for a Pure Michigan Trail.

(*xxxviii*) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.

(*xxxix*) Section 76504, Mackinac Island motor vehicle and land use permits.

(*xxxx*) Section 80159, buoy or beacon permit.

(g) "Permit", as used in sections 1313 to 1317, means any permit or operating license that meets both of the following conditions:

(*i*) The applicant for the permit or operating license is not this state or a political subdivision of this state.

(*ii*) The permit or operating license is issued by the department of environmental quality under this act or the rules promulgated under this act.

(h) "Processing deadline" means the last day of the processing period.

(i) "Processing period", subject to section 1307(2) and (3), means the following time period after the close of the application period, for the following permit, as applicable:

(*i*) Twenty days for a permit under section 61525 or 62509.

(*ii*) Thirty days for a permit under section 9112 or 44516.

(*iii*) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.

(*iv*) Sixty days, for a permit under section 30104 for a minor project established under section 30105(7) or 32512a(1), or an authorization for a specific project to proceed under a general permit issued under section 30105(8) or 32512a(2), or for a permit under section 32312.

(*v*) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.

(*vi*) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit or authorization described in subparagraph (*ii*) or (*iv*), or for a permit under section 31509.

(*vii*) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit under section 63525, or a permit under section 72108.

(*viii*) Ninety days or, if a hearing is held, 150 days for a permit under section 3104 or 30304, or a permit under section 32512 other than a permit described in subparagraph (*iv*).

(*ix*) Ninety days after the close of the review or comment period under section 32604, or if a public hearing is held, 90 days after the date of the public hearing for a permit under section 32603.

(*x*) One hundred twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

(*xi*) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(*xii*) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2013, Act 87, Imd. Eff. June 28, 2013;—Am. 2014, Act 215, Eff. Sept. 25, 2014;—Am. 2018, Act 36, Imd. Eff. Feb. 21, 2018;—Am. 2018, Act 268, Imd. Eff. June 29, 2018.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

324.1303 Permit application; format; documents.

Sec. 1303. (1) An application for a permit shall be submitted to the department in a format to be developed by the department, except as provided in section 30307 with respect to a state wetland permit.

(2) The department shall, upon request and without charge, provide a person a copy of all of the following:

(a) A list that specifies in detail the information required to complete the permit application.

(b) A blank permit application form.

(c) In concise form, any instructions necessary to complete the application.

(d) A complete, yet concise, explanation of the permit review process.

(3) The department shall post the documents described in subsection (2) on its website.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.1305 Receipt of permit application; notice of incomplete application; time period; request for new or additional information.

Sec. 1305. (1) After a department receives an application for a permit, the department shall determine whether the application is administratively complete. Unless the department proceeds as provided under subsection (2), the application shall be considered to be administratively complete when the department makes that determination or 30 days after the state receives the application, whichever is first.

(2) If, before the expiration of the 30-day period under subsection (1), the department notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 30-day period under subsection (1) is tolled until the applicant submits to the department the specified information or fee amount due. The notice shall be given in writing or by electronic notification.

(3) Subject to subsection (4), after an application for a permit is considered to be administratively complete under this section, the department shall not request from the applicant any new or additional information that is not specified in the list required under section 1303(2)(a) unless the request includes a detailed explanation of why the information is needed. The applicant is not required to provide the requested information as a condition for approval of the permit.

(4) After an application for a permit is considered to be administratively complete under this section, the department may request the applicant to clarify, amplify, or correct the information required for the application. The applicant shall provide the requested information.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.1307 Approval or denial of permit application; extension of processing period; tolling of processing period; explanation of reasons for permit denial; failure of department to satisfy requirements of subsection (1); effect; notification to legislative committees.

Sec. 1307. (1) By the processing deadline, the department shall approve or deny an application for a permit.

(2) If requested by the permit applicant, the department shall extend the processing period for a permit by not more than 120 days, as specified by the applicant. If requested by the permit applicant, the department may extend the processing period beyond the additional 120 days. However, a processing period shall not be extended under this subsection to a date later than 1 year after the application period ends.

(3) A processing period is tolled from the date that a permit applicant submits a petition under section 1315(1) until the date that a decision of the director is made under section 1315(6). If a permit applicant submits a petition under section 1315(1), the department shall not approve or deny the application for the permit under subsection (1) until after the director issues a decision under section 1315(6).

(4) The approval or denial of an application for a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275.

(5) Approval of an application for a permit may be granted with conditions or modifications necessary to achieve compliance with the part or parts of this act under which the permit is issued.

(6) A denial of an application for a permit shall document, and any review upholding the decision shall determine, to the extent practical, all of the following:

(a) That the decision is based on specific provisions of this act or rules promulgated under this act.

(b) That the decision is based upon sufficient facts or data, which are recorded in the file.

(c) To the extent applicable, all of the following:

(*i*) That the decision is the product of reliable scientific principles and methods.

(*ii*) That the decision has applied the principles and methods reliably to the facts.

(7) Except for permits described in subsection (8), if the department fails to satisfy the requirements of subsection (1) with respect to an application for a permit, the department shall pay the applicant an amount equal to 15% of the greater of the following, as applicable:

(a) The amount of the application fee for that permit.

(b) If an assessment or other fee is charged on an annual or other periodic basis by the department to a person holding the permit for which the application was submitted, the amount of the first periodic charge of that assessment or other fee for that permit.

(8) If the department fails to satisfy the requirements of subsection (1) with respect to a permit required by section 11509, 11512, 30304, or 32603, the application shall be considered to be approved and the department shall be considered to have made any determination required for approval.

(9) The failure of the department to satisfy the requirements of subsection (1) or the fact that the department is required to make a payment under subsection (7) or is considered to have approved a permit under subsection (8) shall not be used by the department as the basis for discriminating against the applicant. If the department is required to make a payment under subsection (7), the application shall be processed in sequence with other applications for the same type of permit, based on the date on which the processing period began, unless the director determines on an application-by-application basis that the public interest is best served by processing in a different order.

(10) If the department fails to satisfy the requirements of subsection (1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the department shall immediately devote resources from that program to eliminate any backlog and satisfy the requirements of subsection (1) with respect to new applications for that type of permit within the next fiscal quarter.

(11) If the department fails to satisfy the requirements of subsection (1), the director shall notify the appropriations committees of the senate and house of representatives of the failure. The notification shall be in writing and shall include both of the following:

(a) An explanation of the reason for the failure.

(b) A statement of the amount the department was required to pay the applicant under subsection (7) or a statement that the department was required to consider the application to be approved under subsection (8), as applicable.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2011, Act 236, Imd. Eff. Dec. 1, 2011;—Am. 2012, Act 164, Imd. Eff. June 14, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1309 Submissions of applications for more than 1 type of permit.

Sec. 1309. If a person submits applications for more than 1 type of permit for a particular development or project, the department or departments shall process the applications in a coordinated fashion to the extent feasible given procedural requirements applicable to individual permits and, at the request of an applicant, appoint a primary contact person to assist in communications with the department or departments.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.1311 Report; information.

Sec. 1311. By December 1 each year, the director shall submit a report to the standing committees and appropriations subcommittees of the senate and house of representatives with primary responsibility for issues under the jurisdiction of that department. The department shall post the current report on its website. The report shall include all of the following information for each type of permit for the preceding fiscal year:

(a) The number of applications for permits the department received.

(b) The number of applications approved, the number of applications approved by the processing deadline, the number of applications approved after the processing deadline, and the average times for the department to determine administrative completeness and to approve or disapprove applications.

(c) The number of applications denied, the number of applications denied by the processing deadline, and the number of applications denied after the processing deadline.

(d) The number of applications approved or denied after the processing deadline that, based on the director's determination of the public interest, were not processed in sequence as otherwise required by section 1307(9).

(e) The number of applications that were not administratively complete when received.

(f) The amount of money refunded and discounts granted under section 1307.

(g) The number of applications processed as provided in section 1309.

(h) If a department failed to satisfy the requirements of section 1307(1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the type of permit and percentage of applications for which the requirements were not met, how the department attempted to eliminate any backlog and satisfy the requirements of section 1307(1) with respect to new applications for that type of permit within the next fiscal quarter, and whether the department was successful.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1313 Environmental permit review commission; membership; limitations; term; removal; public meeting.

Sec. 1313. (1) The environmental permit review commission is established in the department of environmental quality. The commission shall advise the director on disputes related to permits and permit applications.

(2) The commission shall consist of 15 individuals, appointed by the governor. The governor shall appoint the first commission within 60 days after the effective date of the amendatory act that added this section. Each member of the commission shall meet 1 or more of the following:

(a) Have the equivalent of 6 years of full-time relevant experience as a practicing engineer, geologist, hydrologist, or hydrogeologist.

(b) Have a master's degree from an accredited institution of higher education in a discipline of engineering or science related to air or water and the equivalent of 8 years of full-time relevant experience.

(3) An individual is not eligible to be a member of the commission if any of the following apply:

(a) The individual is a current employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department of environmental quality and the compensation paid under those contracts in any of the preceding 3 years represented more than 5% of the individual's annual gross income in that preceding year.

(c) The individual is employed by an entity that is a party to 1 or more contracts with the department of environmental quality and the compensation paid to the individual's employer under those contracts in any of the preceding 3 years represented more than 5% of the employer's annual gross revenue in that preceding year.

(d) The individual was employed by the department of environmental quality within the preceding 3 years.

(4) An individual appointed to the commission shall serve for a term of 4 years, except as provided in this subsection, and may be reappointed. However, after serving 2 consecutive terms on the commission, the individual is not eligible to serve on the commission for 2 years. The terms for members first appointed shall be staggered so that 5 expire in 2 years, 5 expire in 3 years, and 5 expire in 4 years. A vacancy on the commission shall be filled in the same manner as the original appointment.

(5) The governor may remove a member of the commission for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) Individuals appointed to the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

(7) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1315 Petition for permit review; panel meeting; written recommendation; director's decision; appeal; conflict of interest.

Sec. 1315. (1) A permit applicant may seek review by a panel by submitting a petition to the director before the permit has been approved or denied. The petition shall include the issues in dispute, the relevant facts, and any data, analysis, opinion, and supporting documentation for the petitioner's position. If the director believes that the dispute may be resolved without convening a panel, the director may contact the petitioner regarding the issues in dispute and may negotiate, for a period not to exceed 45 days, a resolution of

the dispute.

(2) Unless the dispute is resolved pursuant to subsection (1), the director shall convene a meeting of a panel. The meeting shall be held within 45 days after the director received the petition. The panel shall consist of 3 members of the commission selected by the director on the basis of their relevant expertise. The director may select a replacement for a member who is unable to participate in the review process. To serve as a panel member, a commission member must submit to the director on a form provided by the department an agreement not to accept employment from the petitioner before 1 year after a decision is rendered on the matter if gross income from the employment would exceed 5% of the member's gross income from all sources in any of the preceding 3 years.

(3) The members of the panel shall elect a chairperson. Two members of the panel constitute a quorum. A majority of the votes cast are required for official action of the panel. The business that the panel may perform shall be conducted at a public meeting of the panel held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(4) The director shall provide the panel with a copy of the petition and its supporting documentation and a copy of all supporting documentation from the department. At the meeting of the panel, representatives of the petitioner and the department shall each be given an opportunity to present their positions.

(5) Within 45 days after hearing the petition, the panel shall make a recommendation regarding the petition and provide written notice of the recommendation to the director and the petitioner. The written recommendation shall include the specific rationale for the recommendation. The recommendation may be to adopt, modify, or reverse, in whole or in part, the department's position or decision on the dispute that is the subject of the petition.

(6) Within 60 days after receiving written notice of the panel's recommendation, the director shall issue a decision, in writing, regarding the petition. If the director agrees with the recommendation, the department shall incorporate the recommendation into the terms of the permit. If the director does not agree with the recommendation, the director shall include in the written decision the specific rationale for rejecting the recommendation. If the director fails to make a decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the decision of the director. The decision of the director under this subsection regarding a dispute related to a permit or permit application is not subject to review under this act, the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. However, the decision of the director under this subsection may be included in an appeal to a final permit action. If a permit applicant declines to submit a petition for review under this section, the decision of the department regarding the approval or denial of a permit is final permit action for purposes of any judicial review or other review allowed under this act, the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) A member of the commission shall not participate in a petition review if the member has a conflict of interest. A member has a conflict of interest if any of the following apply:

(a) The applicant has hired that member or the member's employer on any environmental matter within the preceding 3 years.

(b) The member has been an employee of the applicant within the preceding 3 years.

(c) The member has more than a 1% ownership interest in the applicant.

(8) The director shall select a member of the commission to participate in a petition review in place of a member disqualified under subsection (7).

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1317 Contested case for permit; petition for review; environmental permit panel; staffing; written opinion; final decision and order.

Sec. 1317. (1) In a contested case regarding a permit, an administrative law judge shall preside, make the final decision, and issue the final decision and order for the department. Any party to the contested case, including the department, may, within 21 days after receiving the final decision and order, seek review of the final decision and order by an environmental permit panel by submitting a request to the director and a notice to the hearing officer.

(2) On petition for review of a final decision under subsection (1), the director shall convene an environmental permit panel in the same manner as provided under section 1315(2), except that the director shall not select as a member of the panel an individual who was a member of a panel that previously reviewed any dispute regarding the permit. The panel shall meet and conduct business in the same manner as provided

under section 1315(2) and (3). The panel's review of the final decision must be limited to the record established by the administrative law judge.

(3) After an environmental permit panel is convened under subsection (2), a member of the panel shall not communicate, directly or indirectly, in connection with any issue of fact, with any party or other person, or, in connection with any issue of law, with any party or the party's representative, except on notice and opportunity for all parties to participate.

(4) An environmental permit panel may adopt, remand, modify, or reverse, in whole or in part, a final decision and order described in subsection (1). The panel shall issue an opinion that becomes the final decision of the department and is subject to judicial review as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and other applicable law.

(5) The Michigan administrative hearing system shall provide an environmental permit panel with all staff necessary for the panel to perform its duties under this section.

(6) An opinion issued by an environmental permit panel must be in writing and clearly define the legal and technical principles being applied.

(7) If no party timely appeals a final decision and order described in subsection (1) to an environmental permit panel, the final decision and order is the final agency action for purposes of any applicable judicial review.

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

SECTION E

Oil, Gas, and Minerals Division, Compliance and Enforcement Policy and Procedures

	Office of Oil, Gas, and Minerals POLICY AND PROCEDURES		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: February 7, 2014 Revised Date: Reformatted Date:	Subject: **TABLE OF CONTENTS** Program Name: COMPLIANCE AND ENFORCEMENT Number: OOGM-601.00	Page: 1 of 32	Category: ☒ Internal/Administrative ☐ External/Non-Interpretive ☐ External/Interpretive

INTRODUCTION:

Compliance and enforcement activities are an important tool for the Office of Oil, Gas, and Minerals (OOGM) to use in meeting its mission. Compliance and enforcement activities include conducting inspections, reviewing and evaluating reports, monitoring operations and activities, providing compliance assistance, issuing informal and formal compliance notifications, and conducting escalated enforcement activity. The purpose of this policy is to ensure that OOGM effectively identifies and investigates potential violations of the statutes, rules, permits, and orders that it administers and that the identified violations are responded to in a consistent and effective manner. This policy establishes basic principles applicable to OOGM compliance and enforcement activities and provides guidance to ensure a reliable, predictable, and effective compliance and enforcement program.

AUTHORITY:

Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.61501 to MCL 324.61527
Part 616, Orphan Well Fund, of the NREPA, MCL 324.61601 to MCL 324.61607
Part 625, Mineral Wells, of the NREPA, MCL 324.62501 to MCL 324.62518

DEFINITIONS:

“Compliance and Bonding Specialist” means the staff person responsible for processing escalated enforcement activities in the Permitting and Technical Services Section (PTSS).

“Compliance Communication” means any verbal communication, e-mail, fax, letter, or Notice of Inspection used to notify a permittee of a violation.

“Compliance Coordinator” means professional staff within an OOGM district office responsible for coordinating and tracking district compliance and enforcement activities.

“District Supervisor” means the manager having supervisory responsibilities for an OOGM District Office.

“EIS” means Environmental Investigation Section, Law Enforcement Division, Department of Natural Resources (DNR).

“Enforcement Notice” provides the notification that the case has been referred for escalated enforcement.

“Field Operations Section Supervisor” means the manager having supervisory responsibility for the OOGM Field Operations Section (FOS).

“HP TRIM” means Hewlett Packard Total Records Inventory Management software for records/document management.

“Minor Violations” generally are defined as those that do not pose a threat to the public health, safety or the environment. These violations may include the minor staining of soils with oil; debris at the well site; flammable and combustible materials within a radius of 75 feet of the wells and surface facilities; containment dikes that are too low; and similar types of violations.

“MIR Database” means the Michigan Implementation of the Risk Based Data Management System database.

“Opportunity to Show Compliance Meeting (OTSCM) Chairperson” means the designated staff person to chair the meeting.

“Office Chief” means the Assistant Supervisor of Wells, Supervisor of Mineral Wells, and the OOGM Chief.

“Permitting and Technical Services Section Supervisor” means the manager having supervisory responsibility for the OOGM Permitting and Technical Services Section (PTSS).

“Professional Staff” means geologist, geologist technician, geologist specialist, engineer specialist, hydrogeologist, or environmental quality analyst.

“Second Violation Notice (discretionary)” is a second formal means of notifying the recipient of a Significant Violation or when previous attempts to gain voluntary compliance have failed to correct the compliance issue or violation.

“Section Supervisor” means the section manager having supervisor responsibilities for a section within the OOGM.

“Secretary” means clerical and/or administrative staff within OOGM districts, sections or units.

“SEMA” means Senior Executive Management Assistant.

“Significant Violation” includes all hydrogen sulfide (H2S) violations; violations that pose a threat to the public health, safety or the environment; the failure to plug or produce a well; spills, leaks, and resultant contamination that pose a threat to the groundwater or surface waters of the state. Significant Violations also include failure of the permittee to file required records, since the absence of those records significantly impedes the ability of the OOGM to investigate and develop cases involving threats to the public health, safety or the environment.

“Unit Supervisor” means the manager having supervisor responsibilities for a Unit within the Permitting and Technical Services Section of the OOGM.

"Violation Notice" (previously known as Notice of Non-Compliance) is a formal means of notifying the recipient of a Significant Violation or when previous attempts to gain voluntary compliance have failed to correct the compliance issue or violation.

POLICY:

It is the policy of the OOGM to require full compliance by permittees with all statutes, rules, orders, instructions, and permits administered by the Department of Environmental Quality (DEQ). Toward that end, compliance and enforcement actions should ensure that OOGM program priorities and regulatory responsibilities are successfully carried out. Compliance and enforcement actions should be 1) timely, 2) appropriately applied to violations, 3) consistent throughout the OOGM and 4) progressive in nature in response to repeat or continuing violations. Enforcement in and of itself is not a goal, compliance is the goal. The OOGM upholds the DEQ policy that using both compliance assistance and enforcement tools are warranted in meeting the goal of protecting and enhancing Michigan's environmental quality and public health. Although the compliance and enforcement process for OOGM is typically a progressive process, i.e., starts with sending a Compliance Communication, followed by a Violation Notice, staff may initiate or take action at any point in the process as circumstances warrant. These circumstances include but are not limited to the seriousness of the violation, resources damaged or impaired, or impact on DEQ program functions. Additionally, staff may encounter a situation where a potential crime has been committed that warrants a criminal investigation and ultimate prosecution. Potential criminal violations shall be referred to the EIS, Law Enforcement Division, DNR in accordance with DEQ policy. The OOGM will measure compliance and enforcement program achievements to assist in program management and to allow the OOGM to determine rates of compliance as required by the DEQ's planning process.

INTRODUCTION: The following procedural steps are a progressive series of actions as described in Section 1 utilized by the OOGM to assist a company in achieving compliance.

PROCEDURES:

Step	Who	Does What
1.	Professional Staff	A. Conducts inspection of a well site or facility and/or reviews and evaluates reports, records, or other required submittals. B. Notifies the permittee of any violations observed using the appropriate compliance and enforcement tool. As appropriate, creates field note in the MIR Database citing violation and method of notification. C. If the violation is a Minor Violation, or sufficiently resolved in a timely manner, no further action may be necessary. D. If violation remains unresolved, or if progress toward resolution of violation is deemed insufficient, notifies permittee using appropriate Compliance Communication. E. If a Violation Notice is deemed appropriate, completes Form EQ 7330 Violation Notice and creates compliance case number in the MIR Database and completes appropriate compliance screens.
2.	Compliance Coordinator	Reviews Violation Notice and compliance case data in the MIR Database. Send draft of Violation Notice to District Supervisor or Section Supervisor.
3.	District or Unit Supervisor	Reviews and signs the Violation Notice. Ensures the Violation Notice is sent to permittee.
4.	Professional Staff	A. Conducts follow up review of status on resolution of the Violation Notice. If compliance has been achieved, sends Form EQ 7399 Compliance Case Closure letter and closes compliance case in the MIR Database with notation indicating resolution on appropriate compliance screens. B. If violation remains unresolved, or if progress toward resolution of violation is deemed insufficient, refers case to district Compliance Coordinator. C. If a Second Violation Notice is deemed appropriate, completes Form EQ 7330 Violation Notice and makes further entry in the MIR Database compliance case screens.
5.	Compliance	Reviews Second Violation Notice and compliance case data in

Step	Who	Does What
	Coordinator	the MIR Database.
6.	District or Unit Supervisor	Reviews and signs second Violation Notice. Ensures Second Violation Notice is sent to permittee.
7.	Professional Staff	A. Conducts follow up review of status on resolution of the second Violation Notice. If compliance has been achieved, sends compliance case closure letter and closes compliance case in the MIR Database with notation indicating resolution on appropriate screens. B. If violation remains unresolved, or if progress toward resolution of violation is deemed insufficient, refers case to Compliance Coordinator using Form EQ 7347 Case Referral.
8.	Compliance Coordinator	A. Initiates, prepares case for, and coordinates an Opportunity to Show Compliance Meeting (OTSCM.) B. Prepares a draft Notice EQ 7348 Opportunity to Show Compliance Meeting document using information obtained from the case referral package, the MIR Database, permit and bond files, and any other information sources as deemed applicable to the case. The draft shall specifically cite the sections of the statute, rules, permit conditions, instructions, or orders the permittee allegedly violated. C. Solicit comments on draft Notice EQ 7348 Opportunity to Show Compliance Meeting from the Professional Staff, District or Unit Supervisor, and Section Supervisor and incorporate into the draft Notice EQ 7348 Opportunity to Show Compliance Meeting as applicable. D. Finalize Notice EQ 7348 Opportunity to Show Compliance Meeting. E. Update the MIR Database compliance case screens to reflect the development of the Notice EQ 7348 Opportunity to Show Compliance Meeting.
9.	Secretary	Schedules the informal OTSCM meeting.
10.	OTSCM Chairperson	Conducts informal OTSCM meeting as scheduled. Follow OTSCM instructions. Refer to Form EQ 7348 Opportunity to Show Compliance Meeting.
11.	Professional Staff	A. If the permittee will not attend the meeting or if it is determined that the current address on file with the OOGM is not valid (as evident by returned mailings), Professional Staff may participate in the informal OTSCM by conference call. B. If the permittee has made contact with the OOGM and has indicated attendance at the scheduled informal OTSCM, all Professional Staff involved in the case are expected to be present at the time of the scheduled informal OTSCM. C. All witnesses providing information during the informal

Step	Who	Does What
		meeting must come prepared with adequate documentation (photos, data, written statements from the permittee, etc.) to support the OOGM's position that the permittee is in violation as documented in the Notice of OTSCM. There shall be no discussion of issues that are not included in the Form EQ 7348 Opportunity to Show Compliance Meeting during the informal meeting.
12.	Professional Staff	Following the conclusion of the informal OTSCM and/or after the meeting chairperson has left the room, all Professional Staff may participate in negotiation of enforcement action (Appendix C) as appropriate for any unresolved violations admitted to by the permittee during the informal meeting. Negotiations shall not occur during the informal meeting in the presence of the OTSCM Chairperson.
13.	OTSCM Chairperson	Within 15 working days, issue a Form EQ 7349 Compliance Determination Memo addressed to the FOS and PTSS Section Supervisors, Compliance and Bonding Specialist, and Compliance Coordinator.
14.	Compliance Coordinator	A. If the Chairperson has determined that the permittee is not in compliance with the statutes, rules, orders, instructions, or permits, prepares Form EQ 7372 Withhold Permits letter for signature by the Office Chief. B. If an Escalated Enforcement Referral Memo is deemed appropriate, completes Form EQ 7350 Escalated Enforcement Referral Memo and makes further notation in the MIR Database compliance case screens. Also completes compliance Form EQ 7347 Case Referral Check List with appropriate case documents (case referral package) and notifies District or Unit Supervisor.
15.	OTSCM Chairperson	If the Chairperson has determined that the permittee is in compliance with statutes, rules, orders, instructions, and permits, advises the District/Unit to close the case.
16.	Professional Staff	Conducts inspection or file review, reports results to Compliance Coordinator, and closes case.
17.	Compliance Coordinator	Upon notice from Professional Staff that the permittee is in compliance with the statute, completes Form EQ 7399 Case Closure Letter, notates the closure of the case in the MIR Database.
18.	District or Unit Supervisor	If an Escalated Enforcement Referral Memo is deemed appropriate, reviews and signs Form EQ 7350 Escalated Enforcement Referral Memo and case referral package. Ensures the EQ 7350 Escalated Enforcement Referral Memo and case referral package is sent to Compliance and Bonding Specialist.

INTRODUCTION: The following procedural steps are intended to compel compliance when the progressive actions taken in Section 2 have failed to result in compliance.

PROCEDURES:

Step	Who	Does What
1.	Compliance and Bonding Specialist	Reviews Form EQ 7350 Escalated Enforcement Referral Memo and case referral package along with the compliance case history. If violation(s) remains unresolved, or if progress toward resolution of violation(s) is deemed insufficient, completes Form EQ 7351 Enforcement Notice and recommends enforcement option(s), and forwards to the appropriate Section Supervisor.
2.	FOS or PTSS Supervisor	Reviews EQ 7351 Enforcement Notice and case referral package and informs Compliance and Bonding Specialist of approval, denial, or modification.
3.	Compliance and Bonding Specialist	If approved, ensures Enforcement Notice is sent to permittee, Section Supervisor, and District or Unit Supervisor(s).
4.	Professional Staff	Conducts inspections or reviews files or case information to monitor compliance progress. Reports finding to Compliance and Bonding Specialist as needed.
5.	Compliance and Bonding Specialist	If formal resolution of the violation(s) cited in the Enforcement Notice is not achieved, confers with FOS and/or PTSS Supervisor for selection of additional escalated enforcement option including but not limited to: Suspension of Operations, Holds Permit, Consent Agreement, Civil/Criminal Actions, or Notice of Determination.

POLICY: Refer to the DEQ Policy and Procedure Number 04-003, Appendix A.

DEQ POLICY AND PROCEDURES

SUBJECT:	COMPLIANCE AND ENFORCEMENT	Number: 04-003
Date:	May 30, 2001	Page 1 of 3
Revised:	January 7, 2008	

This document is intended to provide guidance to staff to foster consistent application of the DEQ's compliance and enforcement processes and procedures. This document is not intended to convey any rights to any person nor itself create any duties or responsibilities under Jaw. This document and matters addressed herein are subject to revision.

ISSUE:

An important tool the Department of Environmental Quality (DEQ) has in meeting its mission is its compliance and enforcement activities. This includes inspections, reporting, monitoring, and informal and formal compliance notifications, and escalated enforcement activities. The purpose of this policy is to assure that the DEQ effectively identifies and investigates potential violations of the statutes, rules, permits, licenses and orders that it administers, and that the identified violations are responded to in a consistent and effective manner.

The DEQ has four divisions, one bureau, and two offices (hereafter "divisions") that have regulatory program responsibilities. These divisions administer numerous state and delegated federal environmental programs that require ongoing compliance and enforcement activities and, on occasion, the initiation of escalated enforcement actions. Through the years, each division has developed its own compliance and enforcement process to meet its specific regulatory needs. The DEQ's varied compliance and enforcement processes, procedures, documents, and associated nomenclature create a challenge to communicate internally and externally about DEQ compliance and enforcement policies, practices, activities and successes.

This policy establishes some basic principles applicable to the DEQ's compliance and enforcement programs. It also provides guidance and direction for divisions in key areas that need to have consistent departmental processes and procedures to ensure a reliable, predictable, and effective compliance and enforcement program.

It is important to view enforcement as one tool available to achieve compliance. Enforcement in and of itself is not a goal-compliance is the goal.

POLICY:

All DEQ compliance and enforcement programs shall be administered in accordance with this policy to ensure that these basic principles are followed.

1. Compliance and enforcement actions must be timely: To be most effective, an action must occur promptly after the violation takes place or is discovered. A timely action not only sends a clear message to violators, but also limits the environmental harm that a given violation may cause.

2. **Compliance and enforcement actions must be appropriate to the violations alleged:** In deciding which compliance and enforcement action is the most appropriate response for a violation, consideration needs to be given to a number of factors. These factors include, but are not limited to, the violation's effect on program integrity; the severity and duration of the violation; any public health risk or resource damage caused by the violation; the compliance history of the violator; and the willfulness, negligence, and recalcitrance of the violator.

3. **Compliance and enforcement actions must be consistent for like violations:** Compliance and enforcement actions of the DEQ must not be construed as arbitrary, capricious, or as an abuse of discretion. To this end it is important that compliance and enforcement actions be consistent and fair. Like violations of a given statute, rule, permit or license should end in a similar result where the circumstances are the same or comparable. However, consistency does not mean identical and often no two cases are identical.

   A consistent compliance and enforcement program provides the regulated community with the benefit of knowing what to expect from the DEQ when violations occur. A consistent approach also ensures a level playing field for all regulated entities. Cases requiring an action that differs or appears to differ from past actions for like or similar violations need to be documented with material facts that account for the difference in the level of action taken. In most instances the procedures set forth below will be followed; however, it is impossible to articulate every reason or possibility where it may be appropriate to use a different procedure that is within the scope of DEQ's discretion.

4. **Compliance and enforcement actions in response to repeat or continuing violations must be progressive in nature:** To ensure that violations are resolved as quickly and efficiently as possible, the DEQ will use a progressive compliance program. Failures to comply with previous compliance and enforcement actions must subject the violator to progressively stronger actions.

5. **Compliance and enforcement actions must be responsive to division program priorities and needs:** Compliance and enforcement actions should ensure that program and regulatory responsibilities are successfully carried out. Compliance and enforcement should not be considered as a program unto itself, but should reflect larger program priorities that are set forth in annual work plans.

COMPLIANCE ASSISTANCE:

Although this policy sets standards for carrying out compliance and enforcement responsibilities, it does not lessen each division's responsibility to foster compliance through compliance assistance activities. The DEQ believes that both activities--assistance and enforcement--have a justified place in DEQ efforts. By using both compliance and enforcement and assistance tools, the goal of protecting and enhancing Michigan's environmental. quality and public health should be met.

IMPLEMENTATION OF POLICY:

This policy identifies some basic elements that must be contained in each division's compliance and enforcement program. These elements are listed in sections found in **Appendix A,** in the order they normally occur in the compliance and enforcement process of divisions. The sections in order are as follows:

1. Compliance Evaluations
2. Compliance and Enforcement Process
3. Settlement Issues
4. Compliance Coordination, Tracking, and Measurement
5. Coordination and Management of Multimedia Cases

Divisions shall develop and implement necessary policies, procedures, and guidance for each section. Divisions have the latitude to tailor their compliance and enforcement program to meet the needs of the statutory requirements it is charged with administrating; however, this policy sets forth the minimum standards that must be met for each section.

Periodically, DEQ management will find it necessary to provide direction on how this policy applies to given situations, provide details on initiatives, or set priorities. Divisions shall ensure that these directives are maintained with this policy and that appropriate changes are made to division programs, policies, and procedures to implement the directives. Revisions to this policy shall be implemented by the divisions within six (6) months of the effective date of the revision.

Approved: _____ Date: 1-7-08

TABLE OF CONTENTS

SECTION 1: COMPLIANCE EVALUATIONS

The success of a strong compliance and enforcement process is judged by the degree to which violations are detected and by the timeliness of achieving compliance. Based on the information obtained from compliance evaluations, the DEQ is in the best position to determine what actions will have the greatest impact in ensuring that the environment and public health is protected. Every entity the DEQ oversees could benefit from frequent contact with the DEQ. With frequent contacts the DEQ could offer timely compliance assistance and solve problems before they become significant compliance or escalated enforcement issues. However, the DEQ does not have the resources to provide that level of overview. Therefore, compliance evaluation efforts must be planned to ensure the maximum impact on maintaining a strong rate of compliance.

A. SETTING COMPLIANCE EVALUATION PRIORITIES

A compliance evaluation is any effort designed to ascertain the compliance status of a facility or person. Compliance evaluations include, but are not limited to, inspections, file reviews, evaluation of required submittals, evaluation of sampling or monitoring data, and permit or license application reviews. Compliance evaluation priorities should be set to provide for the best use of limited resources. In setting compliance evaluation priorities, the following factors should be considered:

1. Resources are available for follow-up actions or escalated enforcement.
2. DEQ planning targets and division program means.
3. Violations with a high potential for public health impact or resource damage are the highest priority of the DEQ.
4. A geographic and program balance.
5. Statutory requirements.
6. Grant and program delegation requirements.
7. Compliance history.
8. Special enforcement initiatives.

A list of planned compliance evaluations shall be prepared annually. Procedures should ensure that all regulated entities are evaluated on a set frequency and that scheduled evaluations are consistent with program priorities and targets. When appropriate, representatives from Indian tribes and local authorities should be invited to participate in compliance evaluations.

B. EVALUATION PROCEDURES

Compliance evaluation procedures shall establish the criteria for conducting evaluations and must address the following issues:

1. Evaluation types.

2. The situation in which each type of evaluation is to be used.
3. The statutory or program foundation for the evaluation.
4. The intended scope of the evaluation.
5. Anticipated staff resources necessary to perform the evaluation.
6. Any forms or checklists associated with the evaluation.
7. Any special equipment or supplies needed to perform the evaluation.
8. The final report format of the evaluation.

As appropriate, the procedure must also cover such issues as:

Pre-evaluation

- Gaining access to sites.
- File reviews of previous evaluation reports and pertinent information.
- Review of legal requirements or performance standards that are to be evaluated.
- How and when to make site contacts.

Evaluation

- Sampling procedures.
- Evidence collection.
- Chain-of-custody requirements.
- Completion of required forms, reports, and checklists.

Post-evaluation

- Post-evaluation consultations.
- Site compliance status determination.
- File documentation.
- Database documentation.
- Written notification of inspection results to site personnel.
- When and what type of follow-up evaluations are needed.

SECTION 2: COMPUANCE AND ENFORCEMENT PROCESS

The DEQ's standard environmental compliance and enforcement process may be defined as a progressive sequence of actions taken to compel compliance with environmental statutes and regulations. Although the compliance and enforcement process is progressive, the DEQ may initiate or take action at any point in the process as the facts and circumstances warrant in conjunction with the authority provided by the applicable statutes and regulations or as required by an applicable enforcement response policy for a federally delegated program.

The compliance and enforcement process is initiated when the first compliance communication is issued by the DEQ. The process provides reasonable opportunities to resolve violations in a consistent and progressively escalated manner. Although some circumstances may require immediate escalation, there is a general presumption that the process will start at the lowest stage. However, specific factors or circumstances, such as seriousness of the violation, resources damaged or impaired, previous compliance history, agency program needs, or an applicable federal enforcement response policy for a delegated program may all serve to escalate the initial level of enforcement action.

Each division shall have written compliance and enforcement procedures that:

1. Incorporate the nomenclature and compliance and enforcement process described below.
2. Identify staff responsibilities and authorities.
3. Specify how violations will be identified and prioritized for action.
4. Establish time frames for response.
5. Establish appropriate responses to violations.
6. Establish criteria for referral of cases for escalated enforcement.
7. Provide for the handling of criminal violations and for referrals to the Department of Attorney General (DAG).
8. Provide guidance to staff on when and under what conditions a violation should be considered for referral for criminal action versus being referred for administrative or civil enforcement or when and under what conditions a parallel proceeding should be considered.
9. Describe how division management will provide appropriate oversight and review.

To facilitate a reliable, predictable, and effective department-wide compliance and enforcement program, all divisions shall incorporate the DEQ compliance and enforcement process and nomenclature described below within their written compliance and enforcement procedures.

A. NOMENCLATURE

- Compliance Communication (discretionary):

  A Compliance Communication is an informal means of communication used by DEQ staff via telephone, e-mail, letter or in person to communicate to a regulated entity that there are compliance issues or violations that need attention. Typically, a Compliance Communication is used to address violations or issues that are relatively minor in nature, few in number and can be resolved promptly with limited DEQ oversight. Compliance Communications should be documented in writing in the DEQ's files and will:

  - Be specifically identified as a "Compliance Communication";
  - Include a brief description of the compliance issue or violation(s) and a specified date for compliance;
  - Include a summary of any instructions or directives given by DEQ staff to the regulated entity; and
  - Be signed and dated by the DEQ staff person who provided the communication.

- Violation Notice[1]:

  A Violation Notice (see Attachment 1) is a formal means of notifying the recipient of a significant or priority violation or when previous attempts to gain voluntary compliance have failed to correct the compliance issue or violation. The Violation Notice formally notifies the recipient of the violation and provides the DEQ with a means for tracking its resolution. The Violation Notice places the recipient on notice that a violation(s) has been identified and provides the recipient with an opportunity to correct the violation in a timely manner. If the recipient fails to comply with a Violation Notice, the DEQ may escalate the enforcement action.

  The Violation Notice, at a minimum, will:

  - Reference any previous Compliance Communications (if appropriate);
  - Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed or what was evaluated (i.e., inspection, record review, etc.), and the scope of the evaluation (e.g., evaluation of compliance with the statute, administrative

[1] A "VIOLATON NOTICE" HAS HISTORICALLY BEEN CALLED A LETTER OF WARNING IN THE WASTE AND HAZARDOUS MATERIALS DIVISION; NOTICE OF VIOLATION IN THE LAND AND WATER MANAGEMENT DIVISION; NOTICE LETTER OR NOTICE OF NONCOMPLIANCE IN THE WATER BUREAU; LETTER OF VIOLATION IN THE AIR QUALITY DIVISION; AND NOTICE OF NONCOMPLIANCE IN THE OFFICE OF GEOLOGICAL SURVEY.

rules, permit or license by specific reference).

- Clearly indicate any limitations on the scope of the evaluation (e.g., that the inspection was limited to a portion of the facility; that only a financial assurance record review was conducted; that an evaluation of monitoring results from calendar years 2006 and 2007 to date was performed, etc.).
- Describe the method(s) used to discover the violation;
- Describe in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted;
- Describe the act or omission that created the violation;
- Cite the date(s) or approximate period of time during which the violation occurred and whether the violation is ongoing;
- Specify the action(s) necessary to return the regulated entity to compliance or request submittal of a compliance program to resolve the violation(s);
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings;
- Specify a deadline for response;
- Be signed by a supervisor or other DEQ staff person designated by the division.

The Violation Notice should be written in an informative manner and should not be overly formalistic, accusatory or threatening.

If a sufficient response to the Violation Notice is received and the violation has been, or is being, corrected in a timely manner, no further enforcement action is usually necessary. However, some federal enforcement response policies for delegated programs require that certain types of violations be referred for the assessment of a monetary penalty even if the violation has already been corrected.

Second Violation Notice (discretionary):

Failure to adequately and timely respond to the first Violation Notice or failure to respond at all may result in either issuance of a second Violation Notice (see Attachment 2) or initiation of escalated enforcement proceedings. If a second Violation Notice is issued, at a minimum, it will:

- Reference the first Violation Notice;
- Advise of failure to adequately respond to the first Violation Notice;
- Reiterate the action(s) necessary to be undertaken to return to compliance or again request submittal of a compliance program to address the violation(s);
- Identify any additional violations noted since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program to address the violation(s);

- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, or license and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Each division's compliance and enforcement procedures should include guidance that enables a trained employee to determine under what circumstances it is appropriate to send out a second violation notice.

Enforcement Notice:

A case is usually referred for escalated enforcement because preceding administrative actions have been unsuccessful; however, seriousness of the violation, resources damaged or impaired, previous compliance history, agency program needs, or the applicable federal enforcement response policy for a delegated program may also result in a referral for escalated enforcement.

After a case has been referred, a formal Enforcement Notice (see Attachment 3) should be sent to the violator. At a minimum, the Enforcement Notice will:

- Advise that the case has been referred for escalated enforcement;
- Reference any previously issued Violation Notices;
- Specify the nature of the unresolved violation(s);
- Provide the violator with a final opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violations; or, if appropriate, (3) meet and discuss options for satisfactorily resolving the violation(s);
- Specify a deadline for response;
- Specify the consequences for failure to adequately respond and/or resolve or address the violations; and
- Be signed by a supervisor or other DEQ staff person designated by the division.

ATTACHMENT 1

[Date]

[Person or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Mrs. _____

SUBJECT: Violation Notice

The Violation Notice should:

- Reference any previous DEQ Compliance Communications (if appropriate);.
- Describe the method used to discover the violation;
- Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed or what was evaluated and clearly indicate any limitations on the scope of the evaluation (if any).
- Describe in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted;
- Describe the act or omission that created the violation;
- Cite the date(s) that the violation occurred or specify the period of time during which the violation occurred, and whether the violation is ongoing;
- Specify the action(s) that needs to be undertaken to return the regulated entity to compliance or request submittal of a compliance program to address the violation(s);
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings; and
- Specify a deadline for response.

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions, please feel free to contact me.

Sincerely,

ATTACHMENT 2

[Date]

[Person or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear MrJMrs. _____

SUBJECT: Second Violation Notice

The second Violation Notice should:

- Reference the first Violation Notice;
- Advise of the failure to adequately respond to the first Violation Notice;
- Reiterate the action(s) that needs to be undertaken to return to compliance, identify deficiencies in the initial submittal which require a modification to the compliance program, or again request submittal of a compliance program to address the violation(s);
- Identify any additional violations noted since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program to address the additional violation(s);
- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, license, or order and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Please be advised that issuance of this Violation Notice does not preclude or limit the DEQ's ability to initiate any other enforcement action under state or federal law as appropriate.

If you have any questions, please feel free to contact me at the telephone number listed below.

Sincerely,

ATTACHMENT 3

CERTIFIED MAIL

ENFORCEMENT NOTICE

In the matter of:

[Facility Name or Regulated Entity]
[Address]
[City, Township, Village of], Michigan [ZIP Code]

ATTENTION: [Owner/Operator], [Title]

The Enforcement Notice should follow this format and:

- Advise that the case has been referred for escalated enforcement;
- Reference any previously issued Violation Notices;
- Specify the nature of the unresolved violations;
- Provide the opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violations; or, if appropriate, (3) meet and discuss options for satisfactorily resolving the violation(s);
- Specify a deadline for response; and
- Be signed by a supervisor or other DEQ staff person designated by the division.

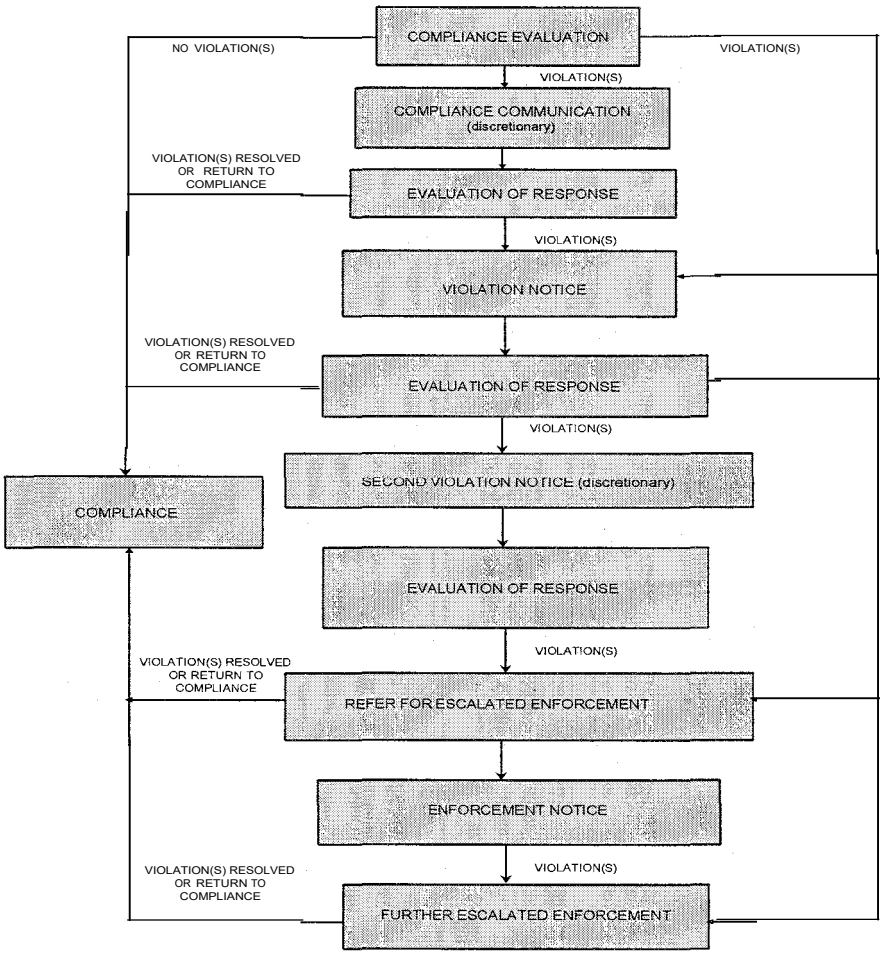
Be advised that failure to timely and adequately resolve or address the violation(s) cited in this Enforcement Notice may result in further enforcement proceedings including, but not limited to, referral of the matter to the Department of Attorney General for commencement of civil litigation. Be further advised that this Enforcement Notice does not preclude or limit the Department of Environmental Quality's ability to initiate any other enforcement action under state or federal law as appropriate.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Date: _____

STANDARD COMPLIANCE AND ENFORCEMENT PROCESS



NOTES: 1. At each evaluation point, staff determines if the facts and circumstances warrant pursuing further enforcement.
2. Cases that are referred for criminal prosecution are not subject to this process.

B. VIOLATION RESPONSE

The compliance and enforcement procedures for each division should provide guidance that enables a trained employee to determine an appropriate response to an identified violation. The procedure should focus on standard violations or classes of violations that commonly occur in the program being administered. Violations are to be evaluated using factors such as:

1. Frequency and duration of the violation.
2. Extent or deviation of the violation from the requirement (magnitude of the violation).
3. Harm to the public health, the environment, or the integrity of the regulatory program.
4. Compliance history of the violator.

For divisions which administer delegated federal programs and the United States Environmental Protection Agency (U.S. EPA) has developed enforcement guidance, the divisions may reference and adopt that guidance.

C. CRIMINAL VIOLATIONS

Employees of the DEQ will encounter situations where a crime may have been committed that may warrant a criminal investigation and ultimately prosecution. Potential criminal violations shall be referred to the Office of Criminal Investigations in accordance with DEQ Policy No. 09-002. Each division's compliance and enforcement procedures shall ensure that criminal investigations referred to the OCI are properly communicated in accordance with the division's referral procedures for criminal cases. Division's compliance and enforcement procedures should also ensure that referrals for criminal investigation are evaluated and/or discussed in accordance with DEQ Policy No. 04-004, Parallel Proceedings, and DEQ Policy No. 04-005, District Enforcement Review Discussions.

The OCI shall develop and maintain a priority system for conducting and completing criminal investigations. In setting priorities the OCI shall work cooperatively with divisions to ensure that division program priorities are met.

D. REFERRALS TO THE ATTORNEY GENERAL

DEQ staff works closely with staff of the DAG in situations where the DEQ requires legal advice or representation. In order to make the most efficient use of staff time, divisions shall establish clear lines of communication and authority for discussing and referring matters to the DAG. These procedures shall be consistent with DEQ Policy No. 09-002.

SECTION 3: SETTLEMENT ISSUES

A. CIVIL PENALTIES

In addressing violations it is necessary to consider whether the violations alleged warrant fines and penalties. This determination needs to be made early in the compliance and enforcement process. The application of penalties needs to be consistent and documented. Penalties are to be calculated based on the factual elements of each case and are intended to eliminate any economic benefit gained from the violation and to create deterrence from future violations. The procedures for penalty calculations shall address the following issues:

1. Criteria for determining when a penalty is appropriate.
2. Criteria for determining the penalty amount.
3. Criteria for the calculation, review, and approval of proposed penalties.
4. Standard procedures for documenting penalty calculations.

Generally, penalties should be considered when one or more of these conditions exist:

1. The violation exceeds a set threshold or an agreement the DEQ has made with the U.S. EPA through the program planning process or delegation agreement.
2. The violation results in harm or impairment of the environment or public health.
3. Failure to receive a penalty could negatively impact the integrity of the regulatory program.
4. The violation is willful.
5. The violation is due to negligence.
6. The violation is in direct disregard to a directive of the DEQ.
7. Compliance efforts to resolve the violation have not been successful and escalated enforcement was needed.
8. The violation is of an Administrative Consent Order, a Unilateral Director's Order, or a Judicial Order.

Division chiefs should have knowledge of all proposed penalties being negotiated in their division and in no case should a penalty in excess of $50,000 be proposed without prior consultation with the division chief. For proposed penalties in excess of $500,000 the Deputy Director needs to be consulted. When a proposed penalty is in excess of $20,000, it is expected that the proposed penalty shall be presented to the other party in person during a settlement meeting.

Penalty calculation procedures should be specific to each division and consider the following factors:

1. The magnitude and duration of the violation.

2. The impact or potential for impact that the violation poses to the environment, public health, or program integrity.
3. The monetary benefit to be gained by the violation.

The penalty procedure shall include a penalty matrix that staff can use to calculate penalties. Divisions that administer programs with different statutory penalty amounts may need to develop penalty guidance and matrices for each program.

EXAMPLE PENALTY MATRIX

	DEGREE OF HARM TO THE ENVIRONMENT/PUBLIC HEALTH		
VIOLATION MAGNITUDE	HIGH IMPACT PENALTY RANGE $25,000 TO $16,000 HIGH MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $20,000 TO $10,500 HIGH MAGNITUDE	LOW IMPACT PENALTY RANGE $14,500 TO $8,000 HIGH MAGNITUDE
	HIGH IMPACT PENALTY RANGE $20,000 TO $10,500 MEDIUM MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $15,000 TO $5,000 MEDIUM MAGNITUDE	LOW IMPACT PENALTY RANGE $9,500 TO $2,500 MEDIUM MAGNITUDE
	HIGH IMPACT PENALTY RANGE $14,500 TO $8,000 LOW MAGNITUDE	MEDIUM IMPACT PENALTY RANGE $9,500 TO $2,500 LOW MAGNITUDE	LOW IMPACT PENALTY RANGE $4,000 TO $500 LOW MAGNITUDE

Each violation will be compared to the matrix and assessed the appropriate penalty amount. If a violation were for multiple days, the assessed penalty could then be multiplied by the number of days of violation.

Multiple days of violation can be addressed by creating a second matrix that sets a penalty amount for the duration of violations and adding that amount to the base penalty amount or by other alternative means.

The calculated penalty amount may be adjusted up or down with justification, but should remain in the established penalty range. Factors that would warrant penalty adjustment include:

1. Compliance history.
2. Recalcitrance of the violator.
3. Willfulness of the violator.
4. Strength of the case.
5. The violation is of the terms of an Administrative or Judicial Order and is not addressed by agreed-to stipulated penalties.
6. The violation resulted in serious impact or an imminent and substantial endangerment to public health or the environment.

The final calculated proposed penalty should be sufficient enough to eliminate any substantial economic benefit that would give a violator a clear advantage over its business competitors. Divisions should use the final calculated proposed penalty to begin settlement negotiations. In all cases, the proposed penalty should be reasonable so as to facilitate resolution of the violation and provide for improvements to environmental protection. The negotiated or final penalty assessed should be justified by the circumstances and should be able to withstand scrutiny when similar circumstances arise.

B. STIPULATED PENALTIES

Stipulated penalties are specified in settlement agreements and address potential future violations of certain terms of the settlement agreement. Stipulated penalties may be applied for failures to meet scheduled dates, to perform specified actions, or to meet environmental performance criteria or other requirements established in the agreement. The amount and terms of stipulated penalties are specified in settlement agreements and can be collected if the terms of the agreement are violated.

The primary goal of stipulated penalties is to act as a deterrent to violating the terms and conditions of the settlement agreement. To have this effect, stipulated penalties must be established at an amount high enough to represent a true penalty for not complying with the agreement.

Persons violating the terms and conditions of a settlement agreement are, by definition, "repeat offenders" and should be subject to penalties that are higher on a per-diem basis than any initial civil penalties that may have been imposed. Stipulated penalties for particularly egregious violations may even be considerably higher. Any clearly definable event in a settlement agreement may be established in the agreement as subject to stipulated penalties. Stipulated penalties are most useful in ensuring that activities specified in a settlement agreement are proceeding on schedule and that interim progress toward a final goal is being made. Settlement agreement language for stipulated penalties must be clearly written to require specific performance milestones by specific dates. Automatic provisions for having stipulated penalties accrue and payable to the state should be clearly incorporated into the settlement document. Settlement documents are to be clearly written to

avoid disputes regarding the application of stipulated penalties. The final amount of stipulated penalties to be assessed may be subject to negotiation.

C. ADMINISTRATIVE PENALTIES

If a division has authority to issue administrative penalties they shall have procedures for determining the penalty amount, assessing the penalty, and the collection of the penalty.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

When requested, the DEQ may consider the use of a supplemental environmental project (SEP) as a part of a settlement agreement.

As a part of the settlement agreement with the DEQ, the alleged violator may request to incorporate a SEP, underwritten by the alleged violator, in lieu of payment of a portion of the monetary penalty. SEPs are neither required by nor prohibited by regulations administered by the DEQ.

A SEP shall be developed in accordance with DEQ Policy No. 04-002.

E. JUDICIAL VS ADMINISTRATIVE ORDERS

Sometimes it is necessary to settle violations by the entry of a settlement agreement. The following guidance is provided to assist divisions in determining which type of agreement, judicial or administrative, to enter.

A settlement agreement is a legally enforceable document that binds the DEQ and a person for the purpose of resolving the alleged violation(s) of laws or regulations administered by the DEQ. A settlement agreement usually contains provisions requiring the person to correct the violation, take steps to ensure the violation is not repeated, repair environmental damage and/or pay a monetary compensatory damage amount, or pay a penalty to deter future noncompliance. A settlement agreement may be in the form of a Judicial Order (court-approved consent decree) or an Administrative Consent Order (an agreement without the involvement of the court).

Because of the additional work required by staff of the DEQ and the DAG with a Judicial Order, Administrative Consent Orders should be used for the vast majority of settlement agreements. An advantage to a Judicial Order is that it provides an additional tool to ensure compliance with the settlement agreement. As a result, if one of the following three situations occurs, then a judicial settlement is probably appropriate.

1. Settlements that will have a high degree of public concern.

Examples are:

a) when public input from citizens, legislators, public officials, environmental groups, or others rise to the level where it may significantly impact compliance with the terms and conditions of a settlement and the oversight of a court is needed; or
b) when there is a major disagreement with the U.S. EPA over fines, penalties, or other corrective actions for particular violations.

2. Settlements that will be complex, financially significant, or otherwise unusual.

   Factors to be considered in determining if this situation exists include:

   a) a multi-year corrective project or extensive remediation program attributable to the lengthy duration and/or magnitude of the violation(s);
   b) a complex or unusually large SEP;
   c) an unusually large fine, penalty, or financial assurance or expenditure;
   d) an unusually large number of violations;
   e) a recent history (within the past five years) of noncompliance with the laws, regulations, or previous settlements;
   f) when facts are present to reasonably expect that the violator does not have the wherewithal or the intent to comply with a settlement agreement, notwithstanding the violator's indications to the contrary.

   If more than one of the items listed above are being considered or are factors in the settlement negotiations, then a judicial settlement is probably appropriate as an added tool to ensure compliance with the settlement agreement.

3. When the alleged violator requests a judicial settlement and the DEQ agrees.

   There may be instances in which the person seeks a judicial settlement in lieu of an Administrative Order. If the person articulates a good reason as to why a judicial settlement should be pursued in lieu of an Administrative Order, then barring a significant impact on the compliance program, it should be pursued judicially.

When a settlement agreement involves a "Covenant Not to Sue" and/or contribution protection, the DAG has final approval under the law as to whether to pursue a matter in court.

Once both parties agree that a judicial settlement is the appropriate mechanism for the settlement agreement, unless a matter has already been filed in court, then staff

should follow the steps outlined in DEQ Policy No. 09-002. An enforcement lawsuit that has been filed prior to any contemplated or anticipated settlement should be settled judicially rather than administratively, if a settlement is subsequently reached.

F. PRESS RELEASES

Press releases can be an effective method to inform the regulated community and the public of DEQ compliance efforts, and serve as a deterrent for illegal environmental activity. To ensure that noteworthy compliance actions initiated by the DEQ, with or without DAG involvement, are publicized, divisions are to take into account the criteria listed below when evaluating whether or not the action warrants a press release. Meeting one criterion alone may not necessarily justify a press release.

1. The violation created a known public health threat or long-term damage to the environment.
2. The person knowingly violated the law and/or deliberately disregarded a direction/order given by DEQ staff.
3. The violation was the focus of significant local attention.
4. The resolution of the violation resulted from a decision by a judge or jury trial.
5. The violation was a felony.
6. There is involvement of the DAG (should be limited to major involvement, not just signing a document as to form).
7. The DEQ action is a Cease and Desist Order.
8. The violation resulted in arrests, filing of major civil suits or settlements with substantial penalties, recovered costs, or restitution for damages (not just a notice of violation).
9. The violation and subsequent DEQ action has the potential to serve as a deterrent to an identified sector that has the likelihood of the same violation and/or will serve to educate the public in a significant way.

A violation such as failure to obtain a permit or license, when a permit or license would have been issued if applied for, may not be sufficient alone to warrant a press release (except where the violator willfully failed to seek a permit or license).

During settlement discussions, the regulated entity should be advised early on that the DEQ may issue a press release. The content of press releases is non-negotiable.

To assist the DEQ Press Secretary in processing requests for press releases, division staff should:

a) Draft the release with all pertinent facts:
   - Violation(s).

- Name of violator.
- Location of offense.
- Unique or interesting facts about the case.
- Duration of offense.
- Amount of fines/penalties/jail time.
- Response activities to be performed to regain compliance.

b) Include a quote from the Director (and/or Attorney General with approval), as appropriate.
c) Use approved structure and format.
d) Forward a draft copy of the release to the Press Secretary and the Deputy Director for consideration.

SECTION 4: COMPLIANCE COORDINATION, TRACKING, AND MEASUREMENTS

A. COMPLIANCE TRACKING

Each division shall have an electronic database for the tracking of compliance activities. The database must enable a division to track the following information for each entity evaluated for compliance.

Evaluations
• Dates conducted
• Tvpes of evaluations conducted
• Compliance status at each evaluation
Compliance Activities
• Dates compliance actions taken
• Types of compliance actions taken
• Status of each compliance action

The tracking system should also allow divisions to produce the compliance measures report identified in the next section of this policy.

B. COMPLIANCE MEASURES

It is important that the DEQ is able to assess the effectiveness of its compliance and enforcement programs. It is also important that this information be readily available to the public. Divisions shall develop measurements that demonstrate program achievement and assist in program management. Measurements should also allow divisions to determine rates of compliance as required by the DEQ's planning process. Divisions shall set a reporting frequency and a management review process.

At a minimum the following measures, where applicable to the program, shall be compiled on a quarterly basis.

1.	Number of known entities (facilities, sources, complaints, or other form of activity) subject to regulation, oversight, or evaluation.
2.	Number of entities that have an evaluation planned by division policy, procedures, or program commitments.
3,	Number of entities with a planned evaluation that were evaluated.
4.	Number of evaluated entities, planned or otherwise, that were determined to be in noncompliance.
5.	Number of evaluated entities whose noncompliance meets a division's Significant Noncompliance criteria (if applicable).

6.	Number of non-compliant entities that returned to compliance before an escalated enforcement action was taken.
7.	Number of non-compliant entities where an escalated enforcement action was taken.
8.	Number of Judicial Orders still in effect.
9.	Number of Administrative Consent Orders that are still in effect.
10.	Number of Director's /Supervisor of Wells Final Orders that are still in effect.
11.	Number of Demand Letters/Orders for Administrative Penalties issued.
12.	Number of referrals that are pending with the OCI.
13.	Number of referrals to the OCI that have a final disposition.
14.	Number of referrals that are pending with the DAG.
15.	Number of referrals to the DAG that have a final disposition.
16.	Total amount (in dollars) of fines and penalties agreed to or ordered (include civil, criminal, administrative, and SEPs).
17.	Total amount (in dollars) of environmental damages agreed to or ordered.
18.	Total amount (in dollars) of DEQ cost agreed to or ordered.
19.	Number of final settlement agreements or orders that contain a SEP.
20.	Total amount (in dollars) of fines and penalties off set by a SEP.
21.	Total number of permit applications backlogged.
22.	Total number of permit applications received.
23.	Total number of permits issued.
24.	Total number of permits denied.
25.	Total number of permit decisions made on time.

C. COMPLIANCE COORDINATION

It is important that compliance and enforcement staff within each division effectively communicate and work in a cooperative manner. This can be accomplished through regular meetings between regulatory divisions who will assign a representative to attend these meetings.

The purpose of the Compliance and Enforcement Chiefs Meetings (C&E Meetings) is to:

1. Champion the DEQ's compliance and enforcement efforts and processes.
2. Provide for the exchange of compliance and enforcement ideas, views, and experiences among the DEQ's program divisions and offices.
3. Foster cooperation and coordination in compliance and enforcement activities.
4. Develop recommendations to the DEQ management on compliance and enforcement issues.

The C&E Meetings will routinely consider the following items:

1. Multi-division/multimedia case coordination.
2. Coordination of civil and criminal enforcement actions.
3. Review of judicial/administrative case decisions that may have an impact on the DEQ's compliance and enforcement processes.
4. Receive case reviews of important cases that divisions are processing or have completed.
5. Identify/recommend special training needs of compliance and enforcement staff.
6. Develop methods to provide coordinated tracking and reporting of compliance and enforcement activities.
7. Coordination of DEQ interaction with the U.S. EPA on enforcement and compliance issues.
8. Receive information on new laws and rules that impact compliance and enforcement activities.
9. Develop and/or share tools that assist in the DEQ's compliance and enforcement activities.
10. Tracking the disbursement of cost, damages, and penalties in the DEQ's accounting system.
11. Evaluation of DEQ and U.S. EPA enforcement and compliance policy and procedures.

Each compliance and enforcement representative is responsible to ensure that compliance and enforcement staffs in their division, as well as division management, are kept informed about the information shared at the C&E Meetings.

When possible, the C&E Meetings will be held from 9:00a.m. to noon on the fourth Wednesday of each month. The meetings will be chaired by the Office of Civil Enforcement Coordination (OCEC) Chief.

It is important that the information discussed at the monthly C&E Meetings gets out to the district offices. This is essential since the field staffs are on the front lines and take the lead role to ensure compliance with permits and regulations. To facilitate this communication the following shall apply:

1. Each field operations supervisor (FOS) has an open invitation to attend the C&E Meetings. Attendance is optional, based on approval of the division chief.
2. FOS will receive any updates on meetings and issues covered at C&E Meetings, as applicable, from their respective C&E chief.
3. When C&E Meetings have agenda items that are relevant to FOS those items will be grouped and given a specific time so that FOS can make appropriate plans to attend the meeting for these items.

4. FOS, collectively or singularly, can request to have items placed on the C&E Meeting agenda.
5. FOS attendance at C&E Meetings will only be required when their involvement is essential to completing an assignment or developing guidance/policy.
6. As appropriate, the OCEC Chief will attend FOS meetings to discuss specific compliance and enforcement issues.

Even though this process should further the communication between the field and compliance and enforcement staffs, personal contact and interaction between these two groups is essentiaL Therefore, division chiefs are to ensure that this happens on a regular basis within their divisions.

SECTION 5: COORDINATION AND MANAGEMENT OF MULTIMEDIA CASES

Staff of the DEQ often initiate or become involved in enforcement actions that may involve violations of various provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or other statutes administered by the DEQ. Communication and coordination between the DEQ divisions should occur early on in the process to ensure that all violations are appropriately addressed, and to avoid potential claim splitting.

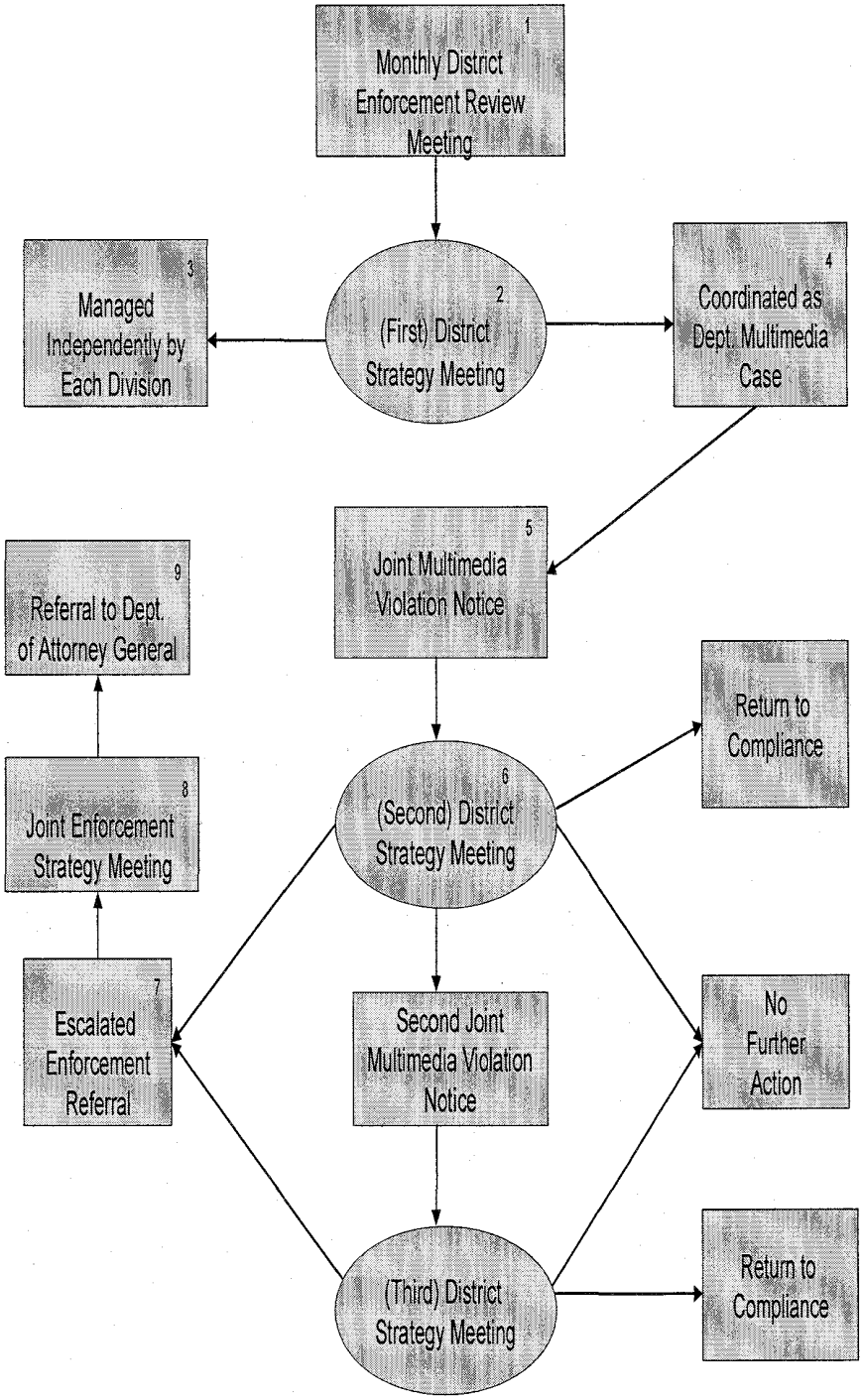
Multimedia enforcement constitutes a comprehensive approach to case development and enforcement usually against a single facility where all of the processes at that facility are inspected and examined as a whole to determine compliance with all environmental statutes. There are many benefits to conducting multimedia enforcement efforts. Environmental contamination is, by nature, unconstrained by statutory boundaries so effective coordination and communication between divisions are critical. Multimedia enforcement can result in:

- Improved detection and resolution of environmental violations. Cross-statutory inspections and analysis of violations afford the most effective method of identifying the extent of environmental problems. This leads to comprehensive enforcement activities.
- Achievement of optimal enforcement results. Multimedia enforcement actions increase the potential for achieving broad environmental benefits as part of an overall settlement. In addition, penalties will more accurately reflect the full extent of the gravity of harm and economic benefit gained by noncompliance. A penalty that reflects the full range of violations also provides an increased opportunity for supplemental environmental project proposals.
- More effective enforcement Targeting facilities or companies with significant, pervasive violations can eliminate the root cause of an environmental problem. This may not be possible through an enforcement action brought pursuant to one statutory authority.
- More efficient use of resources. Multimedia actions reduce and streamline the resource burden otherwise required by the numerous single-statute cases brought to resolve a complex environmental problem.
- Fundamentally change the regulated community's perceptions and behavior regarding environmental compliance. Broad-based actions and subsequent results can assist the regulated community's meaningful implementation of environmental management systems. Furthermore, publicity of far-reaching multimedia cases can assist in general deterrence.

The existence of multiple violations involving different provisions of the NREPA administered by more than one division does not automatically require that a case be managed as a multimedia case. The facts and circumstances of each case will be

different and each case must be analyzed and discussed internally between the divisions before deciding on a course of action or strategy.

Following is a flowchart illustrating DEQ's coordination and management of multimedia cases. This process is intended to foster communication and coordination between divisions that will result in more effective multimedia enforcement.


1
Monthly District Enforcement Review Meeting
2
(First) District Strategy Meeting
3
Managed Independently by Each Division
4
Coordinated as Dept. Multimedia Case
5
Joint Multimedia Violation Notice
6
(Second) District Strategy Meeting
7
Escalated Enforcement Referral
8
Joint Enforcement Strategy Meeting
9
Referral to Dept. of Attorney General
Return to Compliance
Second Joint Multimedia Violation Notice
No Further Action
(Third) District Strategy Meeting
Return to Compliance

Footnotes to Flowchart:

1. **Monthly District Enforcement Review Meetings**
DEQ Policy Number 04-005, District Enforcement Review Discussions, requires the Multimedia Coordinator (MMC) to schedule and chair monthly district enforcement review meetings. During these meetings, it is the MMC's responsibility to ensure that all high priority and significant new violations, new enforcement case referrals, and the status of any ongoing multimedia enforcement cases are discussed. There should also be discussion and agreement on which cases, if any, to be scheduled for a District Strategy Meeting. The MMC is responsible for scheduling the District Strategy Meetings and in doing so, should allow each division sufficient time to discuss the facts of the case with their respective compliance and enforcement (C&E) Unit/Section and FOS prior to the meeting.

   The District Environmental Conservation Officer (EGO), or their assigned representative, will attend each monthly enforcement review meeting. At these meetings, the EGO will provide a status update for each pending district criminal case that has been referred and discuss any district cases that have been initiated by the OCI - unless confidential.

   District Supervisors (or their designee) will attend the monthly district enforcement review meetings and discuss any new significant or high priority violations, new enforcement case referrals, and the status of any cases that have violations of different statutes administered by other divisions where their division is the lead.

2. **(First) District Strategy Meeting**
For each case with violations of different statutes administered by multiple program divisions, the MMC and appropriate district supervisors should discuss and agree upon the relative priority of the case for all divisions involved and an appropriate course of action; strategy for case development or resolution, including a schedule for completing any necessary activities; and a lead division. This discussion should be scheduled separate from the monthly district enforcement review meetings.

   District supervisors should consult with their respective C&E Unit/Section and FOS prior to agreeing to a course of action or strategy regarding a potential multimedia enforcement case so that they can represent their respective division's position on the case. Once a strategy or course of action is agreed to, each district supervisor is responsible for ensuring that their staff completes any necessary activities according to the agreed upon schedule.

The MMC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s) as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the MMC may request that the OCEC Chief facilitate the discussions. If the MMC and the OCEC Chief are unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

3. **Managed Independently by Each Division**

If it is concluded at the district strategy meeting thaia case with violations of different statutes administered by mu!tip!e program divisions will be managed independently (or continue to be managed independently) by each respective division, district supervisors still have an obligation to regularly communicate with the MMC and the other divisions regarding the status of their respective case. This can be accomplished at the monthly district enforcement review meeting. If the facts and circumstances significantly change in a case, it is the district supervisor's responsibility to schedule interim enforcement strategy discussions with the other district supervisors and the MMC to reaffirm the course of action and/or strategy. Prior to interim enforcement strategy discussions, it is each district supervisor's responsibility to consult with their respective C&E unit/section and FOS as appropriate.

4. **Coordinated as Department Multimedia Case**

If it is decided at the district strategy discussions that a case will be developed and coordinated as a department multimedia case, the district supervisor of the lead division will be responsible for periodically following up with the other district supervisor(s) to ensure that the case is proceeding accordingly to the agreed upon strategy and/or schedule. Interim strategy discussions between the MMC and applicable district supervisors should be scheduled as necessary and as the facts and status of the case warrant.

District supervisors are responsible for ensuring that their portion of the case is progressing according to the agreed-upon schedule for case development or resolution.

5. **Joint Multimedia Violation Notice**

If a case will be managed as a department multimedia case, a multimedia violation notice should be sent specifying the violations identified by each division. These violations may be identified as a result of a joint multimedia inspection or evaluations performed in follow-up to an initial single media inspection. Each division has the responsibility of identifying the issues and violations that should be included in the violation notice and should consult with

their respective C&E unit/section or FOS as appropriate.

Each division is responsible for evaluating the sufficiency of any response received to the multimedia violation notice and providing comments to the lead division in a timely manner.

6. **(Second) District Strategy Meeting**

After receiving comments from each division regarding the sufficiency of any response to the multimedia violation notice, the lead division will convene another district strategy meeting to discuss and agree upon a go forward course of action or strategy and a schedule. District supervisors should consult with their respective C&E unit/section and FOS prior to agreeing to any course of action or strategy.

District supervisors are responsible for ensuring that their staff completes any necessary activities identified during the strategy meeting according to the agreed upon schedule.

The MMC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s) as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the MMC may request that the OCEC Chief facilitate the discussions. If the MMC and the OCEC Chief are unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

7. **Escalated Enforcement Referral**

If it becomes necessary to refer a multimedia case for escalated administrative or civil enforcement, each district supervisor is responsible for completing an enforcement referral and providing it to both the MMC and their division C&E and FOS, as appropriate, within the timeframe established at the District Strategy Meeting. Upon receipt of the necessary referrals, the MMC will prepare a memorandum addressed to the OCEC Chief that identifies the case's relative priority; identifies the lead division coordinating the case development; provides recommendations for each division; and summarizes the relevant case issues. The case should be identified as a multimedia enforcement case in the subject line of the memorandum and a copy of each division enforcement referral should be attached. A copy of the memorandum and attachments should also be provided to the appropriate C&E chiefs, FOS, assistant division chiefs and division chiefs, as applicable.

8. **Joint Enforcement Strategy Meeting**

Upon receipt of the multimedia referral memorandum for escalated civil or administrative enforcement from an MMC, the OCEC Chief will schedule a

strategy meeting with the appropriate C&E chiefs, district supervisors, and the MMC to discuss and agree on an appropriate enforcement strategy with associated deadlines and to assign a division to be the lead for coordinating enforcement matters between divisions, the DAG and OCEC as necessary.

District Supervisors shall ensure that their staff provides any necessary support for the multimedia case after it has been referred regardless of which division is assigned as the lead for coordinating enforcement matters and as necessary to meet the established deadlines.

The C&E chief for the lead division is responsible for ensuring that the case proceeds according to the agreed-upon deadlines established in the enforcement strategy meeting and scheduling interim strategy meetings as necessary. The OCEC Chief will facilitate and oversee this process as necessary.

Any dispute or disagreement about the decisions made at the Joint Enforcement Strategy Meeting should be resolved by the OCEC Chief in discussions with the appropriate division C&E chief(s), MMC, and district supervisor(s) as appropriate. If the OCEC Chief is unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

9. **Referral to the DAG**

The C&E chief (or their staff) for the lead division will be responsible for preparing the referral to the DAG in accordance with DEQ Policy 09-002, Referrals of Matters to the Attorney General. The other C&E chiefs shall provide the necessary staff support to ensure that their violations and issues are appropriately addressed and included in the referral, any subsequent settlement documents, or litigation. After a case has been referred to the DAG, and as necessary thereafter, the lead division's C&E chief is responsible for ensuring that there is effective coordination and communication between the divisions.

ISSUE:

It is important that the OOGM is able to assess the effectiveness of its compliance and enforcement programs. It is also important that this information be readily available to the public. Professional Staff must also effectively communicate and work in a cooperative manner with other divisions within the DEQ on compliance and enforcement programs.

PROCEDURES:

Step	Who	Does What
1.	Office Chief/Section Supervisors	Ensures that an electronic database for the tracking of compliance activities is available to Professional Staff. The database shall enable dates and types of evaluations conducted and the compliance status at regulated sites to be adequately tracked. Additionally, the database shall enable Professional Staff to track the dates, types, and status of compliance actions.
2.	Professional Staff	Enters data into the MIR Database to allow for tracking of compliance activities. Data includes on-site inspections, verbal and written communications, records received, and miscellaneous correspondence relevant to regulated operations.
3.	Section Supervisors	A. On a quarterly basis, runs query of the MIR Database to obtain measures applicable to the program as determined by Section Supervisors. Applicable measures may include Compliance Case Summaries from field note print/RBDMS.Net. 1. Number of known entities (facilities, sources, complaints, or other form of activity) subject to regulation, oversight, or evaluation. 2. Number of entities that have an evaluation planned by division policy, procedures, or program commitments. 3. Number of entities with a planned evaluation that were evaluated. 4. Number of evaluated entities, planned or otherwise, that were determined to be not in compliance. 5. Number of evaluated entities whose non-compliance meets a division's Significant Non-compliance criteria

Step	Who	Does What
		(if applicable). 6. Number of non-compliant entities that returned to compliance before an escalated enforcement action was taken. 7. Number of non-compliant entities where an escalated enforcement action was taken. 8. Number of Judicial Orders still in effect. 9. Number of Administrative Consent Orders that are still in effect. 10. Number of Supervisor of Wells Final Orders that are still in effect. 11. Number of Demand Letters/Orders for Administrative Penalties issued. 12. Number of referrals that are pending with the EIS. 13. Number of referrals to the EIS that have a final disposition. 14. Number of referrals that are pending with the Department of Attorney General (DAG). 15. Number of referrals to the DAG that have a final disposition. 16. Total amount (in dollars) of fines and penalties agreed to or ordered (include civil, criminal, administrative, and Supplemental Environmental Projects (SEPs)). 17. Total amount (in dollars) of environmental damages agreed to or ordered. 18. Total amount (in dollars) of DEQ cost agreed to or ordered. 19. Number of final settlement agreements or orders that contain a SEP. 20. Total amount (in dollars) of fines and penalties offset by a SEP. 21. Total number of permit applications backlogged. 22. Total number of permit applications received. 23. Total number of permits issued. 24. Total number of permits denied. 25. Total number of permit decisions made on time.
4.	Compliance and Bonding Specialist/Designate	A. Evaluate information from step 3 and evaluates per management review process. Following review process makes recommendation to Section Supervisors. B. Participates in Compliance and Enforcement Chiefs Meetings and communicates activities and important issues discussed to Section Supervisors.
5.	Section Supervisors	Receives information from steps 3 and 4 and evaluates per

Step	Who	Does What
		management review process. Following review process, directs any appropriate actions to be taken by Professional Staff as necessary.

PROCEDURES:

NOTE: Where these procedures describe an action by a division or office other than the OOGM or a department other than the DEQ, they are for information only; those actions are subject to the procedures or the respective division, office, or department. General Compliance and Enforcement Procedures that apply to all divisions/offices of the DEQ are addressed in the DEQ Policy and Procedure 04-003.

Step	Who	Does What
1.	Professional Staff	If information becomes available during enforcement case development that there may be additional violations of the NREPA or other statutes that other DEQ divisions are responsible for administering, OOGM staff should immediately bring the case to the attention of his/her supervisor for multi-media consideration.
2.	OOGM District Supervisor	If it is determined during enforcement case development that there may be additional violations of the NREPA or other statutes that other DEQ divisions are responsible for administering, the initiating District Supervisor should bring the case to the attention of the other District Supervisors and the District Coordinator, as appropriate, for discussion. If the case involves potential criminal violations, a referral to the EIS should be made per the normal procedures, and the EIS shall be involved in the case coordination efforts. The purpose of early coordination of potential enforcement actions is to facilitate appropriate multi-media coordination and to provide the other DEQ divisions and the EIS with sufficient time for investigation and case development, as well as the ability to consult with and refer the case to their respective compliance and enforcement unit staff within the same time frame as that of the initiating District Supervisor.
3.	Compliance Coordinator	Upon notification by the initiating District Supervisor of a potential multi-media enforcement case, the Compliance Coordinator shall review the potential case with the applicable District Supervisors to determine if additional violations and claims may be/are appropriate for inclusion into the enforcement action.
4.	OOGM and Other Division District Supervisors	Each District Supervisor shall review the potential case for their respective divisions, obtaining concurrence with their proposed response, as appropriate, from their division staff

Step	Who	Does What
		and management. If it is determined that it is, or may be, appropriate to include additional violations and claims in the enforcement action, the District Supervisors shall ensure that their respective staff identify the nature of such violations and claims, as well as provide a time frame for conducting any investigations necessary for case development. Each District Supervisor with additional violations and claims should advise the Compliance Coordinator, the initiating District Supervisor, and other District Supervisors, as appropriate, of the nature of such violations and claims and provide the time frame for completing any necessary investigations, case development, and referral preparation.
5.	Compliance Coordinator	A. The Compliance Coordinator shall confer with the District Supervisors involved, the Division Compliance and Enforcement Chiefs' affected and appropriate EIS staff to determine the lead division. B. The Compliance Coordinator shall periodically (at the District Supervisors Meetings, or through another appropriate mechanism) follow up with the appropriate District Supervisor(s) and the EIS to ensure that the investigation, case development, and referral preparation are proceeding in a concurrent and timely manner. This follow-up shall continue until all referrals have been made to the respective compliance and enforcement staff, at which point the coordination will continue between the compliance and enforcement staff and the EIS of the respective divisions.
6.	OOGM and Other Division District Supervisors	Each division's supervisor shall be responsible for referring violations to their respective compliance and enforcement staff and the EIS for handling according to division procedures. When the District Supervisor is ready to refer the facility they shall include a list of all of the violations and claims identified through the Compliance Coordinator - generated discussions in item 1, above, in the referral package.
7.	Compliance Coordinator	Upon receipt of an enforcement referral from the District Supervisor, the Compliance and Enforcement Chief of the lead division shall notify the other Compliance and Enforcement Chiefs and the EIS that the referral has been received and shall: a) confirm that the other divisions do not have or have chosen not to pursue a potential claim; or b) confirm the status of the other divisions' progress on referring potential violations and claims to their respective compliance and enforcement staff, so that all claims can be addressed simultaneously in a joint enforcement action, including a joint referral to the DAG,

Step	Who	Does What
		unless the case has been or will be resolved in another fashion, i.e. Administrative Consent Order, criminal prosecution, etc. The EIS Chief and Compliance and Enforcement Chiefs involved shall determine the appropriate case strategy to be pursued if criminal violations are involved. The lead division shall coordinate the joint referral to the DAG for civil action.
8.	Other Division Compliance and Enforcement Chiefs	A. Review the case with the lead division's Compliance and Enforcement Chief to determine if additional claims that fall under their respective jurisdiction need to be included. If a division recommends that additional violations and claims be added, that division should be prepared to support those claims, including a claim for civil fines and penalties, in the enforcement action or reach an otherwise agreed upon approach with the lead division. In the alternative, a division may identify a potential claim and indicate that they do not intend to pursue it. B. The other Compliance and Enforcement Chiefs shall ensure that the applicability of their respective division's policies and procedures, as they relate to the violations and potential claims and the scope of the referral, are appropriately addressed. The other Compliance and Enforcement Chiefs shall calculate appropriate civil fines and penalties and provide the amounts of any cost recovery or natural resource damage claims proposed to be included in the enforcement action.
9.	Compliance and Enforcement Chiefs	At the time a case is referred to the DAG, and as necessary thereafter, the Compliance and Enforcement Chiefs shall meet to define their respective roles and provide for effective interdivisional coordination as the case proceeds.

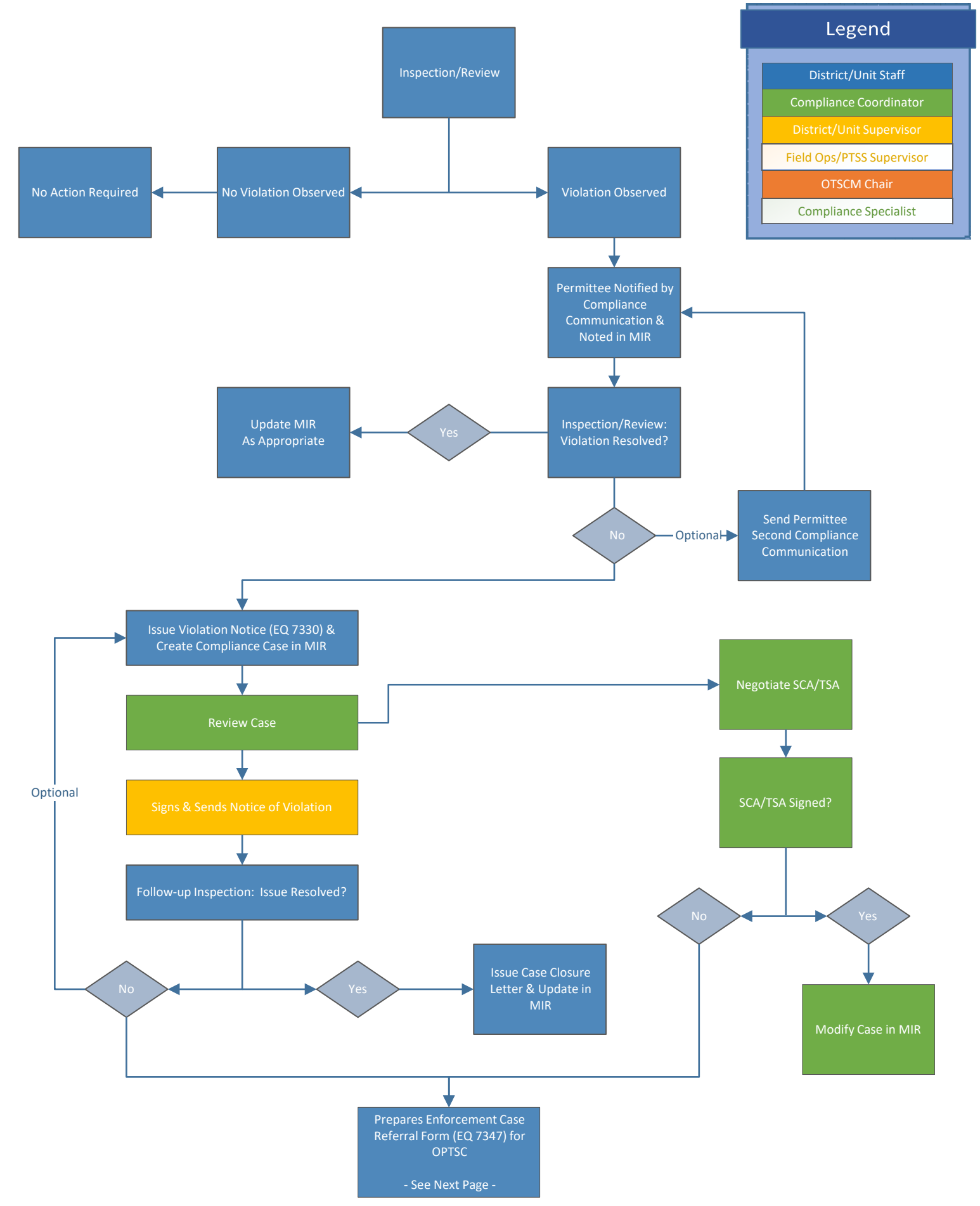
OFFICE CHIEF APPROVAL:

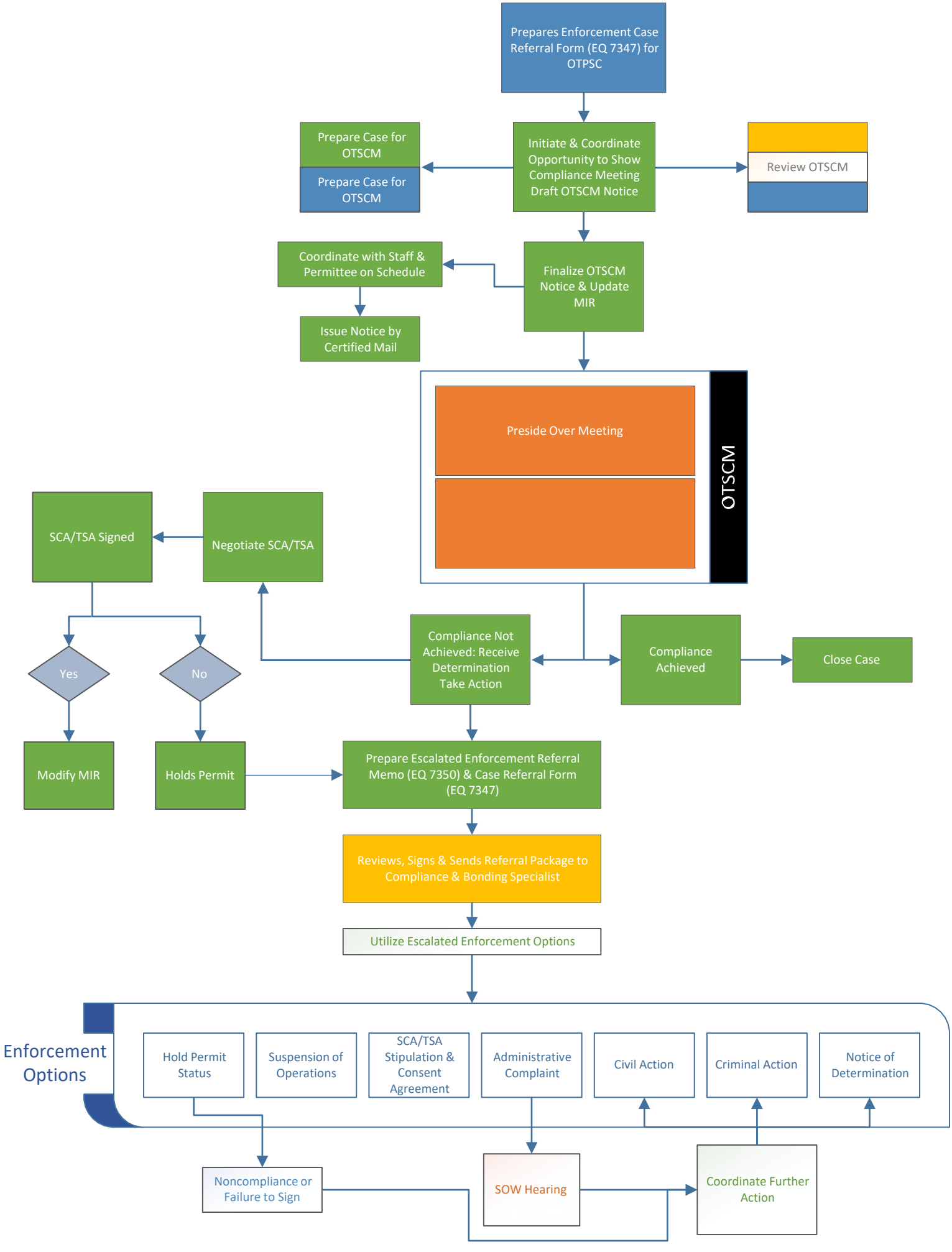
Harold R. Fitch, Chief
Office of Oil, Gas, and Minerals

AppendixA

ComplianceandEnforcementProcessFlowchart

Generalized Compliance & Enforcement Flowchart




Prepares Enforcement Case Referral Form (EQ 7347) for OTPSC
Prepare Case for OTSCM
Prepare Case for OTSCM
Initiate & Coordinate Opportunity to Show Compliance Meeting Draft OTSCM Notice
Review OTSCM
Coordinate with Staff & Permittee on Schedule
Finalize OTSCM Notice & Update MIR
Issue Notice by Certified Mail
Preside Over Meeting
OTSCM
SCA/TSA Signed
Negotiate SCA/TSA
Yes
No
Compliance Not Achieved: Receive Determination Take Action
Compliance Achieved
Close Case
Modify MIR
Holds Permit
Prepare Escalated Enforcement Referral Memo (EQ 7350) & Case Referral Form (EQ 7347)
Reviews, Signs & Sends Referral Package to Compliance & Bonding Specialist
Utilize Escalated Enforcement Options
Enforcement Options
Hold Permit Status
Suspension of Operations
SCA/TSA Stipulation & Consent Agreement
Administrative Complaint
Civil Action
Criminal Action
Notice of Determination
Noncompliance or Failure to Sign
SOW Hearing
Coordinate Further Action

AppendixB

Forms

EQ1083 Referral Memo to Deputy Director

TO: Jim Sygo, Deputy Director

FROM: **[insert division chief's name]**, Chief, **[insert division name]** Division

DATE:

SUBJECT: **[insert Site name], [insert County name]** County
[insert Site ID No. or other division identifier]

The attached letter and briefing report are provided for your consideration. Please contact me at **[insert telephone number]** or **[insert name of other division contact/Compliance and Enforcement Chief]** at **[insert telephone number]** if you have questions regarding this matter.

Attachments

cc: **[insert name of other division contact]**, **[insert division acronym]**

EQ 0184 Referral Memo to Deputy Director

[insert date]

{This is intended to be a ONE-PAGE letter. Use Arial 12 font, if possible; otherwise, Arial 11 font will be accepted. Replace all text in brackets with the appropriate information. All information inserted into the document should follow the *Department of Environmental Quality Correspondence Guidelines*.}

ATTORNEY-CLIENTPRIVILEGE

The Honorable Bill Schuette
Attorney General
Department of Attorney General
P.O. Box 30212
Lansing, Michigan 48909

Dear Attorney General Schuette:

The Department of Environmental Quality (DEQ) requests Department of Attorney General (DAG) assistance in [insert statement of goal (e.g., negotiating a legally binding agreement)] related to the [insert facility/company name and city]. [Briefly define the nature of the violation or other statutory provision that necessitates the referral. Include a reference to the specific statutory provision.]

The DEQ requests that the DAG [briefly describe the type(s) of action we are requesting the DAG to take (e.g., obtain site access or injunctive relief, negotiate a voluntary Administrative Order by Consent, provide counsel to an administrative action, file a complaint in an adversarial proceeding, etc.). Specify the specific statutory authority for that action (NREPA citation) and the specific elements that need to be addressed by the action (e.g., securing implementation of response activities, reimbursement of state costs, assessment of a fine and penalties, assessment of natural resource damages, placement of a lien, etc.] [If appropriate, insert: If a voluntary agreement cannot be reached in a timely manner, we also request that the DAG take all necessary legal actions, including the filing of a lawsuit, to compel (insert name of person/entity) to comply with (specify provisions).]

[If applicable, insert: Assistant Attorney General [insert name] has previously assisted the DEQ in [action] concerning this site.] A briefing report is enclosed for your information. If you have any questions, please contact [insert division/office chief's name], Chief, [insert division/office name], at [insert telephone number]; or you may contact me.

Sincerely,

BRIEFING REPORT
[insert company/individual's name]
[insert facility/company street address]
[insert city name], [insert county name] County, Michigan
Site ID No. [insert number]

{This briefing report is intended to follow the *Department of Environmental Quality Correspondence Guidelines* (page 60) for a Briefing Paper. Use Arial 12 font, if possible; otherwise, Arial 11 will be accepted. Replace all text in brackets with the appropriate information. If this briefing is for a contested case referral, use the division/office name and acronym in addition to the department name.}

ATTORNEY-CLIENTPRIVILEGE

Issue or Request

{State the issue in a clear and concise manner. This can be accomplished in a few sentences or greater detail, if necessary, to describe the issue.}

This briefing report has been prepared to support the referral of the [insert facility/company name and acronym] to the Department of Attorney General (DAG) for [very briefly state the goal/objective of the referral (e.g., assistance in seeking site access or injunctive relief, negotiating a voluntary agreement, filing a complaint in an adversarial proceeding, etc.) and state the relief sought (e.g., to seek implementation of response activities, reimbursement of costs, placement of a lien, etc.)].

Background/Facts

{This section is intended to provide a basis or foundation to further describe the issue. Provide a summary of the RELEVANT site/company history to the issue at hand.}

[Include such information as:
- Type of business conducted as it relates to the environmental problem.
- Location of the facility/company.
- Relative size of the environmental issue/facility or company.
- Names of liable parties (LP).
- Dates of ownership and/or operation of facility/company by LP along with supporting evidence.
- Factual basis to support the determination that there is/was a violation, or release or threatened release of hazardous substances that exceeds an applicable discharge standard/cleanup criteria, including information that links the discharge/release or threatened release to the LP's activity that caused the discharge/release or threatened release. (This may need to be tailored to each program area.)
- The nature and extent of response activities conducted to date, who conducted those response activities, and the results of investigations into the nature and extent of

contamination. Include specific information regarding the performance of Remedial Investigation/Feasibility Study activities, interim response actions, or other response activities at the facility/company. Provide information on the documented concentrations of contaminants as compared to appropriate criteria in order to establish the magnitude of the problem.

- Summary of additional response activities that need to be performed at the facility/company.
- Use of affected properties – industrial, commercial, residential, etc.
- If applicable, impact on, and/or damage to, natural resources.
- Summary of response activities taken by the DEQ, if any, and the approximate costs incurred by the State to date.
- Describe other regulatory considerations, if applicable.]

Analysis

[Describe the reasons why a referral is necessary, including a demonstration that the division/office has exhausted its administrative options or reasons why the problem is so egregious or of the nature that requires immediate referral to the DAG. For example, summarize relevant dates and types of actions initiated by the DEQ and the LP's response, both positive and negative, to DEQ requests, including DEQ requests that LP take response actions at the facility/company, and the LP's responses to information requests, notice letters, demand letters, attempted consensual agreement negotiation, etc. If the DEQ has had no recent contact with the LP, an effort should be made to determine the LP's current position regarding compliance/noncompliance prior to the referral being made (unless the violation is egregious).]

Recommendation

[Provide specific suggestions for resolution of the issue or problem including the relevant statutory remedies (and citations). Also describe why voluntary/DEQ compliance has not/will not be obtained and why DAG assistance is necessary. Include specific justification.]

Staff Contacts

{Revise this section as appropriate for each division/office.}

[Insert project manager's name] is the project manager assigned to [insert facility/company acronym] and may be reached at [insert telephone number] or [insert e-mail ID]@michigan.gov. [Insert district enforcement coordinator's name] is the district enforcement coordinator and may be reached at [insert telephone number] or [insert e-mail ID]@michigan.gov. We request that the assistant attorney general assigned to this case contact [insert compliance and enforcement chief's name], Chief, [insert compliance

and enforcement section/unit name], [insert division/office name/acronym], at [insert telephone number] or [insert e-mail ID]@michigan.gov. [Insert compliance and enforcement chief's name] will coordinate a team meeting at which a case strategy will be formulated and staff assignments will be made.

[Optional: The DAG staff time should be charged to Index Code No. [insert Index Code number], PCA No. [insert PCA number], and Project Code No. [insert Project Code number].

Prepared by: [insert name and title]
[insert district/section/unit name]
[insert division/office name]
Department of Environmental Quality
[insert date]

OTHER DEPARTMENT BUSINESS: PUBLIC HEARINGS AND MEETINGS:

DEADLINE FOR PUBLIC COMMENT REGARDING A NOTICE OF DETERMINATION. The Office of Oil, Gas, and Minerals (OOGM) has issued a Notice of Determination for a well known as the , Permit Number , located in Section of **TOWNSHIP** in **COUNTY.** Any owners, operators, persons with working interest or persons with standing may contest the Notice of Determination by submitting a petition for a hearing to show cause in accordance with Administrative Rule 324.1202 promulgated under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Petitions for Hearing may be submitted to ***Ms. Susan Maul,*** OOGM, P.O. Box 30256, Lansing, Michigan 48909-7756, or via e-mail to mauls@michigan.gov by . Information Contact: ***Mr. Joe Pettit***, OOGM, pettitj@michigan.gov,or 517-335-6766.

PUBLIC NOTICE Department of
Environmental Quality Office of Oil,
Gas, and Minerals

The Office of Oil, Gas, and Minerals (OOGM) has issued a Notice of Determination (NOD) pursuant to Sections 61505 and 61519 of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The NOD orders the permittee of record to repair its well, plug and abandon its well, perform site restoration activities, or perform response activities. If the permittee of record fails to comply with the NOD, then the OOGM intends to repair the well, plug and abandon the well, perform site restoration activities, or perform response activities to enforce the NOD.

Well Name & Number	Permit Number	Permittee Of Record	Township	County

Any owners, operators, working interest partners, or persons with standing may challenge the NOD by submitting a petition for a Supervisor of Wells hearing to show cause in accordance with Administrative Rule 324.1202 promulgated under Part 615. Submit Petitions for Hearing to Susan Maul, Michigan Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756, or via e-mail to mauls@michigan.gov by

.

For additional information go to www.michigan.gov/deq or contact Joe Pettit, Compliance and Bonding Specialist at 517-335-6766 or via e-mail at pettitj@michigan.gov.

Dan Wyant
Director
517-284-6700

Enclosure
cc/enc: Mr. S. Peter Manning, DAG
Mr./Ms. [insert Assistant Attorney General's name, if mentioned in letter], DAG
Mr. Jim Sygo, Deputy Director, DEQ
Mr./Ms. [insert division/office chief's name], DEQ

EQ 7329 Compliance Communication Letter

, ,

Dear :

SUBJECT: **COMPLIANCECOMMUNICATION**
PN , (Well/facility name), (County)

On , staff of the Office of Geological Survey (inspected, reviewed records, etc.) on the above site(s).

(Include a brief description of the compliance issue or violation(s).)

(Include a summary of any instructions or directives given by DEQ staff to the regulated entity.)

We anticipate and appreciate your cooperation in resolving this matter, or contacting us with an acceptable alternative, by (date). If you have any questions, please feel free to contact me.

Sincerely,

Unit or District Office
Office of Geological Survey

cc: Supervisor, Cadillac District Office, DEQ

EQ 7330 Violation Notice

,

Dear :

SUBJECT: **VIOLATIONNOTICE**
Compliance Case No. , and Case Name

Staff of the Office of Oil, Gas, and Minerals (OOGM), Department of Environmental Quality (DEQ) conducted ***(a records review, an inspection)*** pursuant to the authority granted in Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), on ***(Date)*** for the following well(s) and surface facilities:

List:
(Well name and number, permit number, township and county) and/or
(Facility name and number, Mir facility number, township and county)

Based upon staff observations, the OOGM alleges that **(Company)** is in violation of administrative rules promulgated pursuant to Part 615 as detailed below.

(Describe in narrative the observation and *what provisions of the law, rule, or permit that were violated with only a reference to the specific law or rule citation or specific permit for each well. Do note copy rules verbatim.)*

In order to bring your operation into compliance with the statute, the following measures need to be taken.

1. ***(Specify the action that needs to be undertaken to return the company to compliance with deadline date)***
2.

The above measures shall be taken by the date(s) specified above. Please contact ***(staff person, address and phone)***, when the work has been completed and/or if you have any questions or if you wish to submit factual information that may negate the alleged violation(s). We anticipate and appreciate your cooperation in resolving this matter.

Sincerely,

District Office
Office of Oil, Gas, and Minerals

cc: , District Supervisor, DEQ
District Compliance Coordinator, DEQ
Compliance and Bond Specialist, DEQ
District File

(For Second Violation Notice substitute the following sentences in place of the sentence "We anticipate and appreciate…..)

If ***(Company)*** fails to achieve compliance or contact this office to propose an acceptable compliance schedule by the dates specified above, this matter will be referred to the Permits and Technical Services Section, Office of Oil, Gas, and Minerals. This referral will initiate appropriate enforcement action.

Appendix For Spill Clean Up Requiring Hydro: Alternative Wording for action needed to be taken:

1. Provide documentation as specified by the rule above and on form EQP 7233 describing the spills and provide documentation of cleanup of the above referenced spills.

2. Remove visibly contaminated soils by 11/22/04. Samples shall be collected from the bottom and sides of the excavation. Soil samples shall be analyzed as indicated below in paragraph 3.d.

3. Conduct a hydrogeologic investigation of the site. The minimum requirements for a hydrogeologic investigation are as follows:

    a. A soil boring shall be taken at a sufficient depth and spacing to determine impact of the spill on soils. (Samples shall be analyzed every five feet, if appropriate).

    b. Wells shall be installed of sufficient number and location in order to:

        1) determine the direction of groundwater flow;

        2) sample the groundwater in the area of greatest discharge and down gradient; and

        3) obtain a background water quality sample.

    c. A minimum of three wells shall be installed and set in a triangular pattern around the spill to determine general direction of groundwater flow across the site. Once the direction of groundwater flow is determined, a boring (both up gradient and down gradient of the spill) must be drilled and the groundwater vertically sampled to determine quality. A well shall be installed in the zone of highest concentration, if contamination is found in either boring.

    d. Water samples shall be analyzed for the following parameter(s) by an accredited laboratory:

Inorganic: chloride, calcium, sulfate, potassium, magnesium, sodium, bicarbonate and carbonate.

Organic: benzene, toluene, ethylbenzene, and xylene (BTEX).

Soil samples shall be analyzed for sodium, chloride, BTEX and Total Petroleum Hydrocarbons (TPH)

Groundwater contamination is defined as: measurements above five parts per billion (ppb) benzene, 790 ppb toluene, 74 ppb ethylbenzene, and 280 ppb xylenes (BTEX) in the groundwater, as determined by laboratory samples of groundwater using Analytical methods and recommended detection levels as described in the current Department of Environmental Quality, Remediation and Redevelopment Division (RRD) Operational Memorandum #2 (*Sampling and Analysis Guidance, October 22, 2004*). Chloride in the groundwater which measures above 250,000 ppb (250 ppm) chloride (as determined by laboratory sample analyses) is also contamination as described in the RRD Operational Memorandum #1 (*Part 201 Cleanup Criteria / Part 213 Risk-based Screening Levels, September 28, 2012*)

Soil contamination is defined as: contamination which measures above 100 ppb benzene, 16,000 ppb toluene, 1,500 ethylbenzene, and 5,600 ppb xylenes in the soil, as determined by laboratory sample(s) of soil, using Analytical methods and recommended detection levels as described in the current RRD Operational Memorandum #2 (*Sampling and Analysis Guidance, October 22, 2004*). Contamination in soils which measures above 5,000 microgram milligrams per kilogram chloride or above 2,500 milligrams per kilogram sodium as determined by laboratory analyses of sample(s) is also contamination as described in the RRD Operational Memorandum #1 (*Part 201 Cleanup Criteria / Part 213 Risk-based Screening Levels, September 28, 2012*). Contamination in soils which measures above 10,000 mg/kg (ppm) Total Petroleum Hydrocarbons Diesel Range Organics (TPHDRO) as described in Supervisor's Letter 1997-1.

In the event that there is soil and/or groundwater contamination and the contaminant concentrations exceed the residential cleanup requirements of Section 20120a(1)(a) or (17) of the NREPA, then the [well/facility] site and property constitutes a "facility" regulated under Part 201.

An owner or operator of property who has knowledge that the property is a facility, as defined under Part 201, has certain "due care" obligations under Section 20107a of Part 201 of the NREPA. The owner or operator is responsible for taking measures to prevent exacerbation of the existing contamination, taking response activities necessary to allow the use of the property to be conducted in a manner that protects public health and safety, and to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that could result.

If the owner/operator is responsible for the activity causing the release, in addition to the obligations described previously, the owner/operator also has an affirmative obligation under Section 20114 of Part 201 to conduct certain emergency and interim response activities and diligently pursue the remediation of the property to achieve the cleanup criteria specified in Part 201. The liability provisions of Part 201 are set forth in Section 20126 and certain exceptions, exemptions and defenses are available.

The Michigan Department of Environmental Quality (MDEQ) advises you to become familiar with Part 201 of the NREPA and to take the necessary steps to comply with any statutory obligations you may have.

4. Results of the soil sampling and hydrogeological study must be submitted in a report to the OOGM Cadillac District Supervisor by January 22, 2005. If groundwater contamination is found, the submitted report must include a site map, all data obtained, analysis of data, interpretation, conclusion, and a Remedial Action Plan (RAP). The RAP must specifically address the following:

    a. Chemical and static water levels tabulated in chronological order.

    b. Cross-sections (down the axis and across the axis of the plume) with vertical sampling intervals and results, lithology, and screen locations indicated on the cross-sections.

    c. A static water level contour map demonstrating groundwater flow direction.

    d. A site map showing all surface features within a quarter of a mile of the site, including homes, surface waters, wetlands, roads, supply wells, soil borings, monitor wells, etc.

    e. Area water well records (match well records with homes on map) within a quarter of a mile from the site. Survey of homeowners where well records are not available.

    f. Well records for monitor wells and soil borings.

    g. The elevations of screens in monitor wells.

    h. The description of area and regional geology.

    i. An is contour map of plume concentrations.

    j. The interpretation of data and conclusions.

5. In the event groundwater contamination is found, you must also submit a work plan for a remedial investigation to fully determine the vertical and horizontal extent of the groundwater contamination.

MDEQ – OFFICE OF OIL, GAS, AND MINERALS
COMPLIANCE AND ENFORCEMENT CASE REFERRAL FORM

Purpose of Referral: ☐ OTSCM ☐ Escalated Enforcement

Permittee:	OOGM Case Number:
Permit Number:	Well(s):
District/Unit:	Date:
Staff:	Telephone:
Supervisor:	Telephone:

INFORMATION INCLUDED WITH THIS REFERRAL

☐1. Correspondence copies; include certified return receipts	
Date of inspection:	
Compliance Communication(s) dated:	
Date VN sent via U.S. mail:	
Date return receipt signed:	
(Non-Pickup) Date VN returned:	
Date Second VN sent via U.S. mail:	
Date return receipt signed: .	
OTSCM Determination Memo:	
☐3. Field notes with dates from: .	to:
☐4. Chronology	
☐5. Photos	
☐6. Sample analysis	
☐7. Landfill, trucking receipts	
☐8. Other	
☐9. Orphan Well Analysis	
Date Case Accepted:	Date Case Assigned to:
Date Returned to District:	
Reason:	
Compliance Staff:	

Opportunity to Show Compliance Meeting (OTSCM)
Structure & Language

Chairperson's Instructions, Opening Statement, and Closing Statement for OTSCM

The statements given below are to be used for all Opportunity to Show Compliance Meetings (OTSCM) that you conduct as an OTSCM Chairperson. The Opening Statement shall be read at the beginning of the OTSCM and the Closing Statement shall be read at the end of the meeting. ***You must not deviate from these written statements***. Should the permittee(s), or his/her representative, request a copy of the statements, please provide same.

Meeting Chairpersons shall not involve themselves in settlement negotiation either during or after the close of the meeting. Should negotiations commence during the meeting, the meeting chairperson shall adjourn the meeting and allow staff to continue with the negotiations. The meeting can be reconvened at the request of any or all persons involved. All discussions following the close of the meeting shall be directed to the Compliance Unit.

Permittee(s) may be represented by an attorney at the meetings. However, the permittee's representative shall have no status beyond that which is afforded the permittee(s) who is alleged to be in violation.

The permittee(s) may also cause to be made a record of the proceedings of the OTSCM Meeting for their personal use. This record will not be utilized by the supervisor's representative and shall not be accepted as a part of the record in a subsequent formal hearing.

OPENING STATEMENT FOR OTSCMs

The purpose of this Opportunity To Show Compliance Meeting is to give _____ an Opportunity To Show Compliance with Part 615 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and rules promulgated thereunder, and (if applicable, Part 31) and promulgated rules by demonstrating that the violations alleged in the Enforcement Notice provided to _____dated _____have been corrected or are inaccurate.

These proceedings are to be based solely on the Enforcement Notice and only information pertinent to the Enforcement Notice will be considered in my determination. If anyone presents points which are not responsive to the matter at hand, I may stop the discussion. In any event, I will not consider unrelated matters in my decision.

A finding of noncompliance with Part 615, may cause drilling permits and permit transfers to be withheld from _____or it may result in shut-in of production in certain cases. If you are determined to be in noncompliance with the statute, I will recommend that escalated enforcement action be taken.

This is an informal meeting:

- There is no sworn testimony.
- Anyone who is a part of these proceedings may ask or answer questions.
- You have the right to have an attorney present, he or she may speak for you, but your representative shall have no status beyond that which is afforded to you, as the permittee.
- You have the right to make a record of these proceedings for your personal use.
- *This record will not be utilized by the Supervisor of Wells representative and shall not be accepted as part of the record in a subsequent formal hearing*.

As the Meeting Chairperson, it is my job to first listen to the Compliance and Enforcement Unit staff present the allegations and then listen to your response to those allegations. Compliance and Enforcement staff may use other DEQ staff to discuss the basis of the Notice of Violation.

You _____will be given the opportunity to respond to the allegations listed in the Notice of Violation as soon as staff's presentation is complete. When you have finished your response, I will ask if there are more comments and, if there are none, close the meeting.

Based on the presentation and your response I will determine if the allegations in the Notice of Violation have been supported or refuted and, based on that, if compliance with the Act(s) is demonstrated.

Do you have any questions on why we are here or on how the meeting will be conducted?

CLOSING STATEMENT

If there are no further statements, I will take into consideration all relevant facts that have been presented here and make a finding in the next 15 working days. You will receive a copy of my findings resulting from these proceedings.

This meeting is now closed.

(OPTIONAL: Written material as discussed during the hearing will be accepted until DATE.)

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

DATE

TO: Adam Wygant, Supervisor, Technical Services Section

FROM: , OPTSC Meeting Chairperson

SUBJECT: Opportunity to Show Compliance Meeting, Company/Case #

On_____, an Informal Opportunity to Show Compliance meeting was held to allow _____to show compliance with Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); MCL 324.61501 et seq. A Notice of Violation dated _____ was sent to _____informing them of the meeting. There was no representative of the company present at the meeting.

The Compliance Unit staff presented their case with supporting documentation. Based on the information supplied at the meeting, I find that _____is (or is not) in compliance with Part 615 of the NREPA and the promulgated rules. Therefore, I recommend escalated enforcement.

cc: Mr. Rick Henderson, OOGM
Mr. Joe Pettit, OOGM
Staff Person, OOGM

EQ 7349 Escalated Enforcement Referral Memo

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

TO: , Supervisor
Permits and Technical Services Section
Office of Oil, Gas, and Minerals

FROM:
Cadillac District Office
Office of Oil, Gas, and Minerals

SUBJECT: **ESCALATEDENFORCEMENTREFERRAL**
Compliance Case Number

The Cadillac District Office is requesting that the Permits and Technical Services Section initiate escalated enforcement action in accordance with the Office of Oil, Gas and Minerals (OOGM) Policy and Procedure No. 601.03, Escalated Enforcement Referrals, against concerning the following well and associated surface facility:

Well Name and Number	Permit Number	Township	County

Facility Name and Number	MIR Facility Number	Township	County

Copies of all relevant Compliance Communications and Violation Notices are attached for your convenience. If you need any additional information, please call me at .

attachments

cc: , Cadillac District Office, OOGM
, PTSS, OOGM

MDEQ – OFFICE OF OIL, GAS, AND MINERALS
FIELD TO LANSING ENFORCEMENT CASE REFERRAL FORM

Permittee: Click here to enter text.	OOGM Case Number: Click here to enter text.
Permit Number: Click here to enter text.	Well(s): Click here to enter text.
District/Unit: Click here to enter text.	Date: Click here to enter text.
Staff: Click here to enter text.	Telephone: Click here to enter text.
Supervisor: Click here to enter text.	Telephone: Click here to enter text.

INFORMATION INCLUDED WITH THIS REFERRAL

☐1. Correspondence copies; include certified return receipts	
Date of inspection: Click here to enter text.	
NOI dated: Click here to enter text.	
Date return receipt signed: Click here to enter text.	
(Non-Pickup) Date NOI returned: Click here to enter text.	
Date NOV sent via U.S. mail: Click here to enter text.	
Date return receipt signed: Click here to enter text.	
☐2. 201 Number: Click here to enter text.	Project Number: Click here to enter text.
☐3. Field notes with dates from: Click here to enter text.	to: Click here to enter text.
☐4. Chronology	
☐5. Photos	
☐6. Sample analysis	
☐7. Landfill, trucking receipts	
☐8. Other Click here to enter text.	
☐9. Orphan Well Analysis Click here to enter text.	
Date Case Accepted: Click here to enter text.	Date Case Assigned to: Click here to enter text.
Date Returned to District: Click here to enter text.	
Reason: Click here to enter text.	
Compliance and Enforcement Staff: Click here to enter text.	

EQ 7350 Enforcement Notice

CERTIFIEDMAIL

,

Dear :

SUBJECT: **ENFORCEMENTNOTICE**
Compliance Case No.

On , staff of the Office of Oil, Gas, and Minerals (OOGM), Department of Environmental Quality (DEQ), issued a Violation Notice pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, for the following well and associated surface facility:

Well Name and Number	Permit Number	Township	County

Facility Name and Number	MIR Facility Number	Township	County

The Violation Notice required ( ) to resolve the alleged violations by . On , OOGM staff re-inspected the Subject Well and associated surface is and determined that failed to resolve the following violations that were listed in the Violation Notice.

1.

2.

3.

As a result, the matter was referred to the Compliance and Enforcement Unit (CEU) for escalated enforcement action. Accordingly, the CEU is seeking formal resolution of the alleged violation by . Formal resolution of the alleged violation may be accomplished by one of the following:

- may demonstrate that compliance has been achieved;
- may present factual information in writing that should be considered regarding the alleged violation; or

- may schedule a meeting with the CEU to discuss options for satisfactorily resolving the alleged violation.

Be advised that failure to timely and adequately resolve or address the violation cited in this Enforcement Notice may result in further enforcement proceedings including, but not limited to, referral of the matter to the Department of Attorney General for commencement of civil litigation. Be further advised that this Enforcement Notice does not preclude or limit the Department of Environmental Quality's ability to initiate any other enforcement action under state or federal law as appropriate.

If you have any questions, please contact me at the number listed below.

Sincerely,

Permits and Technical Services Section
Office of Oil, Gas, and Minerals

Enclosure

cc: Mr. Adam W. Wygant, DEQ
Mr. Rick Henderson, DEQ
, DEQ
, Cadillac District Office, DEQ
, Cadillac District Office, DEQ

EQ 7351 Opportunity to Show Compliance Meeting for Part 615

,

Dear :

SUBJECT: Opportunity to Show Compliance Meeting; Compliance Case No.

Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501 et seq., and Sections 61505, 61506, 61516 and 61519 of Part 615 and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq. require the Office of Oil, Gas, and Minerals (OOGM) to offer an Opportunity to Show Compliance prior to taking action that involves the suspension, revocation, annulment, or cancellation of a permit to drill or operate.

The OOGM believes that is in violation of Part 615 at the following well and associated surface facility:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

A Violation Notice was issued to on by the Cadillac District Office. The Violation Notice required to achieve full compliance with Part 615 by . failed to achieve full compliance with Part 615 by this deadline.

An Enforcement Notice was issued to on by the OOGM. The Enforcement Notice required to achieve formal resolution of the violations by . failed to achieve full compliance with Part 615 by this deadline.

The OOGM alleges that continues to be in violation of the following Administrative Rules promulgated under Part 615.

1. Administrative Rule 324. requires to . Based upon a review of all available information, has failed to . Therefore, is in violation of Administrative Rule 324. .

2. Administrative Rule 324. requires to . Based upon a review of all available information, has failed to . Therefore, is in violation of Administrative Rule 324. .

An Opportunity to Show Compliance meeting will be held on , at in the Conference Room located on the Floor, Tower of Constitution Hall, 525 West

Allegan Street, Lansing, Michigan 48933. A map is included that can be used to locate Constitution Hall in downtown Lansing. Photo identification is required to enter the building from the public entrance that is located on the east side of building.

If achieves full compliance with the alleged violations prior to the date of the informal opportunity to show compliance meeting, and the OOGM confirms that compliance has been achieved, the meeting may be cancelled.

In the event that an informal opportunity to show compliance meeting is held, there shall be no sworn testimony or formal cross-examination of the participants. Anyone who is a part of the meeting may ask or answer questions. may make a record of the meeting for its own use. However, record cannot be utilized by the OOGM or as evidence or as part of the administrate record in any subsequent formal hearings.

Failure of to demonstrate full compliance with Part 615 may result in additional escalated enforcement action, which may include hold permit status, fines, and/or penalties.

If you have any questions, please contact me by phone at 517-284-6837, by e-mail at pettitj@michigan.gov, or by mail at Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909.

Sincerely,

Joe Pettit
Compliance and Bonding Specialist
Office of Oil, Gas, and Minerals

Enclosure

cc: , DEQ
, DEQ

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

STEVEN E. CHESTER
DIRECTOR

CERTIFIEDMAIL

,

Dear :

SUBJECT: Opportunity to Show Compliance Meeting
Compliance Case No.

Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501 et seq., and Sections 61505, 61506, 61516 and 61519 of Part 615 and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq. require the Office of Geological Survey (OGS) to offer an Opportunity to Show Compliance prior to taking action that involves the suspension, revocation, annulment, or cancellation of a permit to drill or operate.

The OGS believes that is in violation of Part 615 at the following well and associated surface facility:

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
			S , T , R		
Facility Name	**Facility Number**	**MIR Facility Number**	**Section, Town, Range**	**Township**	**County**
			S , T , R		
			S , T , R		
			S , T , R		

A Violation Notice was issued to on by the Cadillac District Office. The Violation Notice required to achieve full compliance with Part 615 by . failed to achieve full compliance with Part 615 by this deadline.

An Enforcement Notice was issued to on by the Compliance and Enforcement Unit. The Enforcement Notuce required to achieve formal resolution of the violations by . failed to achieve full compliance with Part 615 by this deadline.

The Compliance and Enforcement Unit allege that continues to be in violation of the following Administrative Rules promulgated under Part 615.

1. Administrative Rule 324. requires to . Based upon a review of all available information, has failed to . Therefore, is in violation of Administrative Rule 324. .

2. Administrative Rule 324. requires to . Based upon a review of all available information, has failed to . Therefore, is in violation of Administrative Rule 324. .

An Opportunity to Show Compliance meeting will be held on , at in the Conference Room located on the Floor, Tower of Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48933. A map is included that can be used to locate Constitution Hall in downtown Lansing. Photo identification is required to enter the building from the public entrance that is located on the east side of building.

If achieves full compliance with the alleged violations prior to the date of the informal opportunity to show compliance meeting, and the OGS confirms that compliance has been achieved, the meeting may be cancelled.

In the event that an informal opportunity to show compliance meeting is held, there shall be no sworn testimony or formal cross-examination of the participants. Anyone who is a part of the meeting may ask or answer questions. may make a record of the meeting for its own use. However, record cannot be utilized by the OGS Compliance and Enforcement Unit or as evidence or as part of the administrate record in any subsequent formal hearings.

Failure of to demonstrate full compliance with Part 615 may result in additional escalated enforcement action, which may include hold permit status, fines, and/or penalties.

If you have any questions or concerns prior to the date of the informal opportunity to show compliance meeting, please contact me.

Sincerely,

Compliance and Enforcement Unit
Office of Geological Survey

Enclosure

cc: Mr. Thomas Godbold, DEQ
, Cadillac District - DEQ
, Cadillac District – DEQ

EQ 7352 Compliance Determination Memo

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

TO: , Compliance and Bonding Specialist
Permitting and Technical Services Section
Office of Oil, Gas, and Minerals

FROM: , Chairperson

SUBJECT: Opportunity to Show Compliance Meeting
Case No.:

A Notice of Opportunity to Show Compliance Meeting was sent to on .

On , an informal Opportunity to Show Compliance Meeting was held on to allow to demonstrate compliance with Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the promulgated rules.

Based on the information presented at the meeting, I find that is in compliance with Part 615.

EQ 7360 Notice of Determination Generic

REGISTEREDMAIL

,

Dear :

SUBJECT: NOTICE OF DETERMINATION ; Compliance Case No.

is the permittee of record for the following well and associated surface facility:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

The Office of Oil, Gas, and Minerals (OOGM) has determined that failed to .

Therefore, pursuant to Section 61506 of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), the OOGM is issuing this Notice of Determination (notice) and ordering to .

If desires to challenge this notice, may file a petition by , in accordance with Administrative Rule 1202, requesting a hearing before the Supervisor of Wells in order to demonstrate why should not be required to complete the activities described in this notice. Alternatively, may voluntarily enter into a Stipulation and Consent Agreement with the OOGM by .

If fails or neglects to complete the activities as described in this notice, then pursuant to Section 61519 of Part 615, the OOGM may utilize public funds to perform the activities necessary to enforce this notice.

Please note that pursuant to Section 61519 of Part 615 that and are jointly and severally liable for any expenses incurred by the OOGM to enforce this notice. In the event that the OOGM incurs expenses and files a claim against and , the claim shall be paid by the or within 30 days. If the claim is not paid within 30 days, then the OOGM, acting for and in behalf of the state, may bring suit against or , jointly or severally, for the collection of the claim in any court of competent jurisdiction in the county of Ingham.

Also, please be advised that failure to comply with this notice may subject to enforcement under Section 61520 of Part 615, or other sanctions.

If you have any questions, please contact Mr. Joe Pettit at 517-284-6837, pettitj@michigan.gov, or Department of Environment Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals

cc: Surety
, DEQ
, DEQ

EQ 7361 Notice of Determination Violation of Agreement

REGISTEREDMAIL

,

Dear :

SUBJECT: NOTICE OF DETERMINATION; Compliance Case No.

On , entered into a Stipulation and Consent Agreement (Agreement) with the Office of Oil, Gas, and Minerals (OOGM) pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.61501 et seq. regarding the following well and associated surface facility.

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

By entering into the Agreement, waived its right to a formal administrative hearing or other administrative relief to which it may otherwise have been entitled. Both parties agreed that failure of to comply with any of the agreed upon provisions and procedures would provide further cause for the Supervisor of Wells to issue an Order.

The OOGM has determined that has failed to comply with Paragraph in the Agreement which required to . Specifically, has failed to .

Therefore, pursuant to Section 61519 of Part 615, the OOGM is ordering to by .

Pursuant to Section 61519 of Part 615, if fails or neglects to complete the activities as described in this notice by , then the OOGM may utilize public funds to perform the activities necessary to enforce this notice. and are jointly and severally liable for any expenses incurred by the OOGM to enforce this notice. In the event that the OOGM incurs expenses and files a claim against and , the claim shall be paid by the or within 30 days. If the claim is not paid within 30 days, then the OOGM, acting for and in behalf of the state, may bring suit against or , jointly or severally, for the collection of the claim in any court of competent jurisdiction in the county of Ingham.

Also, please be advised that failure to comply with a Notice of Determination may subject to enforcement under Section 61520 of Part 615, or other sanctions.

If you have any questions, please contact Mr. Joe Pettit at 517-284-6837, pettitj@michigan.gov, or Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals

cc: Surety
, DEQ
, DEQ

EQ 7362 Stipulation and Consent Agreement

STATE OF MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF OIL, GAS, AND MINERALS

In the matter of:

Case Number: _____
Date Executed: _____

In particular, the following well and associated surface facility hereinafter referred to as the "Subject Well":

, Permit Number , Section , T , R
Field, Township, County, Michigan

STIPULATIONANDCONSENTAGREEMENT

This is a Stipulation and Consent Agreement (Agreement), by and between ( ), and the Department of Environmental Quality (Department)(DEQ –find replace), by and through Harold R. Fitch, Assistant Supervisor of Wells and Director, Office of Oil, Gas, and Minerals (OOGM).

In consideration of the mutual promises and undertakings set forth below, the parties stipulate and agree as follows:

1. The Department is charged with enforcement of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501 et seq. (NREPA), and the rules promulgated thereunder.

2. The Department is charged with enforcement of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20101 et seq., and the rules promulgated thereunder.

3. Pursuant to Part 615, is the permittee of record and is responsible for the Subject Well.

4. The Subject Well is regulated under Part 615 and the rules promulgated thereunder. For purposes of the Agreement, will not raise a jurisdictional defense in any state enforcement of this Agreement.

5. By entering into this Agreement, waives its right to a formal administrative hearing or other administrative relief to which may otherwise be entitled under Part 615.

   A. The appropriate forum for any civil court proceedings is the Circuit Court of the County of Ingham, State of Michigan.

6. As long as has obligations under this Agreement, shall provide a copy of this Agreement to any prospective successor in interest prior to transfer of ownership of any property or interest owned by in the Subject Well.

7. Both parties agree under Part 615, the Agreement set forth herein is necessary to prevent waste, to alleviate pollution, impairment, and destruction of the State of Michigan's natural resources. Failure of to comply with any of the agreed upon provisions and procedures shall:

   A. Be a violation of Part 615 and may subject to civil and/or criminal enforcement actions.

   B. Provide sufficient reason to withhold the issuance or transfer of any drilling permits that may have outstanding with OOGM.

   C. Provide further cause for the Supervisor of Wells to issue an Order requiring suspension of operations of the Subject Well, and order the Subject Well plugged, if required.

   D. Authorize the State of Michigan to take any action it deems necessary in accordance with the law to prevent waste and protect the public's health, safety and welfare, and the environment.

8. Subsequent to execution of this Agreement, compliance violations in the (Enforcement Notice) shall be considered resolved.

9. Subsequent to execution of this Agreement, shall be released from Hold Permit Status.

10. The Subject Well is not in compliance with Part 615 and desires to make certain that the Subject Well is in compliance. Toward that end, the parties agree and stipulate to abide by the following:

    A. By , shall

    B. By , shall

    C. shall submit written notification of completed activities to the OOGM District Supervisor at , , , .

11. Any delay in compliance with the terms and conditions set forth in this Agreement attributable to a "*Force Majeure*" shall not be deemed a violation of this Agreement. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of , such as an act of God. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions.

    A. shall notify the District/Unit Supervisor by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Written notice shall be submitted to the District/Unit Office, Office of Oil, Gas, and Minerals, (P.O. Box 30256, Lansing, MI 48909-7756)

    B. The Supervisor of Wells or designee may grant a reasonable extension to a deadline in the Agreement if it is determined that the delay in compliance will result in the conditions

of the Agreement being met. (Upon receipt of a delay and request for extension, the OOGM may grant a reasonable extension to a deadline in order to achieve compliance.)

12. agrees to pay stipulated penalties at the following rate per well for failure to meet any deadlines or perform any activities listed in this Agreement.

A. Fifty Dollars ($50.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, up to and including the 31st day. The maximum penalty per well for the first month is calculated as the number of days in the month multiplied by $50.00. Example: 31 days x $50.00 = $1,550.00 per well in penalties for the first month.

B. One Hundred Dollars ($100.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, after the 31st day. The maximum penalty per well for each month thereafter is calculated as the number of days in the month multiplied by $100.00. This amount is then added to the preceding month's total. Example: a two month penalty is calculated as 31 days x $100.00 = $3,100.00 per well in penalties plus that of the preceding first month $1,550.00 = $4,650.00 per well.

C. The maximum penalty for failure to meet the requirements in this Agreement is $50,000.00 per well.

D. Payment of a penalty does not release from the responsibility or liability for complying with the requirements of the NREPA and the promulgated rules.

E. Payments shall be made payable to the State of Michigan within 30 days of any missed deadline. Submit payments to:

Michigan Department of Environmental Quality
Administration Division (Financial and Business Services Division)
P.O. Box 30473
Lansing, Michigan 48909-7973

13. If fails to meet the conditions of this Agreement, the Supervisor of Wells may issue a Notice of Determination requiring any Subject Well that is not in compliance with a deadline within this Agreement to be cased, repaired, or properly plugged and abandoned.

14. Pursuant to Section 61519 of Part 615, if fails to comply with the requirements set forth in the Notice of Determination within 30 days, the Supervisor of Wells may immediately case, repair, or plug a Subject Well that is in violation of the requirements set forth in the Notice of Determination and claim the bond without further administrative action.

A. In the event , the owner, or operator, or surety fail to pay a claim within 30 days, the Supervisor of Wells may bring suit against , the owner, the operator, or surety, jointly and severally for collection of the claim.

15. This Agreement shall terminate upon written request of and written approval from the Department. Department approval shall be based upon showing that it has fully complied with all provisions of this Agreement and has paid in full all stipulated penalties owed to the State of Michigan under this Agreement.

16. Nothing in this Agreement shall, in any manner, restrict or limit the nature or scope of response actions that the Department may take in fulfilling its responsibilities under state and federal law.

IT IS SO AGREED:

Dated: _____ _____

,
- -

The foregoing instrument was acknowledged before me this _____day of _____, _____ by _____on behalf of the_____.

_____
Notary Public
_____County, _____(State)
My Commission Expires _____

Dated: _____ _____

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
P.O. Box 30256
Lansing, MI 48909-7756
517-284-6823

MODEL CONSENT ORDER DOCUMENT

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings	)	
Against ,	)	
A Corporation organized under the laws of the	)	
State of Michigan and doing business in	)	OOGM No. ____-20__
Township, County	)	
State of Michigan	)	

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environmental Quality ("DEQ") Office of Oil, Gas, and Minerals ("OOGM") against , a Michigan Corporation, doing business at Township, County, State of Michigan. The DEQ alleges that the Company has violated . Specifically, . All of the alleged violations are specified in a Notice of Violation ("NOV") sent to the Company on . and DEQ stipulate to the termination of this proceeding by entry of a Stipulation for Entry of a Final Order by Consent ("Consent Order").

, and DEQ stipulate as follows:

1. The Natural Resources and Environmental Protection Act, 1994 PA 451, ("Act 451"), as amended, MCL 324.101 et seq is an act to control pollution in this State.

2. Article II, Pollution Control, Part 615 of Act 451 ("Part 615"), MCL 324.61501 et seq provides for oil and gas control regulations in this State.

3. The Department of Environmental Quality ("DEQ") is authorized pursuant to Section 61503 of Part 615 to administer and enforce all provisions of Part 615. Section 61503 of Part 615 provides the authority to the Director of the DEQ to delegate powers and duties.

4. The Director has delegated authority to the Assistant Supervisor of Wells to enter into this Consent Order pursuant to Letter-OOGM-615-01, effective date October 1, 1995, revised October 2, 2012.

5. The termination of this matter by a Consent Order pursuant to Section 61506 of Part 615 is proper and acceptable.

6. Article II, Pollution Control, Part 625 of Act 451 ("Part 615"), MCL 324.62501 et seq provides for mineral well control regulations in this State.

7. The Department of Environmental Quality ("DEQ") is authorized pursuant to Section 62503 of Part 625 to administer and enforce all provisions of Part 625. Section 61503 of Part 625 provides the authority to the Director of the DEQ to delegate powers and duties.

8. The Director has delegated authority to the Assistant Supervisor of Wells to enter into this Consent Order pursuant to Letter-OOGM-625-01, effective date April 9, 2009, revised October 2, 2012.

9. The termination of this matter by a Consent Order pursuant to Section 62508 of Part 625 is proper and acceptable.

10. Article II, Pollution Control, Part 201 of Act 451 (“Part 615”), MCL 324.62501 et seq provides for environmental remediation control regulations in this State.

11. The Department of Environmental Quality (“DEQ”) is authorized pursuant to Section 20134 of Part 201 to administer and enforce all provisions of Part 201. Section 20134 of Part 201 provides the authority to the Director of the DEQ to delegate powers and duties.

12. The Director has delegated authority to the Chief of the Office of Oil, Gas, and Minerals to enter into this Consent Order pursuant to Letter-OOGM-201-05, effective date December 14, 1995 revised October 1, 2012.

13. The termination of this matter by a Consent Order pursuant to Section 20134 of Part 201 is proper and acceptable.

14. Upon execution of this Consent Order, compliance violations alleged at the Opportunity to Show Compliance meeting held on , shall be considered resolved and shall be released from Hold Permit Status.

15. and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by that the law has been violated.

16. This Consent Order becomes effective on the date of execution ("effective date of this Consent Order") by the Assistant Supervisor of Wells.

17. shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM

The wells listed below are not in compliance with Part 615 and desires to return the wells and associated facilities to compliance.

Well Name	Permit Number	Section, Town, Range	Township	County

Toward that end, and DEQ agree and stipulate to abide by the following:

18. On and after the effective date of this Consent Order, shall .

19. On and after the effective date of this Consent Order, shall .

20. On and after the effective date of this Consent Order, shall .

GENERAL PROVISIONS

21. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

22. Upon completion of the activity associated with a specific deadline, shall submit a notification of completed deadlines for those activities in Compliance Program to the Compliance & Enforcement Unit Supervisor. A copy of the notification should also be sent to the OOGM District Supervisor.

23. Within 30 days after the effective date of this Consent Order, shall pay to the General Fund of the State of Michigan, in the form of a check made payable to the "State of Michigan" and delivered to the Michigan Department of Environmental Quality, Financial & Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909, a settlement amount of , which includes OOGM costs for investigation and enforcement. This total settlement amount shall be paid within 30 days of the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the Agreement Identification No. OOGM- on the face of the check. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on by law.

24. On and after the effective date of this Consent Order, if fails to comply with paragraph , , or of this Consent Order, shall pay stipulated fines of $100.00 per violation per day up to $50,000.00 per well. On and after the effective date of this Consent Order, if fails to comply with any other provision of this Consent Order, the Company shall pay stipulated fines of $50.00 per violation up to $2,500.00 per well. Stipulated fines submitted under this Consent Order shall be by check, payable to the “State of Michigan” within 30 days of demand and shall be delivered to the Michigan Department of Environmental Quality, Financial & Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909. To ensure proper credit, all payments shall include the Agreement Identification No. OOGM- on the face of the check. Payment of stipulated fines shall not alter or modify in any way the Company's obligation to comply with the terms and conditions of this Consent Order.

25. The OOGM, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable state law, rule, regulation, permit, or DEQ administrative order. However, the OOGM is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

26. To insure timely payment of the settlement amount assessed in paragraph and any stipulated fines assessed pursuant to paragraph of this Consent Order, shall pay an

interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest penalty shall be determined at a interest rate equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by shall be made to the State of Michigan in accordance with paragraph of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by before any remaining balance is applied to subsequent payment amount or interest penalty.

27. waives its right to a formal administrative hearing or other administrative relief to which may otherwise be entitled. also agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph . also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph of this Consent Order. In addition, agrees that said fines have not been assessed by the DEQ pursuant to Section 20139 of Part 201 and therefore are not reviewable under Section 20139 of Part 201.

28. reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by DEQ of stipulated fines is made. The appropriate forum for any civil court proceedings is the Circuit Court of the County of Ingham, State of Michigan.

29. Failure of to comply with the provisions set forth in this Consent Order shall provide sufficient reason for OOGM to withhold the issuance or transfer of any drilling permits that may have outstanding.

30. Failure of to comply with the provisions set forth in this Consent Order shall provide sufficient reason for OOGM to order the suspension of production operations at all well sites permitted to .

31. Failure of to comply with the provisions set forth in this Consent Order shall provide sufficient reason for the Assistant Supervisor of Wells to issue a Notice of Determination pursuant to Section 61519 of Part 615. If fails to comply with the requirements set forth in a Notice of Determination within 30 days, then the Assistant Supervisor of Wells may immediately complete the required activities and claim the conformance bonds without any further administrative action. The claim shall be paid by the owner, or operator, or surety within 30 days, or the Supervisor of Wells may bring civil suit against , or surety, jointly and severally for the collection of the claim.

32. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, the Consent Order may be terminated only upon the issuance of a written notice of termination issued by the OOGM Chief. Prior to issuance of a written notice of termination, shall submit a request consisting of a written certification that has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and, (iv) such information as may be requested by the OOGM Chief. Termination of this Consent Order

shall be executed upon completion of the terms and conditions of this contract and will not be unreasonably withheld.

33. In the event sells or transfers , it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, shall also notify the OOGM Compliance & Enforcement Unit Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the OOGM Compliance & Enforcement Unit Supervisor within 30 days of assuming the obligations of this Consent Order.

34. Section 61506 of Part 615 may serve as a source of authority but not a limitation under which the Consent Order may be enforced. Further, Part 17 of Act 451 and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order. The undersigned certifies that he/she is fully authorized by to enter into this Consent Order and to execute and legally bind to it.

_____
Name and Title (Printed)

_____ _____
Signature Date

The above signatory subscribed and sworn to before me this _____day of _____, 200____.

_____
Notary Public

_____	_____
Harold R. Fitch & Assistant Supervisor of Wells Office of Oil, Gas, and Minerals Department of Environmental Quality	Alan F. Hoffman, Section Head Chief Environmental Regulation Section Environment, Natural Resources, and Agriculture Division Department of Attorney General
_____	_____
Date	Date

FINAL ORDER

The Chief of the Office of Oil, Gas, and Minerals having had opportunity to review the Consent Order and having been delegated authority to enter into Consent Orders by the Director of the

Department of Environmental Quality pursuant to the provisions of Part 615 and otherwise being fully advised on the premises, HAS HEREBY ORDERED that the Consent Order is approved and shall be entered in the record of the DEQ as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

_____
Harold R. Fitch, Chief
Office of Oil, Gas, and Minerals

_____
Date

EQ 7363 Stipulation and Consent Agreement Amendment

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF OIL, GAS, AND MINERALS

In the matter of:

Case Number: _____
Date Executed: _____

In particular, the following well and associated surface facility hereinafter referred to as the "Subject Well":

, Permit Number , Section , T , R
Field, Township, County, Michigan

AMENDMENTTOSTIPULATIONANDCONSENTAGREEMENT

This Amended Stipulation and Consent Agreement (Agreement), by and between ( ) and the Department of Environmental Quality (Department), by and through Harold R. Fitch, Assistant Supervisor of Wells and Director, Office of Oil, Gas, and Minerals (OOGM), sets forth changes to the original agreement executed on .

In consideration of the mutual promises and undertakings set forth below, the parties stipulate and agree as follows:

1. Paragraph of the Agreement is amended by replacement with the following language:

   A.

2. agrees to pay stipulated penalties at the following rate per well for failure to meet any deadlines or perform any activities listed in the Agreement.

   A. Fifty Dollars ($50.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, up to and including the 31st day. The maximum penalty per well for the first month is calculated as the number of days in the month multiplied by $50.00. Example: 31 days x $50.00 = $1,550.00 per well in penalties for the first month.

   B. One Hundred Dollars ($100.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, after the 31st day. The maximum penalty per well for each month thereafter is calculated as the number of days in the month multiplied by $100.00. This amount is then added to the preceding month's total. Example: a two month penalty is calculated as 31 days x $100.00 = $3,100.00 per well in penalties plus that of the preceding first month $1,550.00 = $4,650.00 per well.

C. The maximum penalty for failure to meet the requirements in this Agreement is $50,000.00 per well.

D. Payment of a penalty does not release from the responsibility or liability for complying with the requirements of the NREPA and the promulgated rules.

E. Payments shall be made payable to the State of Michigan within 30 days of any missed deadline. Submit payments to:

Michigan Department of Environmental Quality
Administration Division
P.O. Box 30473
Lansing, Michigan 48909-7973

Upon the signature of the parties below, this Amendment shall be deemed incorporated into the Agreement and made an enforceable part thereof.

Dated: _____ _____

,
Telephone: - -

The foregoing instrument was acknowledged before me this _____day of _____, ____
by _____on behalf of the_____.

_____
Notary Public
_____County, _____(State)
My Commission Expires _____

Dated: _____ _____

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
P.O. Box 30256
Lansing, MI 48909-7756
517-284-6823

EQ 7364 Transfer Settlement Agreement

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF OIL, GAS, AND MINERALS

In the matter of:

Case Number: _____
Date Executed: _____

In particular, the following well and associated surface facility hereinafter referred to as the "Subject Well":

, Permit Number , Section , T , R
Field, Township, County, Michigan

TRANSFERSETTLEMENTAGREEMENT

This is a Transfer Settlement Agreement (Agreement), by and between ( ) and the Department of Environmental Quality (Department), by and through Harold R. Fitch, Assistant Supervisor of Wells and Director, Office of Oil, Gas, and Minerals (OOGM). This Agreement fulfills the written agreement requirement of R 324.206(8) of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501
et seq.

In consideration of the mutual promises and undertakings set forth below, the parties stipulate and agree as follows:

1. The Department is charged with enforcement of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501 et seq., and the rules promulgated thereunder.

2. The Department is charged with enforcement of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq., and the rules promulgated thereunder.

3. The Department is authorized to act under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.3101 et seq., and the rules promulgated thereunder.

4. By entering into this Agreement, waives its right to a formal administrative hearing or other administrative relief to which may otherwise be entitled. The appropriate forum for any civil court proceedings is the Circuit Court of the County of Ingham, State of Michigan.

5. The Subject Well is regulated under Part 615 and the rules promulgated thereunder. For purposes of this Agreement, will not raise a jurisdictional defense in any state enforcement of this Agreement.

6. As long as has obligations under this Agreement, shall provide a copy of this Agreement to any prospective successor in interest prior to transfer of ownership of any property or interest owned by concerning the Subject Well.

7. Both parties agree under Part 615, the Agreement set forth herein is necessary to prevent waste, to alleviate pollution, impairment, and the destruction of the State of Michigan's natural resources. Failure of to comply with any of the agreed upon provisions and procedures shall:

   A. Be a violation of Part 615 and may subject to civil and/or criminal enforcement actions.

   B. Provide sufficient reason to withhold the issuance or transfer of any drilling permits that may have outstanding with the OOGM.

   C. Provide further cause for the Supervisor of Wells to issue an Order requiring suspension of operations of the Subject Well, and order the Subject Well plugged, if required.

   D. Authorize the State of Michigan to take any action it deems necessary, in accordance with the law to prevent waste and protect the public's health, safety and welfare, and the environment.

8. Pursuant to Part 615, the permittee of record is responsible for the Subject Well.

   A. **By** , shall submit a properly signed and dated transfer of permit request application form and conformance bond for the Subject Well listed above to the Permits and Bonding Unit, OOGM.

   B. Subsequent to the execution of this Agreement by the Supervisor of Wells, the permit to drill and operate will be transferred to .

9. The Subject Well is not in compliance with Part 615, and desires to make certain that the Subject Well is in compliance. Toward that end, the parties agree and stipulate to abide by the following:

   A. **By** , shall

   B. **By** , shall

   C. shall submit written notification of completed activities to the OOGM District Supervisor at , , , .

10. Any delay in compliance with the terms and conditions set forth in this Agreement attributable to a "*Force Majeure*" shall not be deemed a violation of this Agreement. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of , such as an act of God. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions.

    A. shall notify the Compliance and Enforcement Unit by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each

specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Written notice shall be submitted to the District/ Unit, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756.

B. The Supervisor of Wells or designee may grant a reasonable extension to a deadline in the Agreement if it is determined that the delay in compliance will result in the conditions of the Agreement being met.

11. agrees to pay stipulated penalties at the following rate per well for failure to meet any deadlines or perform any activities listed in the Agreement.

A. Fifty Dollars ($50.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, up to and including the 31st day. The maximum penalty per well for the first month is calculated as the number of days in the month multiplied by $50.00. Example: 31 days x $50.00 = $1,550.00 per well in penalties for the first month.

B. One Hundred Dollars ($100.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, after the 31st day. The maximum penalty per well for each month thereafter is calculated as the number of days in the month multiplied by $100.00. This amount is then added to the preceding month's total. Example: a two month penalty is calculated as 31 days x $100.00 = $3,100.00 per well in penalties plus that of the preceding first month $1,550.00 = $4,650.00 per well.

C. The maximum penalty amount for failure to meet the requirements in the Agreement is $50,000.00 per well.

D. Payment of a penalty does not release from the responsibility or liability for complying with the requirements of the NREPA and the promulgated rules.

E. Payments shall be made payable to the State of Michigan within 30 days of any missed deadline. Submit payments to:

Michigan Department of Environmental Quality
Administration Division
P.O. Box 30473
Lansing, Michigan 48909-7973

F. If fails to meet the conditions of this Agreement, the Supervisor of Wells may issue a Notice of Determination requiring any Subject Well that is not in compliance with a deadline within this Agreement to be cased, repaired, or properly plugged and abandoned.

G. Pursuant to Section 61519 of Part 615, if fails to comply with the requirements set forth in the Notice of Determination within 30 days, the Supervisor of Wells may immediately case, repair, or plug a Subject Well that is in violation of the requirements set forth in the Notice of Determination and claim the bond without further administrative action.

i. In the event , the owner, or operator, or surety fail to pay a claim within 30 days, the Supervisor of Wells may bring suit against , the owner, the operator, or surety, jointly and severally for collection of the claim.

12. This Agreement shall terminate upon written request of and upon written approval from the Department. Department approval shall be based upon demonstrating that it has fully complied with all provisions of this Agreement and has paid in full all stipulated penalties owed to the State of Michigan under this Agreement.

13. Nothing in this Agreement shall, in any manner, restrict or limit the nature or scope of response actions that the Department may take in fulfilling its responsibilities under state and federal law.

IT IS SO AGREED:

Dated: _____ _____

,
telephone: - -

The foregoing instrument was acknowledged before me this _____day of _____, ____
by _____on behalf of the_____.

_____
Notary Public
_____County, _____(State)
My Commission Expires _____

Dated: _____ _____

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
P.O. Box 30256
Lansing, MI 48909-7756
517-284-6823

EQ 7365 Transfer Settlement Agreement Amendment

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF OIL, GAS, AND MINERALS

In the matter of:

Case Number:
Date Executed:

In particular, the following well and associated surface facility hereinafter referred to as the "Subject Well":

, Permit Number , Section , T , R
Field, Township, County, Michigan

AMENDMENT TO TRANSFER SETTLEMENT AGREEMENT

The Department of Environmental Quality (Department) and ( ) previously entered into to a Transfer Settlement Agreement (Agreement) on . The Department and agree to the following amendment to that Agreement:

1. Paragraph of the Agreement is amended by replacement with the following language:

   A.

2. agrees to pay stipulated penalties at the following rate per well for failure to meet any deadlines or perform any activities listed in the Agreement.

   A. Fifty Dollars ($50.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, up to and including the 31st day. The maximum penalty per well for the first month is calculated as the number of days in the month multiplied by $50.00. Example: 31 days x $50.00 = $1,550.00 per well in penalties for the first month.

   B. One Hundred Dollars ($100.00) per day for each day a stipulated deadline or activity for a Subject Well is missed, after the 31st day. The maximum penalty per well for each month thereafter is calculated as the number of days in the month multiplied by $100.00. This amount is then added to the preceding month's total. Example: a two month penalty is calculated as 31 days x $100.00 = $3,100.00 per well in penalties plus that of the preceding first month $1,550.00 = $4,650.00 per well.

   C. The maximum penalty amount for failure to meet the requirements in the Agreement is $50,000.00 per well.

   D. Payment of a penalty does not release from the responsibility or liability for complying with the requirements of the NREPA and the promulgated rules.

E. Payments shall be made payable to the State of Michigan within 30 days of any missed deadline. Submit payments to:

Michigan Department of Environmental Quality
Administration Division
P.O. Box 30473
Lansing, Michigan 48909-7973

Upon the signature of the parties below, this Amendment shall be deemed incorporated into the Agreement and made an enforceable part thereof.

Dated: _____

_____

,
Telephone: - -

The foregoing instrument was acknowledged before me this _____day of _____, ____
by _____on behalf of the_____.

_____
Notary Public
_____County, _____(State)
My Commission Expires _____

Dated: _____

_____
Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
P.O. Box 30256
Lansing, MI 48909-7756
517-284-6823

EQ 7366 Unsigned Agreement Cover Letter

,

Dear :

SUBJECT: **STIPULATIONANDCONSENTAGREEMENT**
Compliance Case No.

Enclosed are two copies of the proposed Stipulation and Consent Agreement for the following well and associated surface facility.

Well Name	Well Number	Permit Number	Location	Township	County
			S , T , R		
			S , T , R		
Facility Name	**Facility Number**	**MIR Facility Number**	**Location**	**Township**	**County**
			S , T , R		
			S , T , R		

Please sign and date both copies, have them notarized, and return both copies within 14 days. Upon receipt, the Agreement will be executed and a copy will be returned to you for your files.

Thank you for your cooperation. Please contact me if you have any questions.

Sincerely,

Adam W. Wygant, Supervisor
Permits and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6823

Enclosures
cc: Mr. Rick Henderson, DEQ
Mr. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District - DEQ

EQ 7367 Executed Agreement Cover Letter

,

Dear :

SUBJECT: **STIPULATIONANDCONSENTAGREEMENT**
Compliance Case No.

Enclosed is a copy of the executed Stipulation and Consent Agreement for the following well and associated surface facility.

Well Name	Well Number	Permit Number	Location	Township	County
			S , T , R		
			S , T , R		
Facility Name	**Facility Number**	**MIR Facility Number**	**Location**	**Township**	**County**
			S , T , R		
			S , T , R		

Thank you for your cooperation. Please contact me if you have any questions.

Sincerely,

Adam W. Wygant, Supervisor
Permits and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6823

Enclosures
cc: Mr. Rick Henderson, DEQ
Mr. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District - DEQ

EQ 7368 Overdue Agreement Cover Letter

,

Dear :

SUBJECT: **STIPULATIONANDCONSENTAGREEMENT**
Compliance Case No.

On , the Compliance and Enforcement Unit (CEU) of the Office of Oil, Gas, and Minerals (OOGM) sent you two copies of an unsigned Stipulation and Consent Agreement for the following well and associated surface facility.

Well Name	Well Number	Permit Number	Location	Township	County
			S , T , R		
			S , T , R		
Facility Name	**Facility Number**	**MIR Facility Number**	**Location**	**Township**	**County**
			S , T , R		
			S , T , R		

The cover letter asked you to sign both copies of the Agreement, have your signature notarized, and return both copies by . As of the date of this letter, the Compliance and Enforcement Unit has not received signed copies of the Agreement. If the CEU does not receive copies of the signed Agreement by , appropriate escalated enforcement action will be taken.

Please contact me if you have any questions.

Sincerely,

Adam W. Wygant, Supervisor
Permits and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6823

Enclosures
cc: Mr. Rick Henderson, DEQ
Mr. Mark Snow, DEQ
, Cadillac District - DEQ

, Cadillac District – DEQ

EQ 7370 Notice of Missed Deadlines

,

Dear :

SUBJECT: NOTICE OF MISSED DEADLINES; Compliance Case No.

On , entered into a Stipulation and Consent Agreement (Agreement) with the Office of Oil, Gas, and Minerals (OOGM) pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.61501 et seq. to resolve violations at the following wells:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

Staff from the Cadillac District Office inspected the on and determined that failed to fulfill the requirements in Paragraph in the Agreement.

Accordingly, is liable for stipulated penalties as set forth in the Agreement. The Agreement provides for the accrual of stipulated penalties for noncompliance with the obligations set forth in the Agreement. Penalties will accrue at the rate of Fifty Dollars ($50) per day for each day a deadline or activity is missed from day 1 through day 30; and One Hundred Dollars ($100) per day for each day a deadline or activity is missed after 30 days. Stipulated penalties will accrue from the date of the deadline in the Agreement until such time that full compliance is achieved. Once compliance has been achieved, a Demand for Payment of Stipulated Penalties will be sent to .

If you have any questions, please contact me at 517-284-6837, pettitj@michigan.gov, or Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909.

Sincerely,

Joe Pettit
Permitting and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6837

Enclosure
cc: , DEQ
, DEQ

EQ 7371 Demand for Stipulated Penalties

,

SUBJECT: DEMAND FOR STIPULATED PENALTIES; Compliance Case No.

This letter serves as formal notification to of its obligations relating to the Stipulations and Consent Agreement (Agreement) entered on regarding the following wells:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

On , the Office of Oil, Gas, and Minerals (OOGM) sent a Notice of Missed Deadlines. The terms and conditions of the Agreement provided for the accrual of stipulated penalties for noncompliance. Penalties accrued at the rate of Fifty Dollars ($50) per day for each day a deadline or activity is missed from day 1 through day 30; and One Hundred Dollars ($100) per day for each day a deadline or activity is missed after 30 days.

failed to meet the deadline in Paragraph , which required to by . fulfilled this requirement on . This represents days of noncompliance. This equates to $ in Stipulated Penalties.

Payments shall be made payable to the State of Michigan and submitted to the Cashier's Office by . To ensure proper credit, all payments made pursuant to this Agreement must include the name " " and the Payment Identification Number and mailed to the address below:

Michigan Department of Environmental Quality
Administration Division
P.O. Box 30657
Lansing, MI 48909-8175

Failure to submit timely payment may result in sanctions by the Michigan Department of Treasury or a civil lawsuit by the Department of Environmental Quality with assistance from the Department of Attorney General.

If you have any questions, please contact me at 517-284-6837, pettitj@michigan.gov, or Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909.

Sincerely,

Joe Pettit
Permitting and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6837

Enclosure
cc: , DEQ
, DEQ

EQ 7372 Notice of Hold Permit Status

CERTIFIEDMAIL

,

Dear :

SUBJECT: **NOTICEOFHOLDPERMITSTATUS**
Compliance Case No.

The Supervisor of Wells has determined that is not in compliance with Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, et seq., and rules promulgated thereunder.

Section 61525(1) of Part 615 states that a *permit to drill shall not be issued to any owner or his authorized representative who does not comply with the rules and requirements or orders made and promulgated by the Supervisor. A permit shall not be issued to any owner or his authorized representative who has not complied with or is in violation of this act, or any of the rules, requirements or orders issued by the supervisor or the department...*

Effective immediately, final approval and issuance of any permits, which may have outstanding with the Office of Oil, Gas, and Minerals under Part 615 will be withheld until has complied with Part 615 and the Administrative Rules.

If you have any questions, please contact Mr. Adam W. Wygant, Permits and Technical Services Section Supervisor at 517-241-1504; wyganta@michigan.gov; or DEQ, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: Mr. Adam W. Wygant, DEQ
Mr. Rick Henderson, DEQ
Ms. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District – DEQ

EQ 7373 Revocation of Hold Permit Status

,

Dear :

SUBJECT: REVOCATION OF HOLD PERMITS STATUS; Compliance Case No.

On , the Office of Oil, Gas, and Minerals (OOGM) issued a Notice of Hold Permit Status to . The OOGM has determined that has achieved compliance with Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Accordingly, the Hold Permit Status has been revoked effective immediately.

Final approval and issuance of permits and permit transfers from the OOGM may now proceed in the normal manner.

If you have any questions, please contact Mr. Joe Pettit at 517-284-6837, pettitj@michigan.gov, or Department of Environment Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: Surety
, DEQ
, DEQ

EQ 7374 Notice of Suspension of Operations – Failure to Comply

CERTIFIEDMAIL

,

Dear :

SUBJECT: **NOTICEOFSUSPENSIONOFOPERATIONS**
Compliance Case Number

This is notice that the Supervisor of Wells is ordering the immediate suspension of all operations at the following well:

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
			S , T , R		

Section 61506(q) of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, et seq. states that the Supervisor of Wells may *require the immediate suspension of drilling or other well operations if there exists a threat to public health or safety*.

Administrative Rule 324.1301(b) states that the Supervisor of Wells *may order the suspension of any or all components of the oil and gas operations when a violation exists. The suspension time shall continue until a correction is made and a violation no longer exists under Section 61516 of Part 615. The Supervisor of Wells may also prohibit the purchaser from taking oil, gas, or brine from the lease during the required suspension time*.

The Supervisor of Wells has determined that is in violation of .

Therefore, in accordance with Section 61506(q) of Part 615 and Administrative Rule 324.1307 the Supervisor of Wells is ordering the immediate suspension of all components of the oil and gas operations at the above listed well, including the removal or sale of oil, gas, or brine.

Please be advised that failure to comply with a Notice of Suspension of Operations may subject to enforcement under Section 61520 of Part 615, or other sanctions.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: All Oil Carriers
Any and all interested parties in well
Mr. Adam W. Wygant, DEQ
Mr. Rick Henderson, DEQ
Mr. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District – DEQ

EQ 7375 Notice of Suspension of Operations – Failure to Transfer

CERTIFIEDMAIL

,

Dear :

SUBJECT: **NOTICEOFSUSPENSIONOFOPERATIONS**
Compliance Case No.

is the permittee of record for the following well and associated surface facility:

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
			S , T , R		

Administrative Rule 324.207 of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act (NREPA), P.A. 451, as amended, states that *if a permittee of a well conveys his or her rights as an owner of a well to another person, or ceases to be the authorized representative of the owner of a well, and a request for the transfer of the permit under R 324.206(6) has not been approved, then, in addition to other enforcement actions, failure to comply shall be cause for immediate suspension of any and all components of the oil and gas operations on the well, including the removal or sale of oil, gas, or brine*.

Staff of the Office of Oil, Gas, and Minerals (OOGM), Cadillac District Office, provided information to the Supervisor of Wells that demonstrates the following:

1. On , conveyed all legal rights as owner and/or operator of the above listed well to another person.

2. An application to transfer ownership of the above listed permit has not been submitted to OOGM as required by R 324.206(6).

3. A conformance bond has not been submitted to OOGM as required by R 324.206(6).

Therefore, in accordance with Administrative Rule 324.207, the Supervisor of Wells is ordering the immediate suspension of all components of the oil and gas operations at the above listed well, including the removal or sale of oil, gas, or brine.

Furthermore, shall submit a request to transfer ownership of permit listed above within 30 days of this notice. If a request to transfer ownership of above listed well has not been received within 30 days of this notice, then the Assistant Supervisor of Wells will place on Hold Permit Status until the matter is formally resolved.

Please be advised that failure to comply with a Notice of Suspension of Operations may subject to enforcement under Section 61520 of Part 615, or other sanctions.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: Mr. Adam W. Wygant, DEQ
Mr. Rick Henderson, DEQ
Mr. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District – DEQ

EQ 7376 Notice of Illegal Oil and Gas

CERTIFIEDMAIL

GulfMark Energy, Inc.
4400 Post Oak Pkwy., Suite 2700
Houston, Texas 77027

Sunoco Logistics Partners, L.P.
907 South Detroit
Tulsa, Oklahoma 74102

To whom it may concern:

SUBJECT: **NOTICEOFILLEGALOILANDGAS**

Pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), please be advised that the Supervisor of Wells has made a declaration of illegal oil and gas. is the permittee of record of the well. The declaration covers the following well and is effective immediately:

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
			S , T , R		

If you do business with or service the above named well, be advised that any oil or gas being produced is illegal oil which was produced in violation of Part 615, and cannot be sold, nor transported, pursuant to Section 61515 of Part 615, which states in part:

> " . . . It shall be unlawful for any person to sell, purchase, acquire, transport, refine, process or otherwise handle or dispose of any illegal oil or gas in whole or in part, or any illegal product of oil or gas . . ."

Enclosed is a copy of the Notice of Suspension of Operations that was sent to , ordering said company to immediately suspend operations at the above referenced well.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: Mr. Adam W. Wygant, DEQ
Mr. Rick Henderson, DEQ

Mr. Mark Snow, DEQ
, Cadillac District - DEQ
, Cadillac District – DEQ

EQ 7377 Revocation of Suspension of Operations

CERTIFIEDMAIL

,

Dear :

SUBJECT: **REVOCATIONOFSUSPENSIONOFOPERATIONS**
Compliance Case Number

On , the Office of Oil, Gas, and Minerals (OOGM), Department of Environmental Quality (DEQ), sent a Notice of Suspension of Operations to for the following well:

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
			S , T , R		

On , the OOGM . Accordingly, the Suspension of Operations for these wells has been terminated effective immediately. Production and sales may now resume.

If you have any questions, please contact Mr. Joe Pettit at 517-284-6837, pettitj@michigan.gov, or Department of Environment Quality, OOGM, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: All Oil Carriers
Any and all interested parties in well
Mr. Adam Wygant, DEQ
Mr. Rick Henderson, DEQ
Ms. Mark Snow, DEQ
, Cadillac District – DEQ

, Cadillac District - DEQ

EQ 7378 Revocation of Illegal Oil and Gas

GulfMark Energy, Inc.
4400 Post Oak Pkwy., Suite 2700
Houston, Texas 77027

Sunoco Logistics Partners, L.P.
907 South Detroit
Tulsa, Oklahoma 74102

To whom it may concern:

SUBJECT: REVOCATION OF NOTICE OF ILLEGAL OIL

On , the Office of Oil, Gas, and Minerals (OOGM), Department of Environmental Quality (DEQ), sent a Notice of Illegal Oil on for the following well:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

On , the OOGM . Accordingly, the Notice of Illegal Oil has been terminated effective immediately. Production and sales may now resume.

I If you have any questions, please contact Mr. Joe Pettit at 517-284-6837, pettitj@michigan.gov, or Department of Environment Quality, OOGM, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Harold R. Fitch
Assistant Supervisor of Wells
and Chief,
Office of Oil, Gas, and Minerals
517-284-6823

cc: Surety
, DEQ
, DEQ

EQ 7380 Administrative Complaint

STATE OF MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF OIL, GAS, AND MINERALS

ADMINISTRATIVECOMPLAINT

In the matter of the following subject well and associated surface facility permitted to .

Well Name	Well Number	Permit Number	Section, Town, Range	Township	County
			S , T , R		
			S , T , R		
Facility Name	**Facility Number**	**MIR Facility Number**	**Section, Town, Range**	**Township**	**County**
			S , T , R		
			S , T , R		

Compliance Case No.:
_____/

This Administrative Complaint is submitted pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the administrative rules promulgated thereunder. Specifically, R 324.1210(1) states that staff of the Supervisor of Wells, through the Department of Attorney General, may file an administrative complaint setting forth the nature of violations of Part 615 and specifically citing the alleged violations. Accordingly, the Office of Oil, Gas, and Minerals (OOGM) of the Department of Environmental Quality (DEQ) alleges the following:

1. is the permittee of record for Permit Number . The well known as the was drilled to a total depth of feet and completed as a oil well in the Michigan Stray Formation. Permit Number is covered by Conformance Bond No. , in the amount of $. Refer to Attachments #1 and #2, respectively.

2. Staff of the OOGM Cadillac District Office issued a Notice of Noncompliance to on . Refer to Attachment #3. failed to comply with Part 615 by the deadline established in the Notice of Noncompliance.

3. Staff of the OOGM Compliance and Enforcement Unit issued a Notice of Violation to on . Refer to Attachment #4. failed to comply with Part 615 prior to the scheduled Opportunity to Show Compliance Meeting.

4. An Opportunity to Show Compliance Meeting was held on . On , a Compliance Determination Memorandum was issued to the Supervisor of the OOGM Administrative Section by the chair-person of the Opportunity to Show Compliance Meeting. Refer to

Attachment #5. The chair-person concluded that failed to comply with Part 615 at the ------ well.

5. The OOGM Cadillac District Office performed compliance inspections after the Compliance Determination Memorandum was issued and concluded that failed to comply with Part 615 at the _____well. Refer to Attachment #6.

6. continues to be in violation of Part 615 and the Administrative Rules. Specifically, is in violation of the following Administrative Rules:
   a. R 324. , which requires to .
   b. R 324. , which requires to .
   c. R 324. , which requires to .

Complaint Prepared By:

Dated: _____

_____

Compliance and Bond Specialist
Office of Oil, Gas, and Minerals
Department of Environmental Quality
P. O. Box 30256
Lansing, Michigan 48909-7756

EQ 7381 Administrative Relief

STATE OF MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF OIL, GAS, AND MINERALS

ADMINISTRATIVERELIEFSUMMARY

In the matter of the following subject well and associated surface facility permitted to .

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

Compliance Case No.:
_____/

This Administrative Relief Summary is submitted pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the administrative rules promulgated thereunder. Specifically, R 324.1210(1) states that staff of the Office of Oil, Gas, and Minerals (OOGM), through the Department of Attorney General (DAG), may file an administrative complaint to set forth the nature of the violations and specifically cite the alleged violations.

The Enforcement Section, Resource Management Division, of the Department of Environmental Quality (DEQ), requests that the DAG file a petition for hearing requesting that the Supervisor of Wells schedule an administrative hearing pursuant to Administrative Rules 324.1210(2) and 324.1205(1)(b). As petitioner of the Administrative Hearing, the Enforcement Section requests that the DAG seek the administrative relief outline below.

In the event that does not file an answer to the Notice of Hearing and Administrative Complaint with the Supervisor of Wells not less than five days before the date set for the hearing, as required by Administrative Rule 324.1204(6), then the DAG may file a motion with the Supervisor of Wells requesting that the matter proceed in accordance with Administrative Rules 324.1205(1)(c) and 324.1205(2).

In the event that files an answer to the Notice of Hearing and Administrative Complaint, but fails to appear at the Administrative Hearing, then the DAG may make a motion requesting that the matter proceed in accordance with Administrative Rules 324.1205(1)(c) and 324.1205(2).

The Enforcement Section requests that the DAG seek an Administrative Order requiring to do the following:

1. Require to .

2. Require to .

3. Require to pay an administrative penalty in the amount of .

   a. Statutory Penalty

      Section 61522 of Part 615 authorizes the Supervisor of Wells to impose administrative penalties of not more than $1,000.00 per day per violation. failed to comply with Administrative Rule 324. from until . This represents days of noncompliance. This equates to a penalty in the amount of $.

      Section 61522 of Part 615 authorizes the Supervisor of Wells to impose administrative penalties of not more than $1,000.00 per day per violation. failed to comply with Administrative Rule 324. from until . This represents days of noncompliance. This equates to a penalty in the amount of $.

      Total Statutory Penalty = $

   b. Economic Benefit

      Economic benefit is based on the economic savings from delayed and/or avoided costs required to comply with the regulations and any benefits other than cost savings. The greatest economic benefit comes from abandoning a well and avoiding the costs of plugging the well and restoring the well site. The Enforcement Section calculated the economic benefit component of the penalty using the USEPA BEN Model using the following assumptions:

      - failed to comply with Administrative Rule 324. since .
      - will achieve full compliance with Administrative Rule 324. by .
      - will incur costs of approximately $ in order to achieve full compliance with Administrative Rule 324. .
      - The Economic Benefit realized by for violating Administrative Rule 324. was determined to be approximately $.

      - failed to comply with Administrative Rule 324. since .
      - will achieve full compliance with Administrative Rule 324. by .
      - will incur costs of approximately $ in order to achieve full compliance with Administrative Rule 324. .
      - The Economic Benefit realized by for violating Administrative Rule 324. was determined to be approximately $.

      Total Economic Benefit = $

   c. Duration of Violations

      For the purposes of determining the duration of a violation, violations should be assumed to be continuous from the first provable date of the violation until the source demonstrates compliance. The following penalties should be used in determining the duration component of a penalty.

Months	Penalty
0-12	$ 500.00
13-24	$ 1,000.00
25-36	$ 1,500.00
37-48	$ 2,000.00
49-60	$ 3,000.00
> 61	$ 5,000.00

Duration of Violations = $

d. Size of Violator

The size of the violator is determined from an individual's or company's net worth. In the case of a company with more than one facility, the size of the violator is determined based on the company's entire operation, not just the violating facility.

Net Worth	Penalty
< $ 250,000	$ 250.00
$ 250,001 - $ 500,000	$ 500.00
$ 500,001 - $ 750,000	$ 750.00
$ 750,001 - $ 1,000,000	$ 1,000.00
> $ 1,000,001	$ 3,000.00

Size of Violator = $

e. Penalty Summary Table

Description	Amount
a. Total Statutory Penalty	$
b. Total Economic Benefit	$
c. Duration of Violations	$
d. Size of Violator	$
Total Penalty Requested	**$**

Prepared By:

Dated: _____

_____

Office of Oil, Gas, and Minerals
Department of Environmental Quality
P. O. Box 30256
Lansing, Michigan 48909-7756

EQ 7399 Case Closed

,

Dear :

SUBJECT: CASE CLOSURE; Compliance Case No.

The Office of Oil, Gas, and Minerals (OOGM) has verified that has achieved full compliance with Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, at the following well and affected surface facility:

Well Name & Number	Permit Number	Township	County
Facility Name	**MIR Facility Number**	**Township**	**County**

Accordingly, the OOGM has closed Compliance Case .

Please note that the Department retains jurisdiction to pursue any further actions should the facts and circumstances warrant. Compliance in this matter in no way affects your responsibility to comply with any other applicable state, federal, or local laws or regulations.

If you have any questions, please contact me by phone at 517-284-6837, pettitj@michigan.gov, or Department of Environmental Quality, Office of Oil, Gas, and Minerals, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,

Joe Pettit
Permitting and Technical Services Section
Office of Oil, Gas, and Minerals
517-284-6837

cc: , DEQ
, DEQ

DEQ

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF CRIMINAL INVESTIGATIONS

CRIMINAL COMPLAINT INVESTIGATION REQUEST

INSTRUCTIONS: Any Department of Environmental Quality (DEQ) employee should immediately complete Section 1 upon receipt of information indicating that a felony criminal violation of any DEQ-administered regulation has occurred. This form is also to be used for referring suspected misdemeanor violations for criminal investigation in accordance with division/office priorities. Forward this form to your local DEQ Office of Criminal Investigations (OCI) Investigator for completion of Section 2. If you have questions about completion of this form, contact your district OCI Investigator or the OCI Headquarters at 517-335-3434.

***NOTIFY YOUR IMMEDIATE SUPERVISOR OF ALL CRIMINAL INVESTIGATION REFERRALS**.

SECTION 1 *(to be completed by DEQ employee receiving complaint information)* COMPLAINT INFORMATION

1. COMPLAINANT NAME (*person originally reporting incident to DEQ*)

2. COMPLAINANT ADDRESS *(street, city, state, zip code)*

3. COMPLAINANT TELEPHONE NUMBER *(include area code*)
( ) -

4. DATE COMPLAINT RECEIVED

5. TIME COMPLAINT RECEIVED

6. COUNTY OF COMPLAINT LOCATION

7. COMPLAINT LOCATION *(including street address, if known)*

8. NATURE OF COMPLAINT

DID YOUR DIVISION RESPOND TO THIS COMPLAINT?

O YES O NO IF YES, COMPLETE BOX 9; IF NO, SKIP BOX 9.

9. PROVIDE INFORMATION ABOUT YOUR RESPONSE
A. NAME AND TELEPHONE NUMBER OF STAFF RESPONDING

B. SITE OBSERVATIONS (*attach another sheet if necessary)*

10. VIOLATION(S) SUSPECTED *(place justification for violation(s) on a separate sheet*)

O PART NUMBER _____ O MCL _____

11. I REQUEST THE OCI TO: (*Use additional sheets if necessary*)

12. NAME OF DEQ EMPLOYEE COMPLETING SECTION 1 *(type or print)*

13. DIVISION

14. SIGNATURE OF EMPLOYEE'S IMMEDIATE SUPERVISOR

15. DATE

SECTION 2 *(to be completed by the OCI)* OCI FOLLOW-UP AND INVESTIGATOR RECOMMENDATION

16. DATE COMPLAINT RECEIVED BY OCI

17. TIME COMPLAINT RECEIVED BY OCI

18. COMPLAINANT CONTACTED *(name, or anonymous ID number)*

19. COMPLAINANT'S ADDRESS *(if anonymous, leave blank)*

20 COMPLAINANT'S PHONE NUMBER
( ) -

21. DATE OF CONTACT

22. TIME OF CONTACT

23. LOCATION

24. OBSERVATIONS

25. NAME OF OCI INVESTIGATOR COMPLETING FORM (*type or print*)

26. DATE OCI RETURNED FORM TO DIVISION

27. DOES THIS MATTER WARRANT FURTHER ACTIVITY BY OCI? O YES O NO
IF YES, COMPLETE BOX 28; IF NO, COMPLETE BOX 29.

28. CASE # ASSIGNED *(if you answered "yes" in Box 27)*

29. EXPLAIN WHY NO FURTHER ACTIVITY IS NECESSARY *(if you answered "no" in Box 27) (use additional sheets if necessary)*

AppendixC

EscalatedEnforcementOptions

Withholding of Permits
Suspension of Operations
Notice of Determination
Stipulation and Consent Agreement
Referrals to the Department of Natural Resources, Law Enforcement Division, Environmental Investigation Section
Referral to the Department Attorney General

ISSUE:

A Notice of Hold Permit letter is an enforcement tool utilized to achieve compliance from a permittee who has been determined to be not in compliance as a result of an OTSCM or by other compliance activities. The purpose of the Notice of Hold Permit is to compel the owner or operator to return to compliance by preventing them from obtaining new permits. This can be an effective enforcement tool for companies who are actively applying for permits. This enforcement tool is less effective for companies that are not actively applying for permits.

Administrative Rule 324.205 promulgated pursuant to Part 615 of the NREPA provides the authority for the OOGM to issue a Notice of Hold Permit. Rule 205 states that the OOGM shall not issue or transfer a permit to a person who has been determined to be in violation.

Administrative Rule 299.2324 promulgated pursuant to Part 625 of the NREPA provides the authority for the OOGM to issue a Notice of Hold Permit. Rule 2324 states that the OOGM shall not issue or transfer a permit to a person who has been determined to be in violation.

PROCEDURES:

Step	Who	Does What
1.	Compliance and Bonding Specialist/ Compliance Coordinator	Prepares Form EQ 7372 Notice of Hold Permit.
2.	SEMA/Secretary	Proofs letter.
3.	FOS/PTSS Supervisor	Reviews letter, makes appropriate comments.
4.	SEMA/Secretary	Finalizes letter for Office Chief's signature and mails.
5.	PTSS Supervisor/Designate	Updates the MIR Database to place permittee on "holds permit status."
6.	Permits and Bonding Unit (PBU) Staff	Withholds permits from the permittee who is on permits hold status until informed in writing by the PTSS that permittee is eligible for permits.
7.	District/Unit Supervisor	Sends notice to PTSS Supervisor and Compliance Specialist when the permittee has achieved compliance at the well site.
8.	PTSS Supervisor	Notifies PBU and District staff that compliance has been achieved and the permittee has been removed from holds permit status; and updates the MIR Database.
9.	Compliance and Bonding Specialist	Prepares Form EQ 7373 Revocation of Hold Permit.

Step	Who	Does What
10.	SEMA/Secretary	Proofs letter.
11.	PTSS Supervisor	Reviews letter, makes appropriate comments.
12.	SEMA/Secretary	Finalizes letter for Office Chief’s signature and mails.

ISSUE:

A Notice of Suspension of Operations letter is an enforcement tool utilized to achieve compliance. A Notice of Suspension of Operations compels compliance because it prevents an owner or operator from generating revenue from a well that is in violation. The Notice of Suspension of Operations also prevents oil gatherers from picking up or selling oil from a well that is in violation. This action has a significant impact on an owner or operator and typically results in a prompt response by the owner or operator.

A Notice of Suspension of Operations may be utilized under the following scenarios:

1. There has been a failure to transfer permit
2. There is a threat to public health and safety
3. The owner or operator has been determined to be in violation as the result of an opportunity to show compliance meeting.

Section 61506(l) of Part 615 of the NREPA provides for a suspension of operations when a condition exists that causes or results or threatens to cause or result in waste.

Administrative Rule 324.207 promulgated pursuant to Part 615 of the NREPA is the basis for issuance of a Notice of Suspension of Operations for failure to request a transfer of permit.

Section 61506(q) of Part 615 of the NREPA and Administrative Rule 324.1014(1) promulgated pursuant to Part 615 of the NREPA provide the authority and process for the OOGM to issue a Notice of Suspension of Operations if a threat to public health and safety exists.

Administrative Rule 324.1301(b) is the basis for issuance of a Notice of Suspension of Operations when a violation exists.

The OOGM will issue a Notice of Suspension of Operations immediately upon discovering a failure to transfer permit in accordance with Administrative Rule 324.207.

The OOGM will issue a Notice of Suspension of Operations immediately upon discovering a threat to public health and safety.

The OOGM may issue a Notice of Suspension of Operations after a permittee is found to be not in compliance as the result of an OTSCM.

PROCEDURES:

Step	Who	Does What
1.	Compliance and Bonding Specialist	Prepares suspension of operations letter and letter to purchasers, for Office Chief's signature, notifying them of illegal production status.
2.	PTSS and/or FOS Supervisor	Reviews letters, makes appropriate comments or revisions.
3.	SEMA/Secretary	Proofs letters and forwards to Office Chief.
4.	Office Chief	Signs letters.
5.	Compliance and Bonding Specialist	A. Updates the MIR Database (declaration of illegal production). B. If permittee fails to come into compliance, prepare Form EQ 7380 Administrative Complaint and proceed to Administrative Hearing (if required). C. If permittee comes into compliance or enters a Form EQ 7362 Stipulated Consent Agreement (SCA), prepare memo to the Office Chief, recommending withdrawal of suspension of operations status. D. Prepare letter to permittee, releasing suspension of operations status to be signed by Office Chief. E. Prepare letter to purchasers, for Office Chief's signature, notifying them of approval to resume purchase of product.
6.	SEMA/Secretary	Finalizes letters for Office Chief.
7.	Office Chief	Signs letters.
8.	Compliance and Bonding Specialist	Updates the MIR Database.

PURPOSE:

A Notice of Determination (NOD) is an administrative enforcement tool issued by the Office Chief to an owner or operator of an oil, gas, or mineral well. A NOD notifies an owner or operator that the OOGM has determined that there is an ongoing violation. A NOD includes an administrative directive that requires the owner or operator to achieve compliance by a specified deadline. A NOD provides legal notice to the owner, operator and surety that the OOGM may take action that will result in a claim against the conformance bond. A NOD must be sent to the owner, operator and surety by Registered Mail per statutory requirement.

A NOD may be issued to an owner or operator under the following situations:

1. An owner or operator of an oil, gas or mineral well has been determined to be in violation of the statute or administrative rules as the result of an Opportunity to Show Compliance meeting and resulting compliance determination memo.
2. An owner or operator of an oil, gas, or mineral well has violated the terms and conditions set forth in a SCA.

Sections 61506(a) and 61519 of Part 615 of the NREPA provide the authority for the OOGM to issue a NOD to the owner or operator of an oil or gas well.

Section 62515 of Part 625 of the NREPA provides that authority for the OOGM to issue an NOD to the owner or operator of a mineral well.

If it is determined that a NOD is necessary to address violations, then the following procedural steps shall be implemented.

PROCEDURES:

Step	Who	Does What
1.	Compliance and Bonding Specialist	A. Obtain list of identified violations from professional staff and Compliance Coordinator. B. Prepare draft NOD using Form EQ 7360 Notice of Determination Generic or EQ 7361 Notice of Determination Violation of Agreement, as applicable. C. Provide draft NOD to District/Unit Supervisor, Compliance Coordinator, and Professional Staff for review via e-mail and incorporate comments as appropriate. D. Provide draft NOD to Section Supervisors via e-mail and incorporate comments as appropriate. E. Prepare a public notice for the DEQ Calendar using form EQ 6560 DEQ Calendar Public Notice. F. Prepare a public notice for the Michigan Oil and Gas News using Form EQ 6557 Public Notice. G. Provide final draft NOD, public notice for the DEQ Calendar, and public notice for the Michigan Oil and Gas News to SEMA/Secretary.
2.	SEMA/Secretary	Finalize NOD and provide NOD, public notice for the DEQ Calendar, and public notice for the Michigan Oil and Gas News to PTSS Supervisor for final review and approval.
3.	PTSS Supervisor	Review and Approve final NOD, public notice for the DEQ Calendar, and public notice for the Michigan Oil and Gas News and give to the Office Chief for signature.
4.	Office Chief	Review, approve and sign NOD, public notice for the DEQ Calendar, and public notice for the Michigan Oil and Gas News.
5.	SEMA/Secretary	Ensure that NOD is mailed to owner, operator and surety via Registered Mail.
6.	Compliance and Bonding Specialist	A. Update the MIR Database compliance chronology. B. Send public notice for the DEQ Calendar to designated DEQ representative. C. Send public notice for the Michigan Oil and Gas News to the designated representative at the Michigan Oil and Gas News. D. Send the public notice for the Michigan Oil and Gas News to the OOGM Web Page Administrator.
7.	OOGM Web Page Administrator	Upload public notice to OOGM Web Page.
8.	Professional Staff and Compliance Coordinator	A. Monitor the compliance deadline in the NOD and perform inspections and evaluations as necessary to determine compliance status. B. If the owner or operator fails to achieve compliance by the

Step	Who	Does What
		deadline specified in the NOD, implement the Funding Referral Process pursuant to Parts 615, 616, and 625 of the NREPA.

PURPOSE:

Stipulation and Consent Agreements or Transfer Settlement Agreements (SCA/TSA's) are administrative enforcement tools that are executed between the OOGM and an owner or operator of an oil, gas, or mineral well. An SCA/TSA resolves violations by setting forth an administratively enforceable schedule for the owner or operator to achieve compliance with statutory requirements and/or administrative rules.

The SCA/TSA's are utilized to resolve violations under the following scenarios:

1. An owner or operator of an oil, gas, or mineral well wishes to voluntarily resolve violations under a prescribed compliance schedule.
2. A request for transfer of permit has been submitted and the permit cannot be transferred due to unsatisfactory conditions.

Administrative Rule 324.206(8) promulgated pursuant to Part 615 of the NREPA states that if the permittee of a well is under notice because of unsatisfactory conditions at the well site involved in the transfer, then the permit for the well shall not be transferred until the permittee has completed the necessary actions or the acquiring person has entered into a written agreement to correct all of the unsatisfactory conditions.

Supervisor of Wells Letter 2000-2 provides clarification and defines "unsatisfactory conditions."

Administrative Rule 299.2325 promulgated pursuant to Part 625 of the NREPA states that a permit for a mineral well shall not be transferred to a person who is in violation of the part, rules, permit conditions, instructions, or orders, until the person has corrected the violation or the supervisor of mineral wells has accepted a compliance schedule and a written agreement has been reached to correct the violations.

If it is determined that a SCA/TSA is necessary to resolve violations, then the following procedural steps shall be implemented.

PROCEDURES:

Step	Who	Does What
1.	Compliance and Bonding Specialist/ Compliance Coordinator	A. Obtain list of identified violations from Professional Staff and Compliance Coordinator B. Draft SCA/TSA using Form EQ 7362 Stipulation Consent Agreement or EQ 7364 Transfer Settlement Agreement. Negotiate specific terms and administrative penalties with the owner or operator who will be entering into the SCA. C. Provide negotiated draft SCA/TSA to District Supervisor, Compliance Coordinator, and Professional Staff for review via e-mail and incorporate comments as appropriate. D. Provide negotiated draft SCA/TSA to Section Supervisors via e-mail and incorporate comments as appropriate. E. Provide final draft SCA/TSA to SEMA/Secretary.
2.	SEMA/Secretary	Finalize SCA/TSA and provide copy to PTSS Supervisor for final review and approval.
3.	FOS/PTSS Supervisor	Review and Approve final draft SCA/TSA and give to the Office Chief for review and approval.
4.	Office Chief	Review and Approve final draft SCA/TSA and return to Compliance and Bonding Specialist.
5.	Compliance and Bonding Specialist/Compliance Coordinator	A. Provide the proposed SCA/TSA by e-mail or other means to the owner or operator and obtain verbal acceptance. B. Prepare an Unsigned SCA/TSA Cover Letter using Form EQ 7366 Unsigned Settlement Agreement Cover Letter and send proposed SCA/TSA to the owner or operator. C. Receive signed SCA/TSA from owner or operator and review to ensure that the SCA/TSA was not altered and that the SCA/TSA was notarized. D. Give signed SCA/TSA to SEMA/Secretary.
6.	SEMA/Secretary	Obtain Office Chief signature and return SCA/TSA to Compliance and Bonding Specialist.
7.	Compliance and Bonding Specialist/Compliance Coordinator	A. Prepare an Executed SCA/TSA Cover Letter using Form EQ 7367 Executed Settlement Agreement Cover Letter and send executed SCA/TSA to the owner or operator. B. Update the MIR Database compliance chronology.
8.	Professional Staff and Compliance Coordinator	Monitor the compliance deadlines and perform inspections and evaluations as necessary to determine compliance. If violations of the SCA/TSA are identified, document the violations in the MIR Database and prepare and issue Form

Step	Who	Does What
		EQ 7370 Notice of Missed Deadlines. Update the MIR Database compliance chronology.
9.	Compliance and Bonding Specialist/Compliance Coordinator	A. If violations of the SCA/TSA are not resolved, take the appropriate enforcement action depending on the nature of the violation. More than one enforcement action may be taken. 1. Prepare Form EQ 7372 Notice of Hold Permits following said procedures. 2. Prepare Form EQ 7374 Notice of Suspension of Operations following said procedures. 3. Prepare Form EQ 7361 Notice of Determination Generic following said procedures. B. Update the MIR Database compliance chronology C. Upon resolution of violations, issues Form EQ 7399 Case Closed and terminates SCA/TSA. Update the MIR Database compliance chronology.

PURPOSE:

Staff of the OOGM may encounter violations that appear to be committed knowingly, intentionally, or through gross negligence. These violations are suspected misdemeanors or felonies, which require prompt referral to the EIS, Law Enforcement Division of the DNR through established criteria and procedures.

PROCEDURES:

Step	Who	Does What
1.	Professional Staff	A. Obtain evidence of suspected criminal violation. B. Discuss suspected criminal violation with the immediate District, Unit, or Section Supervisor, and proceed after Supervisor Approval. C. Complete Form EQ 9107 EIS Criminal Complaint Investigation Request and sign the form. D. Obtain signature of Immediate Supervisor and submit Form EQ 9107 EIS Criminal Complaint Investigation Request, along with supporting documentation to the Office Chief.
2.	Office Chief	Reviews request and determines whether or not to refer case to DNR EIS. If it is to be referred, makes referral to DNR Law Chief. Notifies District/Unit Supervisor and Compliance and Bonding Specialist of decision.
3.	Compliance and Bonding Specialist	A. Update the MIR Database compliance chronology to reflect Form EQ 9107 EIS Criminal Complaint Investigation Request. B. Retain a copy of Form EQ 9170 EIS Criminal Complaint Investigation Request for district case tracking. C. If there are ongoing or pending civil or administrative actions, immediately notify DNR EIS and refer to DEQ Policy and Procedure No. 04-004, Parallel Proceedings.

PURPOSE:

The DEQ staff often work closely with attorneys on the Department of Attorney General's (DAG's) staff in situations where the DEQ requires legal advice or representation. In order to make the best use of staff's time in the DEQ and the DAG, and to establish clear lines of communication and authority, it is necessary to establish procedures and criteria for referring matters to the DAG.

PROCEDURES:

Step	Who	Does What
1.	Professional Staff and/or Compliance and Bonding Specialist	A. Finds evidence of apparent civil violation of statute administered by the DEQ. B. Discuss suspected civil violation with the immediate District, Unit, or Section Supervisor. District and Unit Supervisors shall discuss with Section Supervisor. C. Prepare Forms EQ 1083 Referral Memo to Deputy Director and EQ 0184 Referral Letter to Department of Attorney General.
2.	Section Supervisors	Receives information from step 1 and determines if information should be forwarded to the Office Chief. If, in the judgment of the Section Supervisors, a referral to the DAG is appropriate, directs Compliance and Bonding Specialist to prepare briefing materials Form EQ 0186 Referral Briefing for Office Chief.
3.	Office Chief	Receives information from step 2 and considers information and recommendation that civil action be taken against alleged violator. If, in the judgment of the Office Chief, a referral to the DAG is appropriate, signs the Form EQ 1083 Referral Memo to Deputy Director with recommendation to the Deputy Director for Programs and Regulations. If not appropriate, in the judgment of the Office Chief, refers the information back to the Compliance and Bonding Specialist for further review or clarification.
4.	Compliance and Bonding Specialist	Provides detailed information from the Office file(s) to the DAG staff once referral is sent.

FORMSUSED

EQ 0183 Referral Memo to Deputy Director
EQ 0184 Referral Letter to Department of Attorney
EQ 0186 Referral Briefing
EQ 6560 DEQ Calendar Public Notice
EQ 6557 Public Notice
EQ 7329 Compliance Communication Letter
EQ 7330 Violation Notice
EQ 7347 Case Referral Check List
EQ 7348 Opportunity to Show Compliance Meeting for Part 615
- Chairperson's Instructions OTSCM
- Opportunity to Show Compliance Memo

EQ 7349 Escalated Enforcement Referral Memo
EQ 7350 Enforcement Notice
EQ 7351 Opportunity to Show Compliance Meeting
EQ 7352 Compliance Determination Memo
EQ 7360 Notice of Determination Generic
EQ 7361 Notice of Determination Violation of Agreement
EQ 7362 Stipulation and Consent Agreement
- Model Consent Order Document

EQ 7363 Stipulation and Consent Agreement Amendment
EQ 7364 Transfer Settlement Agreement
EQ 7365 Transfer Settlement Agreement Amendment
EQ 7366 Unsigned Settlement Agreement Cover Letter
EQ 7367 Executed Settlement Agreement Cover Letter
EQ 7368 Overdue Agreement Cover Letter
EQ 7370 Notice of Missed Deadlines
EQ 7371 Demand for Stipulated Penalties
EQ 7372 Notice of Hold Permit Status
EQ 7373 Revocation of Hold Permit Status
EQ 7374 Notice of Suspension of Operation Failure to Comply
EQ 7375 Notice of Suspension of Operation Failure to Transfer
EQ 7376 Notice of Illegal Oil and Gas
EQ 7377 Revocation of Suspension of Operation
EQ 7378 Revocation of Illegal Oil and Gas
EQ 7380 Administrative Complaint
EQ 7381 Administrative Relief
EQ 7399 Case Closed
EQ 9107 EIS Criminal Complaint Investigation Request

SECTION F

Underground Injection Control Program Memorandum of Agreement

UNDERGROUND INJECTION CONTROL PROGRAM
MEMORANDUM OF AGREEMENT
Between

THE STATE OF MICHIGAN
and
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

I. General

This Memorandum of Agreement ("Agreement") sets forth the policies, responsibilities and procedures pursuant to Section 1425 of the Safe Drinking Water Act ("SDWA" or "the Act") for the State of Michigan Underground Injection Control Class II Program ("State UIC program") as authorized by Part C of SDWA (P.L. 93-523 as amended; 42 U.S.C. 300f et seq.).

This Agreement is entered into by the State of Michigan (hereafter, "the State") and signed by the Director of the Department of Environment, Great Lakes, and Energy, (hereafter, "the Department") with the United States Environmental Protection Agency, Region 5, and signed by the Regional Administrator (hereafter, "EPA" or "Regional Administrator"). This Agreement shall become effective upon publication of a final rule approving Class II primacy in the *Federal Register*.

A. Lead Agency Responsibilities

The Department is designated by the Governor of the State to implement the State UIC program. The Department facilitates communication between the EPA and the State. The responsibilities include, but are not limited to, the submission of grant applications, reporting and monitoring results, annual report requirements, issuing final permit decisions, and taking timely and appropriate enforcement actions. The Department is responsible for and has authority over all Class II injection wells as defined in Title 40 of the Code of Federal Regulations (40 C.F.R.) § 144.6(b)(1)-(3), except Class II wells sited on "Indian lands," which is defined in 40 C.F.R. § 144.3 as meaning "Indian country" as defined in 18 U.S.C. § 1151. EPA remains the permitting authority with primary enforcement responsibility for Class II injection wells sited on Indian lands located within the State of Michigan

B. Review and Modifications

The parties will periodically review this Agreement. The annual program grant and the State/EPA Agreement (SEA) should be consistent with this Agreement and do not override this Agreement.

This Agreement may be modified upon the initiative of the State or the EPA. Modifications must be in writing and must be signed by the Department Director and the Region 5 Regional Administrator. Modifications become effective when signed by both parties. Modifications may be made by the addenda attached to this Agreement and consecutively numbered, signed, and dated.

C. Conformance with Laws and Regulations

The Department will administer the State UIC program consistent with the State's submission for program approval, this Agreement, the SDWA, applicable federal regulations, priorities established as part of the annually approved state UIC grant, state and federal law, and any separate working agreements which are entered into between the EPA and the Department as necessary for the full administration of the State UIC program.

D. Responsibilities of Parties

Each of the parties has responsibilities to assure that all applicable UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between State and EPA staff in a partnership to assure successful and effective administration of the State UIC program. In this partnership, the Region 5 Regional Administrator will provide to the Department necessary technical and policy assistance on program matters.

The Region 5 Regional Administrator will keep the Department apprised, in a timely manner, of the meaning and content of federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which might affect the State UIC program.

The strategies and priorities for issuance of permit decisions, compliance monitoring, enforcement, and implementation of technical requirements will be established in the State's UIC program description, the annual SEA, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the State and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the State UIC program.

E. Sharing of Information

The Department will promptly inform EPA of any proposed, pending, or enacted modifications to laws, regulations, rules, or guidelines, and any judicial decisions or administrative actions, which might affect the State UIC program and the State's authority to administer the program. The Department will promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect the State's ability to administer the program.

Any information obtained or used by the State under its UIC program will be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing EPA such information. Any information obtained from the State and subject to a claim of confidentiality

will be treated in accordance with 40 C.F.R. Part 2. If EPA obtains information from the State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA will furnish the State the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA will furnish to the State information submitted to EPA under a claim of confidentiality which the State needs to implement its UIC program subject to conditions in 40 C.F.R. Subpart 2.

F. Duty to Revise Program

If the EPA establishes or amends any requirement of a regulation under Section 1421 of SDWA or State statutory or regulatory authority is modified, or a State court issues an opinion and order interpreting and applying State law or rules, the State will have the opportunity to demonstrate that the State UIC program continues to meet the requirements of Section 1421(b) of SDWA and represents an effective program under Section 1425(b) of SDWA. The State may make this alternative showing under Section 1425 of SDWA, but still must do this within 270 days after such revision or amendment.

G. Exemption of USDW's

The State must define an "Underground Source of Drinking Water" (USDW) in a manner that is consistent with 40 C.F.R. Section 146.3 of the UIC regulations. The State will not allow aquifer exemptions in accordance with its determination that aquifer exemptions are not authorized under State rules.

H. Duration of Agreement

This Agreement will remain in effect until such time as State primary enforcement responsibility is returned to EPA by the State, or withdrawn by EPA in accordance with the provisions under 1425(c)(2) of the SDWA.

I. General Provisions

Nothing in this Agreement is intended to affect any State or local UIC program requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements do not prevent the State UIC program from meeting the requirements of Section 1421(b) of the SDWA and 40 C.F.R. part 147 and representing an effective program under Section 1425(b) of the SDWA.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action in accordance with applicable regulations pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1426, 1431 or other Sections of the SDWA.

This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Department or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the Department and EPA.

II. Permitting

A. General

The State is responsible for expeditiously reviewing permit applications, drafting, circulating, issuing, modifying, revoking and reissuing, and terminating UIC permits. The Department will review permit applications and issue permits based on the requirements of the State UIC program. Permit decisions shall comply with the provisions of the approved State UIC program.

B. Transfer of Responsibility from EPA

Existing EPA permits and applications

The Region 5 Regional Administrator will transfer from EPA to the State UIC program all issued permits, excluding permits in Indian country and permits for which EPA has an ongoing enforcement action, when the State assumes primacy for the program. The State will adopt EPA's permits under R 324.814. The State will resolve any differences among EPA-issued and State 615 permit conditions and communicate to operators about their duties under the State's Class II program and permits.

EPA will transfer to the Department pending permit applications and any other information relevant to program operation not already in the possession of the Department.

Ongoing EPA Enforcement Actions

EPA will act in accordance with 1423(a)(2) of the SDWA and retain ongoing investigations and enforcement actions for violations occurring prior to the State receiving primary enforcement responsibility for the UIC program. Permits subject to ongoing EPA enforcement will be transferred to the State after the conclusion of federal enforcement actions.

EPA and the State expect to establish a process by which financial assurance is officially transferred to the State without undue burden to permittees.

C. Alternative Mechanical Integrity Tests

If the State proposes to allow any mechanical integrity tests other than those specified or justified in the program application, the Director will notify the Region 5 Regional Administrator and provide enough information about the proposed test that a judgment about its usefulness and reliability may be made.

D. Compliance Schedule and Reports

The Director may establish compliance schedules in permits where appropriate and will require periodic reporting on compliance with compliance schedules and other permit conditions.

III. Compliance Monitoring

A. General

The Department will operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements. For purposes of this Agreement, the terms "compliance monitoring" or "compliance evaluation" refers to all efforts associated with determining compliance with State UIC program requirements.

B. Compliance Schedule

The Department will maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by permits and State UIC program rules. These procedures should also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The State will initiate appropriate enforcement actions for compliance when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Department will conduct a timely and substantive review of all such reports to determine compliance status. The State will operate a system to determine if: (1) the reports required by permits or state regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and State UIC program requirements are met. The reports and notices will be evaluated for compliance status in accordance with the State UIC program requirements.

D. Inspection and Surveillance

The Department will have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the State UIC program. Inspections and other methods of surveillance shall be utilized to identify persons who have not complied with permit conditions or other program requirements. Any compilation, index, or inventory obtained for such facilities or activities will be made available to the Region 5 Regional Administrator or designee upon request.

The Department will conduct inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections will be performed to assess compliance with all State UIC program requirements and include evaluating a facility's monitoring and reporting program. These inspections will be conducted to determine compliance or noncompliance, to verify the accuracy of information submitted in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information.

E. Information from the Public

The Department will maintain a mechanism for the public to submit information on violations and have procedures for receiving, investigating, and ensuring proper consideration of the information.

F. Authority to Enter

The Department and other State designees engaged in compliance monitoring and evaluation have the authority pursuant to MCL 324.61506(a) and (b) to enter any site or premises subject to regulation or to review and copy the records of relevant program operations where such records are kept.

G. Admissibility

Any investigatory inspections will be conducted and samples and other information will be collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

IV. Enforcement

A. General

The State is responsible for taking timely and appropriate enforcement action against persons in violation of State UIC program requirements, compliance schedules, technical requirements and permit conditions. This includes violations detected by State or federal inspections except as provided in Section II B.

Failure by the State to initiate a timely and appropriate enforcement action may result in an enforcement action by EPA pursuant to Section 1423 of the SDWA.

B. Enforcement Mechanisms

The State has the mechanism to restrain immediately and effectively any person engaging in any unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. The State has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any State UIC program requirement. Additionally, the State has the mechanism to access or sue to recover in court civil penalties and criminal remedies.

C. Public Participation

The State will provide for public participation in the State enforcement process by providing either: 1) the authority which allows intervention as of right by any citizen having an interest which is or may be adversely affected in any civil or administrative action to obtain remedies as specified in 40 C.F.R. § 145.13(d), or 2) assurance that the State agency or enforcement authority will: (i) investigate and provide written responses to all citizen complaints; (ii) not oppose intervention by any citizen when permissive intervention may be authorized by statutes, rule, or

regulation and (iii) publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

D. EPA Enforcement

Upon full delegation of primary enforcement responsibility for the State UIC program, EPA will act in accordance with its authority under Sections 1423 and 1431 of the SDWA. EPA maintains its authority to enter and inspect facilities under 1423(a)(1) of SDWA, and as described in IV.A. of this document. EPA will notify the State in accordance with Section 1423(a)(1) of SDWA. Nothing in this Agreement shall affect EPA's authority or responsibility to take enforcement actions under Sections 1423 and 1431 of the SDWA.

E. Assessment of Fines

The State will assess civil penalties in amounts appropriate to the violation in accordance with the State UIC program.

V. EPA Oversight & Capacity Building

A. General

EPA will oversee the Department's administration of the UIC program on a continuing basis to assure that such administration is consistent with the State's approved program as codified in 40 C.F.R. Part 147, the State UIC grant application, and all applicable requirements embodied in current regulations, policies, and federal law. EPA intends to conduct periodic facility inspections and meetings with the Department to evaluate and discuss program implementation with the Director and staff.

B. State Reports

The Director will immediately notify the Region 5 Regional Administrator by telephone, or otherwise, of any imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the State by well injection.

The Department will submit an annual report on the operation of its Class II program to EPA in accordance with 40 C.F.R. § 144.8. Per 40 C.F.R. § 144.8 at a minimum, the annual report will contain: (a) an updated inventory; (b) a summary of surveillance programs, including the results of monitoring and mechanical integrity testing, the number of inspections, and corrective actions ordered and witnessed; (c) an account of all complaints reviewed by the State and the actions taken; (d) an account of the results of the review of existing wells made during the year; and (f) a summary of enforcement actions taken. The report is expected to be submitted on appropriate EPA forms or their contemporary equivalents. The State will submit annual reporting for its Class II program grant under 40 C.F.R. § 35.115.

C. Performance Evaluation

EPA will evaluate the State UIC program using annual State reporting submitted under 40 C.F.R. § 35.115. Evaluation of performance may include site inspections and reviewing program reports and other requested information to determine State UIC program consistency with the approved State Class II UIC program, the SDWA, and applicable regulations. The evaluation will include a review of resource allocations.

EPA may also conduct comprehensive program reviews on an as-needed basis. During any annual or periodic program evaluation or comprehensive program review, EPA may review Department databases and a to-be-determined number of permit and compliance files. The Department will submit and/or provide access to databases and files necessary for evaluating the Department's administration of the State UIC program. EPA will submit a summary of the draft evaluation findings to the Department outlining the program strengths and recommendations for improving the Department's Class II program operations. The Department will have an opportunity to comment on the draft findings.

In addition to the specific activities listed in this section, EPA may from time to time, request specific information necessary for evaluating the Department's administration of the UIC program. The Department will submit the information requested and provide access to all files necessary for the evaluation.

EPA will provide technical assistance to the Department on permits, compliance, enforcement, and emergency response. The Department will have the lead responsibility for all such actions. However, nothing in this Agreement shall restrict EPA's oversight authority and right to take unilateral enforcement actions.

D. Inspection and Surveillance by EPA

EPA may conduct periodic site and activity inspections on injection operations, giving priority to operations having the greatest potential to endanger public health. The Region 5 Regional Administrator will generally notify the State as least seven (7) days before any inspection and allow opportunity for the Department to accompany EPA on any such inspection. The Region 5 Regional Administrator may waive advance notification to inspect a facility if, for example, an emergency exists, or it is not possible to give such advance notification. In keeping with Section 1445(b)(2) of the SDWA, the State agrees not to use such information to inform the person whose property is to be entered of the pending inspection. In addition, EPA may periodically accompany State inspectors during well inspections and participate in the performance of file reviews for compliance evaluation purposes.

VI. Execution of Agreement

This Agreement may be executed through duplicate originals and shall be effective upon publication of a final rule approving Class II primacy in the *Federal Register*.

VII. Signatures

Michigan Department of Environment, Great Lakes, and Energy

By _____

Liesl Eichler Clark, Director

Date 10/8/19

U.S. Environmental Protection Agency, Region 5

By _____

Cathy Stepp, Regional Administrator

Date _____

SECTION G

Executive Order No. 2019-06

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2019-06

Department of Environmental Quality
Department of Licensing and Regulatory Affairs
Department of Natural Resources
Department of Technology, Management, and Budget

Department of Environment, Great Lakes, and Energy

Executive Reorganization

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

Section 2 of article 5 of the Michigan Constitution of 1963 empowers the governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the governor considers necessary for efficient administration.

State government needs a principal department focused on improving the quality of Michigan's air, land, and water, protecting public health, and encouraging the use of clean energy. That department should serve as a full-time guardian of the Great Lakes, our freshwater, and our public water supplies.

Michigan state government can better administer the implementation of administrative rules and the conduct of administrative hearings—particularly those that protect Michigan's air, land, and water, and the public health—by consolidating state functions and responsibilities relating to administrative hearings and rules.

Overly bureaucratic organizations within state government can hinder the state's response to threats to the environment and public health and detract from good government.

It is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government.

Acting pursuant to the Michigan Constitution of 1963 and Michigan law, I order the following:

1. **Establishing the Department of Environment, Great Lakes, and Energy**

(a) Renaming the Department of Environmental Quality

(1) The Department of Environmental Quality is renamed the Department of Environment, Great Lakes, and Energy (the "Department").

(2) After the effective date of this order, a reference to the Department of Environmental Quality will be deemed to be a reference to the Department.

(3) After the effective date of this order, a reference to the director of the Department of Environmental Quality will be deemed to be a reference to the director of the Department.

(b) Interagency Environmental Justice Response Team

(1) The Interagency Environmental Justice Response Team (the "Response Team") is created as an advisory body within the Department, consisting of the following members:

(A) The director of the Department, or the director's designee from within the Department.

(B) The director of the Department of Agriculture and Rural Development, or the director's designee from within that department.

(C) The executive director of the Department of Civil Rights, or the executive director's designee from within that department.

(D) The director of the Department of Health and Human Services, or the director's designee from within that department.

(E) The director of the Department of Natural Resources, or the director's designee within that department.

(F) The president of the Michigan Strategic Fund, or the president's designee from within the Michigan Strategic Fund.

(G) The director of the Department of Transportation, or the director's designee from within that department.

(H) The chairperson of the Public Service Commission, or the chairperson's designee from within the Public Service Commission.

(2) The members of the Response Team are *ex officio* members.

(3) The director of the Department, or the director's designee from within the Department, is designated as the chairperson of the Response Team.

(4) The Response Team shall act in an advisory capacity with the goal of assuring that all Michigan residents benefit from the same protections from environmental hazards, and do all the following:

(A) Assist the Department in developing, implementing, and regularly updating a statewide environmental justice plan (the "Plan").

(B) Identify and make recommendations to address discriminatory public health or environmental effects of state laws, regulations, policies, and activities on Michigan residents, including an examination of disproportionate impacts.

(C) Develop policies and procedures for use by state departments and agencies, including collaborative problem-solving, to assist in assuring that environmental justice principles are incorporated into departmental and agency decision-making and practices.

(D) Recommend mechanisms for members of the public, communities, tribal governments, and groups, including disproportionately-burdened communities, to assert adverse or disproportionate social, economic, or environmental impact upon a community and request responsive state action.

(E) Make recommendations to ensure consistency with federal environmental justice programs and recommend specific mechanisms for monitoring and measuring the effects of implementing the Plan.

(F) Identify state departments and agencies that could benefit from the development of a departmental or agency environmental justice plan.

(G) Assist in the development of departmental or agency environmental justice plans and review the plans for consistency with the Plan.

(H) Recommend measures to integrate and coordinate the actions of state departments to further the promotion of environmental justice in this state.

(I) Recommend environmental justice performance goals and measures for the Department and other state departments and agencies with departmental or agency environmental justice plans.

(J) Review the progress of the Department and other departments and agencies with environmental justice plans in complying with the Plan and promoting environmental justice.

(K) Interact with tribal governments regarding environmental justice issues.

(L) Work to achieve Michigan's goal of becoming a national leader in achieving environmental justice.

(M) Make recommendations to improve environmental justice training for state and local officials and employees.

(N) Review best practices to enhance community environmental quality monitoring.

(O) Recommend changes in Michigan law.

(P) Perform other advisory duties as requested by the director of the Department or the governor.

(5) The Response Team shall report regularly to the director of the Department and the governor on its activities.

(6) The following provisions apply to the operations of the Response Team:

(A) The Department shall assist the Response Team in the performance of its duties and provide personnel to staff the Response Team, subject to available funding. The budgeting, procurement, and related management functions of the Response Team will be performed under the direction and supervision of the director of the Department.

(B) The Response Team shall adopt procedures, consistent with this order and applicable law, governing its organization and operations. The Response Team should actively solicit public involvement in its activities.

(C) A majority of the members of the Response Team serving constitutes a quorum for the transaction of the business of the Response Team. The Response Team must act by a majority vote of its serving members.

(D) The Response Team shall meet at the call of its chairperson and as otherwise provided in procedures adopted by the Response Team.

(E) The Response Team may establish advisory workgroups composed of individuals or entities participating in Response Team activities or other members of the public as deemed necessary by the Response Team to assist the Response Team in performing its duties and responsibilities. The Response Team may adopt, reject, or modify any recommendations proposed by an advisory workgroup.

(F) The Response Team may, as appropriate, make inquiries, studies, investigations; hold hearings; and receive comments from the public. The Response Team also may consult with outside experts in order to perform its duties, including experts in the private sector, organized labor, government agencies, and at institutions of higher education.

(G) The Response Team 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 Response Team and the performance of its duties as the director deems advisable and necessary, consistent with this order and applicable law, rules, and procedures, subject to available funding.

(H) The Response Team may accept donations of labor, services, or other things of value from any public or private agency or person. Any donations shall be received and used in accordance with law.

(7) All departments, committees, commissioners, or officers of this state shall give to the Response Team, or to any member or representative of the Response Team, any necessary assistance required by the Response Team, or any member or representative of the Response Team, in the performance of the duties of the Response Team so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given to any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of the Response Team, consistent with applicable law.

(8) Executive Directive 2018-3 is rescinded in its entirety.

(c) Office of the Clean Water Public Advocate

(1) The Office of the Clean Water Public Advocate is created as a Type I agency within the Department.

(2) The director of the Department shall appoint the Clean Water Public Advocate, who will be the head of the Office of the Clean Water Public Advocate.

(3) The Clean Water Public Advocate shall do all the following:

(A) Accept and investigate complaints and concerns related to drinking water quality within the State of Michigan.

(B) Establish complaint, investigatory, informational, educational, and referral procedures and programs relating to drinking water quality, coordinating with existing programs where feasible.

(C) Establish a statewide uniform reporting system to collect and analyze complaints about drinking water quality for the purpose of publicizing improvements and significant problems, coordinating with existing programs where feasible.

(D) Assist the Department, or other departments or agencies, in the resolution of complaints where necessary or appropriate.

(E) Assist in the development, and monitor the implementation, of state and federal laws, rules, and regulations relating to drinking water quality.

(F) Recommend changes in state and federal law, rules, regulations, policies, guidelines, practices, and procedures relating to drinking water quality.

(G) Cooperate with persons and public or private agencies and undertake or participate in conferences, inquiries, meetings, or studies that may lead to improvements in drinking water quality in this state.

(H) Publicize the activities of the Office of the Clean Water Public Advocate, as appropriate.

(I) Identify issues related to drinking water quality that transcend state departmental jurisdictions and work with the director of the Department, the director of the Department of Health and Human Services, and other state departments and agencies to seek solutions.

(J) Report matters relating to drinking water quality to the governor and the director of the Department, as the Clean Water Public Advocate deems necessary.

(4) All departments, committees, commissioners, or officers of this state shall give to the Office of the Clean Water Public Advocate, or to any member or representative of the Office of the Clean Water Public Advocate, any necessary assistance required by the Office of the Clean Water Public Advocate, or any member or representative of the Office of the Clean Water Public Advocate, in the performance of the duties of the Office of the Clean Water Public Advocate so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given to any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of the Office of the Clean Water Public Advocate, consistent with applicable law.

(d) Office of Climate and Energy

(1) The Office of Climate and Energy is established within the Department.

(2) The Office of Climate and Energy shall exercise the authorities, powers, duties, functions, and responsibilities transferred from the Michigan Agency for Energy to the Department under section 4(b) of this order.

(3) The Office of Climate and Energy also shall do all the following:

(A) Coordinate activities of state departments and agencies on climate response.

(B) Provide insight and recommendations to state government and local units of government on how to mitigate climate impact and adapt to climate changes.

(C) Provide guidance and assistance for the reduction of greenhouse gas emissions, renewable energy and energy efficiency, and climate adaptation and resiliency.

(D) Perform other functions and responsibilities as requested by the director of the Department.

(e) Office of the Great Lakes

(1) A new Office of the Great Lakes is established within the Department.

(2) The Office of the Great Lakes shall exercise the authorities, powers, duties, functions, and responsibilities transferred from the former Office of the Great Lakes to the Department under section 5(a) of this order, as allocated or reallocated by the director of the Department to promote the economic and efficient administration and operation of the Department.

(f) Office of the Environmental Justice Public Advocate

(1) The Office of the Environmental Justice Public Advocate is created as a Type I agency within the Department.

(2) The director of the Department shall appoint the Environmental Justice Public Advocate, who is the head of the Office of the Environmental Justice Public Advocate.

(3) The Environmental Justice Public Advocate shall do all the following:

(A) Accept and investigate complaints and concerns related to environmental justice within the state of Michigan.

(B) Establish complaint, investigatory, informational, educational, and referral procedures and programs relating to environmental justice, coordinating with existing investigatory programs where feasible.

(C) Establish a statewide uniform reporting system to collect and analyze complaints about environmental justice for the purpose of publicizing improvements and significant problems, coordinating with existing programs where feasible.

(D) Assist the Department, or other departments or agencies, in the resolution of complaints where necessary or appropriate.

(E) Assist in the development, and monitor the implementation of, state and federal laws, rules, and regulations relating to environmental justice.

(F) Recommend changes in state and federal law, rules, regulations, policies, guidelines, practices, and procedures relating to environmental justice.

(G) Cooperate with persons and public or private agencies and undertake or participate in conferences, inquiries, meetings, or studies that may lead to improvements in environmental justice in this state.

(H) Publicize the activities of the Office of the Environmental Justice Public Advocate.

(I) Identify issues related to environmental justice that transcend state departmental jurisdictions and work with the director of the Department and the Interagency Environmental Justice Response Team created under section 1(b) of this order to seek solutions.

(J) Report matters of environmental injustice involving state departments and agencies to the governor and the director of the Department, as the Environmental Justice Public Advocate deems necessary.

(K) Attend and participate in meetings of the Interagency Environmental Justice Response Team created under section 1(b) of this order.

(4) All departments, committees, commissioners, or officers of this state shall give to the Office of the Environmental Justice Public Advocate, or to any member or representative of the Office of the Environmental Justice Public Advocate, any necessary assistance required by the Office of the Environmental Justice Public Advocate, or any member or representative of the Office of the Environmental Justice Public Advocate, in the performance of the duties of the Office of the Environmental Justice Public Advocate so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given to any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of the Office of the Environmental Justice Public Advocate, consistent with applicable law.

(g) Science Review Boards

(1) The director of the Department may create one or more science review boards to advise the Department and the governor on scientific issues relating to the authorities, powers, duties, functions, and responsibilities of the Department, including those relating to protecting Michigan's environment, the Great Lakes, and the safety of drinking water.

(2) A board created under section 1(g)(1) of this order will consist of 7 members appointed by the director of the Department, each with scientific expertise in one or more of the following areas: biology, chemistry, ecology, climatology, hydrology, hydrogeology, toxicology, human medicine, engineering, geology, physics, risk assessment, or other related disciplines.

(3) A board created under section 1(g)(1) of this order shall assess the scientific issue before the board and determine whether the board has sufficient expertise to fully review the issue. If the board determines that additional expertise would assist the board in its review, the board may request assistance from one or more persons with knowledge and expertise related to the subject of its scientific inquiry.

(4) The director of the Department shall designate a member of a board created under section 1(g)(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 its vice-chairperson.

(5) A board created under section 1(g)(1) of this order will be staffed and assisted by personnel from the Department, subject to available funding. The budgeting, procurement, and related management functions of the board will be performed under the direction and supervision of the director of the Department.

(6) A board created under section 1(g)(1) of this order shall adopt procedures, consistent with this order and applicable law, governing its organization and operations.

(7) A majority of the members serving on a board created under section 1(g)(1) of this order constitutes a quorum for the transaction of the board's business. The board shall act by a majority vote of its serving members.

(8) A board created under section 1(g)(1) of this order will meet at the call of its chairperson and as may be provided in procedures adopted by the board.

(9) A board created under section 1(g)(1) of this order may make inquiries, studies, investigations, hold hearings, and receive comments from the public relating to its functions and responsibilities under this order. A board also may consult with outside experts in connection with the performance of its duties, including experts in the private sector, at government agencies, and at institutions of higher education.

(10) Members of a board created under section 1(g)(1) of this order serve without compensation, but may receive reimbursement for necessary travel and expenses consistent with applicable law, rules, and procedures, and subject to available funding.

(11) A board created under section 1(g)(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 deems advisable and necessary, consistent with applicable law, rules, and procedures, and subject to available funding.

(12) A board created under section 1(g)(1) of this order may accept donations of labor, services, or other things of value from any public or private agency or person. Any donations shall be received and used in accordance with law.

(13) All departments, committees, commissioners, or officers of this state shall give to a board created under section 1(g)(1) of this order, or to any member or representative of a board created under section 1(g)(1) of this order, any necessary assistance required by the board created under section 1(g)(1) of this order, or any member or representative of a board created under section 1(g)(1) of this order, in the performance of a board created under section 1(g)(1) of this order so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given to any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of a board created under section 1(g)(1) of this order, consistent with applicable law.

(h) State Plumbing Board

(1) The position on the State Plumbing Board designated for the director of the Department of Environmental Quality or his or her authorized representative is transferred to the director of the Department or the director's designated representative from within the Department, as a voting, ex officio member of the State Plumbing Board.

(2) The position on the State Plumbing Board designated for a member or employee of the Department of Environmental Quality selected by the director of the Department of Environmental Quality is transferred to an individual with expertise in hydrology or clean drinking water appointed by the director of the Department and serving at the pleasure of the director of the Department. The individual appointed by the director of the Department under this section 1(h)(2) may be an employee of the Department.

2. Administering the Department

(a) The director of the Department is the head of the Department.

(b) The director of the Department shall establish the internal organization of the Department and allocate and reallocate duties and functions to promote the economic and efficient administration and operation of the Department.

(c) The director of the Department may promulgate rules and regulations as 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.

(d) The director of the Department 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 vested in the director of the Department by law or order.

(e) The director of the Department may appoint one or more deputy directors and other assistants and employees as necessary to implement and effectuate the powers, duties, and functions vested in the Department under this order or other law.

(f) Deputies may perform the duties and exercise the duties as prescribed by the director of the Department. The director of the Department may delegate within the Department a duty or power conferred on the director of the Department by this order or 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.

(g) Decisions made by the director of the Department, or by persons to whom the director has lawfully delegated decision-making authority, are subject to judicial review as provided by law and in accordance with applicable court rules.

(h) The director of the Department may utilize administrative law judges and hearing officers employed by the Michigan Office of Administrative Hearings and Rules to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

(i) The director of the Department is the chief advisor to the governor regarding the development of energy policies and programs.

(j) The director of the Department is the chief advisor to the governor regarding the development of policies and programs relating to freshwater and the Great Lakes.

(k) The director of the Department is designated as the governor's designee as a commissioner on the Great Lakes Commission under section 32202 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.32202.

(l) The director of the Department 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 authorities, powers, duties, functions, and responsibilities vested in the Department.

3. Establishing the Michigan Office of Administrative Hearings and Rules

(a) The Michigan Office of Administrative Hearings and Rules ("Office") is created as a Type I agency within the Department of Licensing and Regulatory Affairs. The director of the Department of Licensing and Regulatory Affairs shall appoint an executive director of the Office to head the Office. The executive director of the Office must administer the personnel functions of the Office and be the appointing authority for employees of the Office.

(b) As a Type I agency, the Office shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing, and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication, including those transferred to the Office under this order, independently of the director of the Department of Licensing and Regulatory Affairs. The budgeting, procurement, and related management functions of the Office shall be performed under the direction and supervision of the director of the Department of Licensing and Regulatory Affairs.

(c) After the effective date of this order, a reference to the Michigan Administrative Hearing System or the Michigan Office of Regulatory Reinvention will be deemed to be a reference to the Michigan Office of Administrative Hearings and Rules created under section 3 of this order. The position of executive director of the Michigan Administrative Hearing System is abolished.

(d) The executive director of the Office is the chief regulatory officer of the State of Michigan.

4. Transfers from the Department of Licensing and Regulatory Affairs

(a) Michigan Public Service Commission

(1) The Michigan Public Service Commission is transferred by Type I transfer from the Michigan Agency for Energy to the Department of Licensing and Regulatory Affairs.

(b) Michigan Agency for Energy

(1) The Energy Security section of the Michigan Agency for Energy, including any authority, powers, duties, functions and responsibilities of the Energy Security section, is transferred to the Michigan Public Service Commission. The authorities, powers, duties, functions, and responsibilities of the executive director of the Michigan Agency for Energy under 1982 PA 191, as amended, MCL 10.82 to 10.87, are transferred to the chairperson of the Michigan Public Service Commission.

(2) The Michigan Agency for Energy, excluding any authorities, powers, duties, functions, and responsibilities transferred under section 4(a) or 4(b)(1), is transferred by Type III transfer from the Department of Licensing and Regulatory Affairs to the Department. The director of the Department may allocate authority, power, duties, functions and responsibilities transferred under this section 4(b)(2) within the new Office of Climate and Energy created by section 1(d) of this order.

(3) The Michigan Agency for Energy is abolished.

(4) The position of executive director of the Michigan Agency for Energy is abolished.

(c) Michigan Administrative Hearing System

(1) The authorities, powers, duties, functions, and responsibilities of the Michigan Administrative Hearing System created by Executive Order 2011-4, MCL 445.2030, are transferred to the Michigan Office of Administrative Hearing and Rules created by section 3 of this order.

(2) The Michigan Administrative Hearing System is abolished.

5. Transfers from the Department of Natural Resources

(a) Office of the Great Lakes

(1) The Office of the Great Lakes is transferred by Type III transfer from the Department of Natural Resources to the Department.

(2) The Office of the Great Lakes is abolished.

(3) The position of director of the Office of the Great Lakes is abolished.

6. Transfers from the Department of Technology, Management, and Budget

(a) Office of Performance and Transformation

(1) The Office of Good Government created within the Office of Performance and Transformation under section III of Executive Order 2016-4, MCL 18.446, is transferred by Type III transfer to the Department of Technology, Management, and Budget and is abolished.

(2) The Office of Reinventing Performance in Michigan, also known as the Office of Continuous Improvement, created within the Office of Performance and Transformation under section IV of Executive Order 2016-4, MCL 18.446, is transferred by Type III transfer to the Department of Technology, Management, and Budget and is abolished.

(3) Except as otherwise provided in section 6(a)(4), the authorities, powers, duties, functions, and responsibilities of the Office of Interagency Initiatives within the Office of Performance and Transformation are transferred to the Executive Office of the Governor and the Office of Interagency Initiatives is abolished.

(4) All the authorities, powers, duties, functions, and responsibilities vested in the Office of Performance and Transformation under section V of Executive Order 2016-4, MCL 18.446, are transferred by Type III transfer to the Department of Technology, Management and Budget.

(5) The Environmental Rules Review Committee created within the Office of Performance and Transformation under section 65 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.265, and the authorities, powers, duties, functions, and responsibilities of the Environmental Rules Review Committee under sections 65 and 66 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.265 and 24.266, are transferred intact to the Department.

(6) The authorities, powers, duties, functions, and responsibilities of the Office of Performance and Transformation transferred from the Office of Regulatory Reinvention under section II of Executive Order 2016-4, MCL 18.446, and the authorities, powers, duties, functions, and responsibilities of the Office of Performance and Transformation under the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 to 24.328, not transferred to the Department under this order are transferred to the Michigan Office of Administrative Hearings and Rules created by section 3 of this order. The Office of Regulatory Reinvention is abolished.

(7) Any remaining authorities, powers, duties, functions and responsibilities of the Office of Performance and Transformation not otherwise transferred under this section 6(a), including the Office of Internal Audit Services, which remains intact, are transferred to the State Budget Office and the Office of Performance and Transformation is abolished.

(b) Environmental Science Advisory Board

(1) The Environmental Science Advisory Board is transferred by Type III transfer from the Department of Technology, Management, and Budget to the Department.

(2) The Environmental Science Advisory Board is abolished.

7. Definitions

As used in this order:

(a) "Civil Service Commission" means the commission required under section 5 of article 11 of the Michigan Constitution of 1963 and includes the State Personnel Director.

(b) "Department of Environment, Great Lakes, and Energy" or "Department" means the principal department of state government originally created as the Department of Environmental Quality under section IV of Executive Order 2011-1, MCL 324.99921, and renamed by this order.

(c) "Department of Environmental Quality" means the principal department of state government created under section IV of Executive Order 2011-1, MCL 324.99921.

(d) "Department of Health and Human Services" means the principal department of state government created by Executive Order 2015-4, MCL 400.227.

(e) "Department of Licensing and Regulatory Affairs" means the principal department of state government originally created as the Department of Commerce under section 225 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.325, renamed as the Department of Consumer and Industry Services by Executive Order 1996-2, MCL 445.2001, renamed the Department of Labor and Economic Growth by Executive Order 2003-18, MCL 445.2011, renamed the Department of Energy, Labor, and Economic Growth by Executive Order 2008-20, MCL 445.2025, and renamed the Department of Licensing and Regulatory Affairs by Executive Order 2011-4, MCL 445.2030.

(f) "Department of Natural Resources" means the principal department of state government created under section III of Executive Order 2011-1, MCL 324.99921.

(g) "Department of Technology, Management, and Budget" means the principal department of state government originally created as the Department of Management and Budget by section 121 of The Management and Budget Act, 1984 PA 481, as amended, MCL 18.1211, and renamed the Department of Technology, Management, and Budget by Executive Order 2009-55, MCL 18.441.

(h) "Environmental Science Advisory Board" means the board created within the Department of Technology, Management, and Budget under section 2603 of the

Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 2603.

(i) "Michigan Administrative Hearing System" means the agency created within the Department of Licensing and Regulatory Affairs by section IX of Executive Order 2011-4, MCL 445.2030.

(j) "Michigan Agency for Energy" means the agency created within the Department of Licensing and Regulatory Affairs by Executive Order 2015-10, MCL 460.21, as modified by Executive Order 2018-1, MCL 460.22.

(k) "Michigan Office of Administrative Hearings and Rules" means the office created within the Department of Licensing and Regulatory Affairs under section 3 of this order.

(l) "Michigan Public Service Commission" means the commission created under the Michigan Public Service Commission Act of 1939, as amended, 1939 PA 3, MCL 460.1.

(m) "Office of the Great Lakes," as used in section 5(a) of this order, means the office created under section 32903 of the Natural Resources and Environmental Protection Act, as amended, 1994 PA 451, MCL 324.32903, transferred to the former Department of Environmental Quality by Executive Order 1995-18, MCL 324.99903, transferred to the former Department of Natural Resources and Environment by Executive Order 2009-45, MCL 324.99919, transferred to the Department of Environmental Quality by Executive Order 2011-1, MCL 324.99921, and transferred to the Department of Natural Resources by Executive Order 2017-9, MCL 324.99922, including all of the authorities, powers, duties, functions, responsibilities transferred with the Office of the Great Lakes under Executive Order 2017-9, MCL 324.99922.

(n) "Office of Performance and Transformation" means the office created within the State Budget Office by Executive Order 2016-4, MCL 18.446.

(o) "State Budget Office" means the office within the Department of Technology, Management, and Budget created originally as the Office of the State Budget Director by section 321 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1321, and renamed as the State Budget Office by Executive Order 2009-55, MCL 18.441.

(p) "State Budget Director" means the individual appointed by the governor under section 321 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1321.

(q) "State Personnel Director" means the administrative and principal executive officer of the Civil Service Commission provided for under section 5 of article 11 of the Michigan Constitution of 1963 and section 204 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.304.

(r) "State Plumbing Board" means the board provided for by section 1105 of the Skilled Trade Regulation Act, 2016 PA 407, MCL 339.6105.

(s) "Type I agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103.

(t) "Type II transfer" means that phrase as defined under Section 3 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103.

(u) "Type III transfer" means that phrase as defined under Section 3 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103.

8. **Implementation**

(a) The director of any department receiving a transfer under this order shall provide executive direction and supervision for the implementation of all transfers to that department under this order.

(b) The functions and responsibilities transferred to a department under this order will be administered under the direction and supervision of the director of the department receiving a transfer under this order.

(c) 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 a department receiving a transfer under this order are transferred to that same department receiving a transfer under this order.

(d) The director of any department receiving a transfer under this order shall administer the functions and responsibilities transferred to the department receiving a transfer under this order in such ways as to promote efficient administration and must make internal organizational changes as administratively necessary to complete the realignment of responsibilities under this order.

(e) State departments, agencies, and state officers shall fully and actively cooperate with and assist the director of a department with implementation responsibilities under this order. The director of a department with implementation responsibilities under this order may request the assistance of other state departments, agencies, and officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and the departments, agencies, and officers shall provide that assistance.

(f) 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.

(g) A rule, regulation, order, contract, or agreements relating to a function or responsibility transferred under this order lawfully adopted before the effective date of this order will continue to be effective until revised, amended, repealed, or rescinded.

(h) This order does not abate any criminal action commenced by this state before the effective date of this order.

(i) This order is not intended to abate a proceeding commenced by, against, or before an entity affected by this order. A proceeding may be maintained by, against, or before the successor of any entity affected under this order.

(j) If any portion of this order is found to be unenforceable, the unenforceable provision should be disregarded and the rest of the order should remain in effect as issued.

(k) Consistent with section 2 of article 5 of the Michigan Constitution of 1963, this order is effective April 22, 2019 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan.

Date: February 20, 2019

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

FILED WITH SECRETARY OF STATE
ON 2/20/19 AT 4:45 pm