



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



PHILLIP D. ROOS  
DIRECTOR

**Variance**  
**Suspension of Enforcement of Rule 336.1662**  
**For Limited use of Industrial Maintenance Coatings on Bridge Construction**

## 1. Variance Statement

In accordance with the provisions of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), a variance is granted suspending enforcement of specific requirements of R 336.1662 (Rule 662), only as described below. This variance is granted for a period of one year from the effective date of this document for only the following portion of Michigan Air Pollution Control Rules (MAPCR) R 336.1662:

- The industrial maintenance coating limit of 250 grams of Volatile Organic Compounds (VOC)/liter as described in Table 1 of the Ozone Transport Commission's "Model rule for Architectural and Industrial Maintenance Coating Rule," Phase II dated June 21, 2011,\* and only when complying with the additional following requirements:
  - Coatings are only used to cover minor repairs and touch-ups.
  - Coatings are only used on bridges and bridge related structures.
  - Coatings, as applied, do not exceed 2,500 gallons of usage per year.
  - Coatings, as applied, do not exceed 3 lbs. of VOC/gallon.

The purpose of this variance is to suspend the requirements of the newly promulgated MAPCR Part 6 rule for industrial maintenance coatings for use in touch-up painting of the Gordie Howe International Bridge and its related structures. Given the circumstances of construction and the timing of the newly promulgated rule and minor quantity of emissions anticipated in exceedance of those allowed by the rule, enforcing the rule as promulgated is viewed as an unnecessary and undue hardship on the citizens of Michigan. Also, in absence of the variance, alternative solutions to resolve the issue within the confines of the rules could result in more VOC emissions and excessive costs.

## 2. Regulatory Background

Part 55 of the NREPA, along with rules promulgated pursuant to the NREPA, regulates emissions of air pollutants to the ambient air.

Section 5535 (MCL 324.5535 Suspension of enforcement; reasons; variance) of the NREPA allows the department to suspend enforcement of the whole or part of any rule that would be an unreasonable hardship upon the person, provided it is granted by variance, and it does not violate the federal Clean Air Act (CAA).

Section 5536 (MCL 324.5536 Variance; considerations effecting) specifies considerations the department shall give due recognition to in granting any variance, and conditions and requirements that shall apply. It also specifies when variances may not be granted, and those circumstances do not apply here.

Section 5537 (MCL 324.5537 Variance; granting for undue hardship) specifies the department shall grant a variance from any rule shown to cause harm or undue hardship to a person and would be out of proportion to the benefits to be obtained by compliance but not granted if causing air pollution that is injurious to the public health or if the granting of the variance would violate the CAA.

Section 5538 (MCL 324.5538 Variance; period granted; report; conditions) specifies that any variance granted pursuant to Section 5535 shall be for a period of time specified by the department at the time of granting but not to exceed one year. However, any variance may be continued from year to year.

### **3. Justification for the Department's Position**

The department promulgated several rules addressing the emission of VOCs in April 2023. Rule 662 was a statewide applicable regulation to address those emissions, but because of other factors required by the CAA, the rules were given a very short implementation period. The Gordie Howe International Bridge project was well underway and had long since been using specific industrial maintenance coating products in order to obtain the desired result. Rule 662 made the coatings that were/are in use noncompliant and therefore unattainable and unusable. Compliant coatings did not allow them to achieve a satisfactory result. The alternative, repainting the bridge, would emit much greater VOC emissions than allowing a small amount of noncompliant touch-up paint, and cause an undue financial hardship. Given the difference in VOC content between compliant and noncompliant coatings in this situation, and the limited use of materials both in quantity and situation, the department chooses to issue a variance for this limited portion of Rule 662 with the listed restrictions/limitations described above.

This variance will not cause violations of the CAA.

### **Final Approval**

The Director of the Air Quality Division, having had opportunity to review the variance and having been delegated authority to grant variances by the Director of the Michigan Department of Environment, Great Lakes, and Energy pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises, hereby grants the variance, which shall be entered in the record of the department.



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Annette Switzer, Director  
Air Quality Division  
Michigan Department of Environment, Great Lakes, and Energy

Effective Date: April 23, 2024