

AGENCY REPORT TO THE JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Michigan Office of Administrative Hearings and Rules (MOAHR) at MOAHR-Rules@michigan.gov.

1. Agency Information:

Agency name:	Michigan Department of Environment, Great Lakes, and Energy (EGLE)		
Division/Bureau/Office:	Oil, Gas, and Minerals Division (OGMD)		
Name, title, phone number, and e-mail of person completing this form:	Mark Snow, Manager, Permitting and Technical Services Section, EGLE- OGMD. 517-230-8233 SnowM@Michigan.gov		
Name of Departmental Regulatory Affairs Officer reviewing this form:	David Fiedler		

2. Rule Set Information:

MOAHR assigned rule set number:	2019-001 EG
Title of proposed rule set:	Oil and Gas Operations

3. Purpose for the proposed rules and background:

EGLE is in the process of applying for primacy from the United States Environmental Protection Agency (U.S. EPA) to implement the Class II Underground Injection Control Program. This requires EGLE to demonstrate that the State of Michigan has an equally effective program for the protection of underground sources of drinking water (USDWs) compared to federal standards in accordance with Section 1425 of the Safe Drinking Water Act. Definitions, in particular, are important for demonstrating the State of Michigan program is protecting the same USDWs and that USDWs are unequivocally protected from endangerment. EGLE regulates Class II injection wells under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the Oil and Gas Operations rules that are promulgated under Part 615. A USDW is described in current state rules as fresh water or mineral water that is either used for drinking water or that can potentially be used for drinking water and has fewer than 10,000 milligrams per liter total dissolved solids.

The U.S. EPA has expressed concern regarding the definition of “fresh water” and “mineral water” in Michigan regulations, as well as whether the statutory authority to prevent “waste” is adequate to protect USDWs. These rule revisions address those concerns.

4. Summary of proposed rules:

The current R 324.102(s) defines "fresh water" as “water that is free of contamination in concentrations that may cause disease or harmful physiological effects and is safe for human consumption.” The proposed revised rules would define fresh water as “water that contains less than 1,000 milligrams per liter of total dissolved solids.” This change makes it clear that Michigan will protect water from damage related to injection wells even if the water may already be contaminated from other sources. The term “mineral water” is referenced in Part 615 but is not defined in statute or rules. The proposed revision to R 324.102(z) defines "mineral water" as water that contains 1,000 milligrams per liter or more of total dissolved solids. These two definitions are designed to satisfy the U.S. EPA concern that EGLE must have authority to protect all USDWs.

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Michigan Office of Administrative Hearings and Rules
611 West Ottawa Street; 2nd Floor, Ottawa Building
Lansing, MI 48933
Phone: (517) 335-8658 FAX: (517) 335-9512

The revised R 324.403 requires that water that is used to drill water wells associated with oil and gas exploration must be fresh water that is “free of contamination in concentrations that may cause disease or harmful physiological effects” (because that criterion will be removed from the definition of “fresh water”) in order to protect drinking water sources from contamination from the drilling process. The revised R 324.405 applies that criterion to water used for drilling oil and gas wells through fresh water horizons, for the same reason.

The revised R 324.801(v) states that “waste” as defined in Part 615 includes “endangerment to an underground source of drinking water.” That provision clarifies that EGLE has the requisite authority to protect USDWs under its statutory mandate to “prevent waste.” The U.S. EPA and EGLE is concerned that the existing definition of “endangerment to an underground source of drinking water” may imply that endangerment exists only *after* there is contamination of an underground source of drinking water. EGLE proposes to revise the definition R 324.801(j), to ensure the term is clear that “endangerment to an underground source of drinking water” protects against contaminants that may result from injection operations.

5. List names of newspapers in which the notice of public hearing was published and publication dates (attach copies of affidavits from each newspaper as proof of publication).

Lansing State Journal – May 2, 2019
Gaylord Herald Times – May 3, 2019
Marquette Mining Journal – May 3, 2019

6. Date of publication of rules and notice of public hearing in *Michigan Register*:

May 15, 2019

7. Time, date, location, and duration of public hearing:

1pm, June 21, 2019, Constitution Hall, 525 W. Allegan St., Lansing, Michigan, 1-4pm (3 hours).

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

https://dtmb.state.mi.us/ORRDocs/RIS/1889_2019-001EQ_ris.pdf

9. List of the name and title of agency representative(s) attending public hearing:

Adam Wygant, Division Director, EGLE-OGMD
David Fiedler, Regulatory Affairs Officer, EGLE
Susan Bishop, OGMD Administrative Assistant, OGMD
Larry Organek, Engineer, EGLE-OGMD
Mark Snow, Manager, Permitting and Technical Services Section, EGLE-OGMD

10. Persons submitting comments of support:

Mike Cornelius, Michigan Oil and Gas Association
Erin McDonough, Michigan Oil and Gas Association
Heather Dzedzic, Consumers Energy

11. Persons submitting comments of opposition:

None.

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12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments Made at Public Hearing	Written Comments	Agency Rationale for Change	Rule Number & Citation Changed
1.	Erin McDonough and Mike Cornelius. Michigan Oil and Gas Association.	In support. No recommended changes.	In support. No recommended changes. Please see attachment.	No changes.	N/A.
2.	Heather Dzedzic, Consumers Energy	In support.	Written comment from Consumers Energy were received on July 11, 2019 (one week after the comment period expired). Please see attachment. This comment took issue with the proposed definition of “Mineral Water” in that there is no upper limit on the milligram per liter of total dissolved solids within the definition.	Because comments were submitted after the close of the comment period, no changes to the rules can follow. Moreover, based upon the comments submitted, no changes to the rule were deemed necessary. In placing an upper limit on the “Mineral Water” definition there is no impact to the overall protection of underground sources of drinking water. Lastly, produced waters associated with oil and gas activity, regardless of the total dissolved solid content, and whether those fluids are considered mineral waters, brine, or both, will be allowed to be disposed of in Class II wells.	N/A.

13. Date report completed:

July 15, 2019



MICHIGAN OIL AND GAS ASSOCIATION

124 W. ALLEGAN ST., SUITE 1610 • LANSING MI 48933 • Telephone: (517) 487-1092 • Fax: (517) 487-0961

June 21, 2019

Director Adam Wygant
Oil, Gas, and Minerals Division
Michigan Department of Environmental, Great Lakes, and Energy
525 West Allegan Street
Lansing, Michigan 48909-7756

RE: Oil and Gas Operations 2019-001 EG Rule Set

Dear Director Wygant:

The Michigan Oil and Gas Association, on behalf of its nearly 850 members, supports the Oil and Gas Operations 2019-001 EG proposed rule set.

Michigan's home state oil and gas production provides safe, affordable and reliable energy that keeps homes and families warm and safe, and fuels industry and business. In addition, our industry contributes to approximately 47,000 jobs and a \$13 billion economic impact in Michigan.

This rules package will ensure that the State of Michigan has an equally effective program for protecting underground sources of drinking water (USDW's) compared to federal standards by expanding and strengthening the definition of USDW's. Under the new rule set, fresh water is defined as water contains less than 1000 milligrams per liter of total dissolved solids. While mineral water is defined as water that contains 1000 milligrams per liter or more of total dissolved solids. These definition changes provide protection for additional sources of water, beyond what was previously defined in rules as "fresh water" and make certain that the Michigan program covers the same USDW's as the federal program.

The proposed rule set puts in place additional safeguards for Michigan's fresh water resources and gives the Michigan Department of Environment, Great Lakes, and Energy another tool it needs to protect drinking water and safely regulate Class II injection wells. The changes ensure Michigan follows the high standards set by the EPA.

Respectfully,

Erin D. McDonough
President

July 11, 2019

Oil, Gas, and Minerals Division
Michigan Department of Environment, Great Lakes, and Energy
Attention: Adam Wygant
525 West Allegan St
Lansing, MI 48909-7756

RE: Consumers Energy Company's response to proposed rule revisions under Part 615 (1994 PA 451, § 324.61501)

Consumers Energy Company is one of Michigan's largest combined gas and electric utilities, serving over 6 million of Michigan's 10 million residents. Thus, Consumers Energy (Consumers) appreciates the opportunity to comment on the proposed rule set (2019-001 EQ), outlining the State's anticipated primacy for Class II wells, under the Underground Injection Control (UIC) program and other proposed amendments to Part 615. Consumers recognizes that these comments are being submitted after the published deadline of July 5, 2019 and respectfully requests their inclusion in the record for the proposed rule changes. Consumers has reviewed the revised, published rule set and offers the following comment:

R324.102 (z) – The revised rule defines “Mineral Water” as “water that contains 1000 milligrams per liter or more of total dissolved solids.”

Recommendation – This addition seeks to numerically define and protect potential Underground Sources of Drinking Water (USDW), as articulated in the proposed rule documentation and defined by 40 CFR 144.3. However, the definition provided at Rule 102(z) does not include an upper milligram per liter limit. This could result in brines, common to oil and gas operations, being interpreted as mineral water, which is unlikely the intent of the proposed revision, as brines are regulated separately throughout Part 615. Therefore, Consumers recommends that this definition be revised to reflect the intent of the rule to protect USDWs. A potential revision is: (z) “Mineral water” means water that contains 1000 milligrams per liter or more, *but less than 10,000 milligrams per liter* total dissolved solids.

Thank you for considering our comments. Consumers Energy supports the State and the Department of Environment, Great Lakes, and Energy in their effort to obtain primacy for the UIC Class II program. We welcome the opportunity for further dialog should you have questions or desire further clarification. I can be contacted at 517-788-1285, or heather.dziedzic@cmsenergy.com.

Sincerely,



Heather Dziedzic
Consumers Energy
Environmental Regulations & Strategy
Senior Environmental Planner: Land & Water Management
1945 W. Parnall Rd, P22-326
Jackson, MI 49201

AFFIDAVIT OF PUBLICATION

RECEIVED
MAY 08 2019
Oil, Gas, and Minerals Division

In the Matter of:
Michigan Department of Environment, Great Lakes, and Energy Oil, Gas, and Minerals Division

STATE OF MICHIGAN

SS: Notice of Public Hearing

COUNTY OF OTSEGO

Gina DeForge, being first duly sworn, says that she is an employee of the Gaylord Herald Times, a newspaper published in the English language for the dissemination of local or transmitted news, which is a duly qualified newspaper, and that annexed hereto is a copy of a certain order taken from said newspaper in which the order was published.

Published:

May 3, 2019



Employee

Subscribed and sworn to before me this

3rd day of May 2019



Vicky Plummer, Notary Public
State of Michigan, County of Otsego
My commission expires April 27, 2025
Acting in the County of Otsego

MICHIGAN DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY
OIL, GAS, AND MINERALS DIVISION

OIL AND GAS OPERATIONS
Rule Set 2019-001 EG

NOTICE OF PUBLIC HEARING

FRIDAY, JUNE 21, 2019
Constitution Hall
525 West Allegan Street
Lansing, Michigan 48909
ConCon Conference Room, 1:00 – 4:00 p.m.

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Oil, Gas, and Minerals Division (OGMD), will hold a public hearing on June 21, 2019 at Constitution Hall in the ConCon Conference Room from 1:00 to 4:00 p.m. The hearing will be held to receive public comments on proposed changes to the Oil and Gas Operations administrative rules.

The proposed rule set (2019-001 EG) will amend the current rules by clarifying definitions and terminology in order to demonstrate that the oil and gas regulatory program within the State of Michigan is equally effective as compared to the Class II well program regulated on the federal level by the United States Environmental Protection Agency (US EPA). EGLE regulates Class II wells under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the US EPA regulates the same wells under the Underground Injection Control (UIC) program under the authority of the Safe Drinking Water Act (SDWA). These rule updates will position Michigan to apply for Class II well delegated authority (termed primacy) of the US EPA program pursuant to Section 1425 of the SDWA.

These rules are promulgated by authority conferred on the Director of EGLE by Section 61506 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.61506. These rules will become effective 7 days after filing with the Secretary of State.

The rules (2019-001 EG) are published on the Michigan Office of Administrative Hearings and Rules' website at Michigan.gov/MOAH. Click on "Administrative Rules", "Pending Rules Activity" and then "Pending Rule Changes." Under "Rules by Department," click on "Environment, Great Lakes, and Energy." Scroll to ORR 2019-001 EG and click on "Revision Text." The rules will also be published in the May 15, 2019 issue of the Michigan Register.

Any interested person is invited to attend and present his or her views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address shown below by 5:00 p.m. on Friday, July 5, 2019. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Oil, Gas, and Minerals Division
Michigan Department of Environment,
Great Lakes, and Energy
(Attention: Mark Snow)
525 West Allegan Street
Lansing, Michigan 48909-7756
Phone: 517-284-6823
Fax: 517-241-1595

E-Mail: EGLE-OGMDPublicComments@Michigan.gov

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations to participate in the hearing (such as information in alternative formats) should contact the OGMD at 517-284-6823 at least 5 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

AFFIDAVIT OF PUBLICATION

LSJ MEDIA

300 S. Washington Square, Suite 300, Lansing, MI 48933

State of Michigan, County of Livingston

IN THE MATTER OF: NOTICE-LSJ3538014

DEQ OIL, GAS, MINERALS DIV.

DEQ OIL, GAS, MINERALS DIV.
525 W ALLEGAN ST

LANSING, MI 48933

Being duly sworn, says that he/she is authorized by the publisher of Lansing State Journal, to swear that a certain notice, a copy of which is annexed here to, was published in the following publication:


1. Published in the English language for the dissemination of general and/or legal news, and
2. Has a bonfide list of paying customers or has been published at least once a week in the same community without interruption for at least 2 years, and
3. Has been established, published and circulated at least once a week without interruption for at least one (1) year in the community where the publication is to occur.

Lansing State Journal, 05/02/19



 Amy Schmidt

SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd DAY OF May, 2019



 GINA ANNE HUFF
 Notary Public State of Michigan
 County of Livingston
 My commission expires March 9, 2023

Acting in the County of Livingston

0003538014, LSJ-0000000026

LSJ-LSJ-Lansing State Journal

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES,
AND ENERGY
OIL, GAS, AND MINERALS DIVISION

OIL AND GAS OPERATIONS
Rule Set 2019-001 EG

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LSJ3538014

05/02/2019

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MAY 10 2019

Oil, Gas, and Minerals Division

The Mining Journal

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Upper Michigan's Largest Daily Newspaper

249 W. Washington St., P.O. Box 430, Marquette, Michigan 49855. Phone (906)228-2500. Fax (906)228-3273.

MAY 06 2019

AFFIDAVIT OF PUBLICATION

STATE OF MICHIGAN

Department of Environmental Quality
Oil, Gas, and Minerals Division

AFFIDAVIT OF PUBLICATION

For the County of **MARQUETTE**

In the matter of: Notice of Public Hearing
Michigan Department of Environment, Great Lakes, and Energy Oil, Gas, and Minerals Division
Oil and Gas Operations
Rule Set 2019-001 EG
June 21, 2019

Size: 2 x 8

State of **MICHIGAN**, County of Marquette ss.

JAMES A. REEVS

being duly sworn, says that he is

PUBLISHER

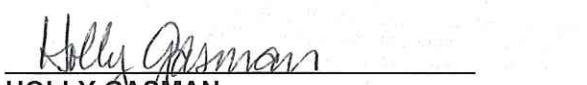
of **THE MINING JOURNAL**

a newspaper published and circulated in said county and otherwise qualified according to Supreme Court Rule; that annexed hereto is a printed copy of a notice which was published in said newspaper on the following date, or dates, to-wit

May 3, 2019


JAMES A. REEVS

Subscribed and sworn to before me this 3rd day of May 2019.


HOLLY GASMAN
Notary Public for MARQUETTE County, Michigan
Acting in the County of Marquette
My commission expires: May 25, 2025

**MICHIGAN DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY
OIL, GAS, AND MINERALS DIVISION**

**OIL AND GAS OPERATIONS
Rule Set 2019-001 EG**

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