Status of Petitions on the National Pollution Discharge Elimination System Phase II General Permits

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The Court of Appeals Denied Relief from Increased Costs of the Permit in City of Riverview v. Dep't of Envtl. Quality

- The Michigan Court of Appeals found that irrespective of whether the permitting requirement for operation of an MS4 imposes increased costs on cities, villages, townships, and counties, the operation of the MS4 is optional, not a mandatory action. Therefore, the increased costs of permits that follow from the voluntary assumption of an activity do not constitute a violation of the Headlee Amendment.
- The *City of Riverview* Case is unpublished and not binding on subsequent courts, but unless the State Law changes to allow Headlee Amendment claims for "optional" activities, a claim increased costs related to future permits will have limited chance of success.
- The Court of Appeals opinion is attached. The Supreme Court refused review of the issues on September 17, 2014.

In the Matter of Petitions on the National Pollution Discharge Elimination System Phase II General Permits

Office of Administrative Hearings

- The Administrative Law Judge (ALJ) dismissed the Contested Case on September 18, 2015.
- The State asserted the 2008 Permit had been withdrawn in 2010, thus no case or controversy remained for the ALJ to decide. Challenges to future permits could be filed on a case-by-case basis.
- The Petitioners asserted the same or similar permit was in the process of being reissued so the challenge should move forward as well.
- The ALJ determined that the Administrative Procedures Act did not provide a process to rule on withdrawn permits.
- A Motion for Costs in favor of the municipalities is pending based on the MDEQ's withdrawal of the Permit providing for the "relief" originally requested by the Permittees.

The Next Permit

- The MDEQ has created a new NPDES Permit Application for Discharge of Storm Water to Surface Waters of the State from an MS4.
- The new NPDES Permit is an **Individual Permit** not a General or Jurisdictional Permit.
- Each city, village, township, county, or other municipal entity will fill out the Permit Application "requesting" permit conditions.
- The Permit Schedule is staggered, with different watersheds coming up for renewal for each year of the 5-year permit cycle

Disclaimer: The presentation is based on advice we are giving our clients. It is not intended to be general legal advice and you should consult your legal counsel in connection with your permit.

Preserve Objections to Permit Conditions

- The Permit Application requires the Applicant to propose its own Permit Conditions.
- The options to propose Permit Conditions are limited by the Permit Application itself.
- In order to preserve objections to costly, arbitrary and capricious, or otherwise unlawful or objectionable Permit Conditions, applicants *should consider proposing only Permit Conditions that they do not object to and are willing and able to undertake.*
- Alternatives can be described for objectionable permit conditions even if the "alternative" is not suggested by the Permit Application.

The Permit Conditions as Set Forth In the Application are only Generally Based on the State Rules and Federal Law and thus are Subject to Future Challenge

- Although the Courts found that the Headlee Amendment POUM clause does not apply to MS4s, all other objections to the Permit conditions raised remain viable. The Office of Administrative Hearings Dismissal of the Contested Case was not based on the merits of the Permit.
- Rule 323.2161a governs the content of the permit and is broad and general with respect to permit requirements. The Permit Application does not follow the State Regulations. Most of the Application/Permit detail has been created by MDEQ staff.
- The MDEQ does not have "rulemaking" authority under the Administrative Procedures Act.

Objectionable Permit Conditions

- If MDEQ staff does not "approve" the proposed "alternative," it is likely that the MDEQ will issue the Permit Condition from the available options in the Application or will otherwise deny the application.
- The Applicant can object in writing to the content of a Permit Condition that it does not agree with and actions in denying the Application.
- Written objections should be detailed and explain why the Permit Condition unreasonable or not feasible as applied.
- Once the Individual Permit is issued with the objectionable condition, the Applicant can contest the Permit individually.
- If multiple Permittees in the same watershed contest petitions within the same timeframe and identify similar objections, the Office of Administrative Hearings may consolidate the cases.

Rule 323.2161a

- Rule 323.2161a is the State Regulation governing the minimum requirements for an NPDES storm water management program.
- The minimum program requirements are broadly stated in the Rule not with the specificity of the Permit Application.
- The Rule dose not include:
  - periodic scheduled field observations of points of discharge.
  - a particular water quality treatment performance standard.
  - a specific channel protection performance standard.
  - off-site mitigation and payment in lieu requirements.
  - expansive MDEQ review and analysis of municipal fleet operations

Permit Conditions are Open to Challenge

- Permit conditions can be challenged as arbitrary and capricious, being without a basis in science, being of little benefit to water quality, and excessive in cost for the benefits provided, or other reasons making the condition not reasonable or infeasible as applied to the Applicant.

Process for Challenging a Condition under an Individual Permit

- Begin by ***preserving objections*** in the Permit Application process.
- Provide "alternatives" to objectionable requirements even if an alternative is not suggested in the Application.
- The alternative should be something that the Permittees has the means and intent to undertake.
- The alternative should comply with the "six-minimum measures," required by federal law.

Process for Challenging a Condition Under an Individual Permit

- If the Permit is public noticed and issued with conditions other than "requested" by the Permit Applicant, a contested case would need to be filed with the Office of Administrative Hearings within 60 days in accordance with MCL 324.3113.

2013 WL 5288907
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

CITY OF RIVERVIEW and All Others Similarly Situated, Plaintiffs–Appellees,
v.
DEPARTMENT OF ENVIRONMENTAL QUALITY, Defendant–Appellant,
and
City of River Rouge, Defendant.
City of Novi, Village of Beverly Hills, City of Farmington Hills, City of Auburn Hills, Village of Bingham Farms, and City of Walled Lake, Plaintiffs–Appellees,
and
City of Orchard Lake Village, Plaintiff,
v.
Department of Environmental Quality, Defendant–Appellant.
David Angileri, Butler Benton, Kenneth Butler II, Township of Brownstown, City of Dearborn, City of Dearborn Heights, City of Gibraltar, Township of Huron, Township of Sumpter, City of Taylor, City of Trenton, Township of Van Buren, Robert Cannon, Robert Chirkun, Charter Township of Clinton, Louis Kisic, Alan Lambert, City of Lincoln Park, City of Madison Heights, City of New Baltimore, City of Northville, Oakland County, City of Plymouth, Charter Township of Redford, City of Rochester, City of Romulus, City of Roseville, Lisa Santo, Philip Sanzica, Paul Sincock, City of Southgate, Patrick Sullivan, and Wayne County, Plaintiffs–Appellees,
v.
Department of Environmental Quality, Defendant–Appellant.

Docket Nos. 301549, 302903, 301551, 302904, 301552, 302905. | Sept. 19, 2013.

Ingham Circuit Court; LC Nos. 09–000712–CZ, 09–001569–CZ, 10–000039–CZ.

Before: CAVANAGH, P.J., and K.F. KELLY and FORT HOOD, JJ.

Opinion

PER CURIAM.

*1 Defendant, Department of Environmental Quality, appeals by leave granted[1] the circuit court order denying, in part, its motion for summary disposition, of the claimed violation of Article 9, § 29 of the Michigan Constitution, known as the Headlee Amendment. We reverse and remand for entry of an order granting summary disposition in favor defendant and vacate the order awarding sanctions.

Pursuant to the federal Clean Water Act, 33 USC 1251 *et seq.*, defendant implemented a storm water program. This case arises from defendant's issuance of National Pollution Discharge Elimination Permits (NPDES) for storm water discharges from municipal separate storm sewer systems. Plaintiffs filed administrative challenges to those permits, and this litigation alleging arbitrary and capricious conduct, statutory and administrative rule violations, and violation of the Headlee Amendment.[2] Defendant filed a motion for summary disposition, and the trial court granted the motion except with regard to the Headlee Amendment claim and for declaratory relief. We granted defendant's application for leave to appeal.

Defendant contends that the circuit court erred by denying summary disposition of the Headlee Amendment claim because the state did not mandate that plaintiffs own and operate municipal separate storm sewer systems. We agree. A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp.*, 486 Mich. 311, 317; 783 NW2d 695 (2010). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials, LLC v. Galui Constr., Inc.*, 295 Mich.App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.* "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id.* The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v. Rozwood*, 461 Mich. 109, 120–121; 597 NW2d 817 (1999). "The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion." *SSC Assoc. Ltd. Partnership v. Gen. Retirement Sys.*, 192 Mich.App 360, 364; 480 NW2d 275

(1991). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 371–372; 547 NW2d 314 (1996).

In *AFSCME Council 25 v. State Employees' Retirement Sys.*, 294 Mich.App 1, 8–9; 818 NW2d 337 (2011), this Court set forth the rules governing interpretation of a constitutional provision:

> Cases involving questions of constitutional interpretation are reviewed de novo. *Midland Cogeneration Venture Ltd. Partnership v. Naftaly*, 489 Mich. 83, 89; 803 NW2d 674 (2011). When interpreting a constitutional provision, the primary goal is to determine the initial meaning of the provision to the ratifiers, the people, at the time of ratification. *Nat'l Pride At Work, Inc. v. Governor*, 481 Mich. 56, 67; 748 NW2d 524 (2008). "[T]he primary objective of constitutional interpretation, not dissimilar to any other exercise in judicial interpretation, is to faithfully give meaning to the intent of those who enacted the law." *Id.* To effectuate this intent, the appellate courts apply the plain meaning of the terms used in the constitution. *Toll Northville Ltd. v. Northville Twp.*, 480 Mich. 6, 11; 743 NW2d 902 (2008). When technical terms are employed, the meaning understood by those sophisticated in the law at the time of enactment will be given unless it is clear that some other meaning was intended. *Id.* To clarify the meaning of the constitutional provision, the court may examine the circumstances surrounding the adoption of the provision and the purpose sought to be achieved. *Traverse City Sch. Dist. v. Attorney General*, 384 Mich. 390, 405; 185 NW2d 9 (1971). An interpretation resulting in a holding that the provision is constitutionally valid is preferred to one that finds the provision constitutionally invalid, and a construction that renders a clause inoperative should be rejected. *Id.* at 406. Constitutional convention debates are relevant, albeit not controlling. *Lapeer Co. Clerk v. Lapeer Circuit Court*, 469 Mich. 146, 156; 665 NW2d 452 (2003). Every provision in our constitution must be interpreted in light of the document as a whole, and "no provision should be construed to nullify or impair another." *Id.* "Statutes are presumed constitutional unless the unconstitutionality is clearly apparent." *Toll Northville Ltd.*, 480 Mich. at 11. The court's power to declare a law unconstitutional is exercised with extreme caution and is not exercised where serious doubt exists regarding the conflict. *Dep't. of Transp. v. Tomkins*, 481 Mich. 184, 191; 749 NW2d 716 (2008).

***2** The interpretation and application of a statute presents a question of law that the appellate court reviews de novo. *Whitman v. City of Burton*, 493 Mich. 303, 311; 831 NW2d 223 (2013). The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. *Id.* First, the court examines the most reliable evidence of the Legislature's intent, the language of the statute itself. *Id.* "When construing statutory language, [the court] must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *In re Receivership of 11910 South Francis Road*, 492 Mich. 208, 222; 821 NW2d 503 (2012). Effect must be given to every word, phrase, and clause in a statute, and the court must avoid a construction that would render part of the statute surplusage or nugatory. *Johnson v. Recca*, 492 Mich. 169, 177; 821 NW2d 520 (2012). "If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted." *Whitman*, 493 Mich. at 311.

Const 1963, art 9, § 29 commonly known as the Headlee Amendment provides:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

The underlying purpose of the Headlee Amendment was set forth as follows:

> The Headlee Amendment was part of a nationwide taxpayers revolt to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and the

> state level. [*Airlines Parking, Inc. v. Wayne Co.*, 452 Mich. 527, 532; 550 NW2d 490 (1996) (quotation marks, punctuation, and citation omitted).]

In *Judicial Attys. Ass'n. v. State of Michigan,* 460 Mich. 590, 595; 597 NW2d 113 (1999), the Court described the two different sentences of the Headlee Amendment:

> The first sentence of this provision prohibits reduction of the state proportion of necessary costs with respect to the continuation of state-mandated activities or services. The second sentence requires the state to fund any additional necessary costs of newly mandated activities or services and increases in the level of such activities or services from the 1978 base year. [Further citation omitted.]

As explained in *Adair v. State of Michigan,* 470 Mich. 105, 111; 680 NW2d 386 (2004), the two sentences represent maintaining funds or prohibiting unfunded mandates:

> *3 To assist the public in understanding the different thrusts of these two sentences, this Court has described the first sentence as a "maintenance of support" (MOS) provision and the second sentence as a "prohibition on unfunded mandates" (POUM) provision. See *id.* Accordingly, to establish a Headlee violation under the MOS clause, the plaintiffs must show "(1) that there is a continuing state mandate, (2) that the state actually funded the mandated activity at a certain proportion of necessary costs in the base year of 1978–1979, and (3) that the state funding of necessary costs has dipped below that proportion in a succeeding year." *Oakland Co. v. Michigan,* 456 Mich. 144, 151; 566 NW2d 616 (1997) (opinion by KELLY, J.). Under the POUM clause, they must show that the state-mandated local activity was originated without sufficient state funding after the Headlee Amendment was adopted or, if properly funded initially, that the mandated local role was increased by the state without state funding for the necessary increased costs.
>
> However, not all activity changes established pursuant to statute or rule constitute "new or increased" activity requiring state funding. MCL 21.234(5) explains what the POUM provision excludes:
>
> (a) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963 adopted pursuant to an initiative petition, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.
>
> (b)A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963, enacted or adopted pursuant to a proposal placed on the ballot by the legislature, and approved by the voters, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.
>
> (c) A court requirement.
>
> (d) A due process requirement.
>
> (e) A federal requirement.
>
> (f) An implied federal requirement.
>
> (g) A requirement of a state law which applies to a larger class of persons or corporations and does not apply to principally or exclusively to a local unit or units of government.
>
> (h) A requirement of a state law which does not require a local unit of government to perform an activity or service but allows a local unit of government to do so as an option, and by opting to perform such an activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines.
>
> (i) A requirement of a state law which changes the level of requirements, standards, or guidelines of an activity or service that is not required of a local unit of government by existing law or state law, but that is provided at the option of the local unit of government.
>
> (j) A requirement of state law enacted pursuant to section 18 of article 6 of the state constitution of 1963.
>
> Thus, under a POUM analysis, not every required change in school activities requires state funding under the Headlee Amendment. *Judicial Attorneys Ass'n, supra* at 603. Headlee, at its core, is intended to prevent attempts by the Legislature "to shift responsibility for services to the local government ... in order to save the money it would have had to use to provide the services itself." *Id.* at 602–603.

*4 Case law has addressed whether a licensing requirement that follows a county's voluntary undertaking

is an unfunded mandate of the Headlee Amendment and rejected the assertion. In *Livingston Co. v. Dep't. of Mgt. & Budget,* 430 Mich. 635; 425 NW2d 65 (1988), the plaintiff county began operating a sanitary landfill in 1972, in accordance with the licensing requirements of the garbage and refuse disposal act (GRDA), 1965 PA 87. In 1979, the act was repealed and replaced with the comprehensive Solid Waste Management Act (SWMA), 1978 PA 641, MCL 299.401 *et seq.* In November 1978, shortly before the adoption of the SWMA, the voters amended the Michigan Constitution by adopting the Headlee Amendment, which provided that the state had to appropriate funds of any necessary costs associated with "an increase in the level of any activity or service beyond that required by existing law." *Id.* at 637–638. To comply with the SWDA, the plaintiff signed a schedule of compliance with the then Department of Natural Resources, and upgraded its landfill by undertaking hydrogeological studies and installing a leachate collection system and PVC liner. The county plaintiff sought to recover the cost of these improvements from the state, but the state asserted that it was not liable. *Id.* at 638. The county obtained a judgment in the Court of Claims, and the Court of Appeals majority affirmed, but our Supreme Court reversed. *Id.* at 638–639.

Our Supreme Court held that the state was not responsible for costs of services and activities unless mandated by state law:

> We are persuaded by our understanding of the purpose of the Headlee Amendment, as expressed in its totality, that it was intended to apply only to increases in the level of those services and activities that state law mandates in the first instance. As we said in *Durant [v. State Bd. of Ed.,* 424 Mich. 364; 381 NW2d 662 (1985)], the Headlee Amendment was intended to "limit legislative *expansion of requirements* placed on local government...."
>
> If we examine the language of art 9, § 29 as a whole, we are left with the firm conviction that this provision of the Headlee Amendment applies only to services and activities required of units of local government. The first sentence of art 9, § 29 clearly limits the reduction of the state-financed portion of the necessary costs of any existing activity or service "required" by state law. There is no ambiguity here about whether or not the activity or service is required. Disregarding the troubling clause of the second sentence of art 9, § 29, there is also no doubt that a new activity or service cannot be required without state financial support for any necessary increased costs.
>
> Section 29 then at least makes clear its intent to prohibit either the withdrawal of support where already given or the introduction of new obligations without accompanying appropriations, and, in both instances, art 9, § 29 applies only to services or activities required by state law. The question then is why would the drafters or the voters limit the prohibition against the withdrawal of support to "required" activities or services in sentence one, and at the same time, in sentence two, prohibit the unfinanced expansion of an optional activity? Such an interpretation creates a flaw in the logic of the Headlee Amendment's overall plan.

***5** That plan is quite obvious. Having placed a limit on state spending, it was necessary to keep the state from creating loopholes either by shifting more programs to units of local government without the funds to carry them out, or by reducing the state's proportion of spending for "required" programs in effect at the time the Headlee Amendment was ratified. The plan clearly does not prohibit the reduction of the "state financed proportion ... of any existing activity or service [*not*] required ... by state law."

Yet under amicus curiae's interpretation plaintiff would be reimbursed for the increased costs allegedly mandated by the SWMA, but due to the unambiguous language in the first sentence of art 9, § 29, a unit of local government that hypothetically was receiving state aid for a landfill at the time of the adoption of the Headlee Amendment could have that support withdrawn. More specifically, to accept amicus curiae's interpretation of the second clause of the second sentence of art 9, § 29 would place that provision in conflict with sentence one. What sentence two would give, sentence one would take away.

Amicus curiae further argues that many essential services of cities and townships, such as fire protection services, are not mandated by state law and that our interpretation of art 9, § 29 would, in effect, defeat the Headlee Amendment by making these units of local government vulnerable to expensive state regulations. We cannot of course anticipate all of the advantages and disadvantages of what we consider to be the plain and most obvious reading of the Headlee Amendment. It does seem, however, that the most fundamental services, such as fire protection, are already being performed in large measure by units of local government. While the state can, and sometimes does, mandate higher standards, benefits, and so forth, it does not necessarily profit from increasing these standards, and, therefore, the kind of escape hatch for the state that the Headlee Amendment was intended to head off is not created. Unlike the shifting of traditional state functions to units of local government, increasing the

> costs of services that are currently performed predominantly by units of local government does not lessen the state's financial burden.
>
> Moreover, if we were to accept amicus curiae's argument that the Headlee Amendment applied to increases in the level of even optional activities or services, any unit of local government that had undertaken an optional activity in the past could pass along to taxpayers statewide the costs of improvements. Units of local government, such as plaintiff county, could look to all state taxpayers for the cost of upgrading a voluntarily assumed, quasi-governmental function, such as a sanitary landfill, whereas taxpayers in an adjoining county that used a private landfill would presumably find charges for using their landfill increased because the private landfill owner could not be reimbursed for upgrading his landfill. That unit of government would in turn have to pass off that increased cost to its own tax base, rather than to that of the entire state. Rather than containing the cost and scope of state and local government as indicated by the Headlee Amendment, this result would encourage local units of government to undertake those services and activities previously provided by private enterprise since state taxpayers as a whole, as opposed to local consumers of the service, would pay for any necessary increased costs associated with the increase in the level of that service or activity. [*Livingston Co.*, 430 Mich. at 643–646 (Emphasis in original).]

*6 The Supreme Court then went on to address whether the SWMA, in effect, required the county to continue to operate the landfill and therefore upgrade its facility. The Court acknowledged that there are statutes that require the county to be responsible for ensuring that all solid waste was removed from its site of generation. However, the Court rejected the assertion that this obligation translated into a viable Headlee Amendment claim, holding:

> While the record does not indicate the degree of difficulty plaintiff would encounter in disposing of solid waste if it did not continue the operation of its landfill, we have no reason to gainsay the fact that its continued operation would be beneficial. We also do not doubt that the alleged newly mandated requirements for the operation of the landfill would add to the cost of disposing of waste. However, the $260,000 cost of the landfill improvements arrived at by the trial court is part of the cost of the ownership of the landfill, not the cost of its use. It is the latter that, arguendo, is mandated, not the former.
>
> The heightened requirements for the licensure of a disposal area were not directed solely to public owners. To the contrary, the statute encourages, as a matter of policy, the continued operation of privately owned landfills. It is a regulatory measure, like many others passed by the Legislature, that applies new technology to everyday activities in the private and public sector.
>
> Under the holding of the court below, the added costs of regulating the many optional services of government would have to be accompanied by an appropriation, if it could be shown to be related to the carrying out of a required service or activity, before that increased regulatory costs is translated into the recoverable cost of that required service or activity. We do not think this complies with either the express language of art 9, § 29, or its overall intended purpose. *[Livingston Co.,* 430 Mich. at 652–653 (footnotes omitted).]

Additionally, in *Kramer v. City of Dearborn Hts.*, 197 Mich.App 723, 725; 496 NW2d 301 (1992), the plaintiffs, property owners in the city, alleged that the state was responsible for the requirements imposed on the city to upgrade sanitary and storm sewers to be in compliance with the Clean Water Act. This Court rejected the Headlee Amendment challenge:

> There is no merit to plaintiffs' claims that the action in this case is violative of the Headlee Amendment because it was taken pursuant to a 1988 amendment of the Federal Clean Water Act, 33 USC 1251 *et seq.*, rather than pursuant to the language of the pre–1978 act. The Headlee Amendment requires the state to pay for the increase in costs incurred by units of local government because of any new activity or service required by the Legislature or another state agency. *Ann Arbor v. Michigan,* 132 Mich.App 132, 136; 347 NW2d 10 (1984). By statute, a law that allows a local unit of government to perform an activity or service, but does not require it, is not a "requirement of state law." MCL 21.234(5)(h).... The providing of a sewage disposal system is optional under the home rule cities, act, MCL 117.4f.... Because sewage disposal by a home rule city is a permissive rather than a mandatory activity, the costs associated with implementing state requirements

> relative to sewage disposal systems operated by a home rule city are not subject to the provision of the Headlee Amendment. [*Id.*]

*7 In light of the above cited authority, the trial court erred by denying defendants' motion for summary disposition of the Headlee Amendment claim. Irrespective of whether the permitting requirement for operation of municipal separate storm sewer systems requires increased costs on cities, villages, townships, and counties, as stated in *Kramer,* the operation of the disposal systems was optional, not a mandatory action. Therefore, the increased costs of permits that follow from the voluntary assumption of an activity do not constitute a violation of the POUM provision of Headlee. Plaintiffs' attempt to distinguish these cases is unpersuasive. In *Livingston Co.,* our Supreme Court noted the abuse that would occur as a result of a Headlee claim wherein private landfill owners would be required to pass along additional permit requirements to its users whereas county owners could spread the increase costs of regulation to state taxpayers as a whole, and that was not intended by Headlee. Similarly, the cost of complying with changes to the sewer permit system will be passed along to all statewide residents if plaintiffs prevail.

MCL 117.4b(2) provides that each city "may" provide in its charter for the "installation and connection of sewers and waterworks ..."; MCL 101.1 governs fourth class cities and provides that the "council of any city may establish, construct and maintain sewers and drains whenever and wherever necessary ..."; and MCL 67.24 governs drains in a village and provides that the "council of any village may establish, construct, and maintain sewers, drains, and watercourses whenever and wherever necessary." The Legislature's use of the term "shall" denotes mandatory action or direction, *Mich. Educ. Ass'n. v. Secretary of State (On Rehearing),* 489 Mich. 194, 218; 801 NW2d 35 (2011), and the term "may" denotes permissive action, *Manuel v. Gill,* 481 Mich. 637, 647; 753 NW2d 48 (2008). Pursuant to the authority of *Livingston Co.* and *Kramer,* the trial court erred by denying summary disposition of the Headlee Amendment claim. The operation of a drainage and sewer system is permissive and not mandated by state law. The fact that the state regulated the optional activity does not require the state to pay for the costs of compliance with the regulations.

In light of holding, we need not address defendant's remaining issues challenging the administrative process. If the trial court had appropriately granted defendant's motion for summary disposition in its entirety, the propriety of the allegations contained in the third amended complaint and the issue of sanctions would never have been addressed. Therefore, we vacate the order addressing the third amended complaint and sanctions.

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2013 WL 5288907

Footnotes

1 *City of Riverview v. Dep't. of Environmental Quality,* unpublished order of the Court of Appeals, issued March 22, 2011 (Docket Nos. 301549, 301551, 301552, 302903, 302904, and 302905).

2 A more detailed statement of facts can be found in *City of Riverview v. State of Michigan,* 292 Mich.App 516, 518–519; 808 NW2d 532 (2011).

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of	**Permit Nos.**	**MIG610000 (Watershed)** **MIS049000 (Jurisdictional)**
Petitions on National Pollution Discharge Elimination System Phase II General Permits	**Part:**	**31, Water Resource Protection**
_____/	**Agency:**	**Department of Environmental Quality**
	Case Type:	**Water Resources Division**

Issued and entered
this 18th day of September, 2015
by Daniel L. Pulter
Administrative Law Judge

The Department of Environmental Quality (DEQ), Water Resources Division (WRD) filed a Motion to Dismiss this contested case on July 16, 2015, claiming that the petitions are moot. The Petitioners filed a Response to the Motion to Dismiss on August 6, 2015, claiming that the issues alleged in the petitions are "capable of repetition but evading review." The WRD filed a Reply on August 20, 2015. Oral argument was held on August 24, 2015. On September 15, 2015, the Petitioners submitted a Supplement to their Brief in Opposition to the Motion to Dismiss.

OPINION AND ORDER

This contested case arises from the WRD's issuance, in 2008, of National Pollution Discharge Elimination System (NPDES) permits for storm water discharges from municipal separate storm sewer systems (MS4s). Seventy-five Petitioners contested the issuance of the permits. All such petitions were consolidated into the instant contested case.

While this case was pending, the permits were also challenged in Ingham County Circuit Court in three lawsuits entitled (1) *City of Riverview v Michigan Department of Environmental Quality*, Case No. 09-712-CZ; (2) *City of Novi v Michigan Department of Environmental Quality*, Case No. 09-1569-CZ; and (3) *City of Gibraltar v Michigan*

Department of Environmental Quality, Case No. 10-0039-CZ. Over 300 municipal entities participated in these lawsuits. The lawsuits were consolidated into one case by the Circuit Court, which stayed this case. [1] That stay was subsequently reversed by the Court of Appeals. [2] Nevertheless, this Tribunal held this contested case in abeyance at the request of the parties. Upon the decision in the Circuit Court cases becoming final, this Tribunal established a hearing schedule for the contested case, which included pre-hearing motions. In accordance with the schedule, the WRD filed the Motion which is under consideration. Before addressing the merits of the WRD's Motion, a brief review of the facts in this case is warranted.

Under §402 of the Clean Water Act (CWA), 33 USC §1341, Phase I of the U.S. Environmental Protection Agency's (EPA) stormwater program was promulgated in 1990. 55 Fed Reg 47990 (1990). Phase I relies on NPDES permit coverage to address stormwater runoff from medium and large MS4s. Phase II of the program was established in 1999 to expand the Phase I program by requiring operators of MS4s in urbanized areas to implement programs and practices to control polluted stormwater runoff. 64 Fed Reg 235 (1999). Section 402 of the CWA authorized the states to implement the NPDES program. 33 USC §1342(b). Michigan commenced its NPDES program in 2003, allowing a permittee to obtain coverage under the General Jurisdictional permit, the General Watershed permit, or to obtain an individual NPDES permit. Each of the Petitioners to this contested case is covered by NPDES permits issued in 2003.

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[1] Order Staying Contested Case Proceedings, *City of Novi v Michigan Department of Environmental Quality*, Case No. 09-1569-CZ (Ingham County Circuit Court, Jan. 20, 2010).
[2] *City of Novi v Department of Environmental Quality*, Appeal No. 296405 (Mich App Oct. 14, 2010) (Unpublished Opinion).

Under the statutory and regulatory scheme, new NPDES permits are to be obtained under the NPDES program every five years. See R 323.2150. In 2008, when the WRD issued its new NPDES General Jurisdictional permit (Permit No. MIS049000) and new General Watershed permit (Permit No. MIG610000), 75 municipal and county entities challenged such permits in this proceeding. When permits such as the General Jurisdictional and General Watershed permits are challenged in this Tribunal, the parties operate under their existing NPDES permits, which in this case were the 2003 NPDES permits referenced above. MCL 24.291(2). Under the Administrative Procedures Act (APA), the 2008 permits would not become effective until a Final Determination and Order is issued by the Director of DEQ. *Id.*

On November 30, 2010, the WRD advised this Tribunal that it had withdrawn the 2008 NPDES General Jurisdictional and General Watershed permits. At such time, the WRD stated that the withdrawal of such permits "closes this case." In essence, the withdrawal of such 2008 permits effectively granted the Petitioners the relief they requested in this contested case – the vacation of the 2008 permits. However, several Petitioners opposed the dismissal of this contested case on the grounds that "the conduct and practice of [DEQ] which is being challenged in this pending contested case, is likely to recur in the guise of a new permit with the same constitutional, statutory, rule and other invalid deficiencies."[3] As a result, such Petitioners requested that this matter be held in abeyance to allow the Circuit Court case to conclude. By Order entered on December 3, 2010, this Tribunal directed the WRD to file a motion and supporting brief by December 22, 2010, in

[3] Letter from certain Petitioners dated December 2, 2010.

the event that the WRD desires a dismissal of this contested case. The December 3 Order also noted that, should the WRD elect not to file such a Motion, this matter will continue to be held in abeyance. No Motion was filed by the WRD at such time.

In its current Motion, the WRD contends that the Petitions challenging the 2008 permits are moot, because such permits no longer exist. The Court of Appeals has held that "[a]n issue is moot and should not be reached if a court can no longer fashion a remedy." *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004). In the petitions filed in this contested case, the Petitioners sought the vacation of the 2008 NPDES General Jurisdictional and General Watershed permits. In November 2010, the WRD voluntarily withdrew the 2008 NPDES General Jurisdictional and General Watershed permits. At such time, the WRD effectively granted the Petitioners the relief they requested in this contested case. Therefore, this Tribunal can no longer fashion a remedy for the Petitioners.

However, in response to the WRD's mootness argument, the Petitioners contend that "what the MDEQ actually did was to *administratively defer* the 2008 permit for re-issuance in the future." Petitioner's Response at p 4 (emphasis in original).[4] However, the Petitioners also contend that, even if an issue is technically moot, it is justiciable if the issue is of "public significance" that is likely to recur, but evades judicial review. The Petitioners are correct that the doctrine of mootness has been qualified by the Supreme Court in cases dealing with issues of "public significance." See, e.g., *Socialist Workers Party v Secretary of State*, 412 Mich 571; 317 NW2d 1 (1982). In *Socialist Workers Party*, the plaintiff challenged Michigan's election laws regarding qualifications necessary to be placed

[4] The Petitioners assertion runs afoul of the definition of mootness set forth in *Menominee County Taxpayers Alliance, Inc v Menominee County Clerk*, 139 Mich App 814, 819; 362 NW2d 871 (1984), where the Court of Appeals held that "[a] moot case is one which seeks to get ... a decision, in advance, about a right before it has been actually asserted and tested...."

on the general election ballot. Because a person would rarely obtain appellate review before the general election occurs, the Court applied the "public significance" exception to the mootness doctrine. See also *People v Richmond*, 486 Mich 29, 40; 782 NW2d 187 (2010).

Contrary to the Petitioners' assertion, this Tribunal is not authorized to make determinations regarding which issues are of "public significance." That is a matter for the courts. The issuance or denial of permits under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101, *et seq.*, may be challenged before this Tribunal under Section 3113. MCL 324.3113. Also, by Administrative Rule, this Tribunal is authorized to make determinations when parties file a petition claiming that they are aggrieved by their coverage under a general permit. See R 323.2192(c). Since the challenged 2008 permits have been withdrawn, this Tribunal has no other authority under the controlling statutory and regulatory framework.

In addition to mootness grounds, this contested case should be dismissed on the grounds that this Tribunal no longer possesses subject matter jurisdiction. A basic tenant of administrative law provides that an agency has only those powers provided to it by statute. See *York v Detroit*, 438 Mich 744, 275 NW2d 356 (1991); *Coffman v State Board of Examiners in Optometry*, 331 Mich 582; 50 NW2d 322 (1951). All such jurisdiction must be grounded in either a statute or administrative rule because for an administrative agency "doubtful power does not exist." *In Re Quality Service Standard*, 204 Mich App 607, 611; 516 NW2d 142 (1994). Absent that lawful authority to perform its function, this Tribunal

lacks subject matter jurisdiction and "any action with respect to such a cause, other than to dismiss it, is absolutely void." *Fox v Board of Regents of the University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965).

As noted above, this Tribunal's express grant of jurisdiction is expressed in either MCL 324.3113, which authorizes this Tribunal to hear challenges to the issuance of permits under Part 31, or R 323.2192, which authorizes this Tribunal to hear contested cases when parties are aggrieved by their coverage under a general permit, such as the 2008 NPDES General Jurisdictional permit (Permit No. MIS049000) and the 2008 General Watershed permit (Permit No. MIG610000). Because these permits have been withdrawn, this Tribunal no longer has subject matter jurisdiction under either Part 31 or the Administrative Rules.

In their Supplemental Brief, the Petitioners contend that this Tribunal has the authority to convert this contested case into a proceeding for a declaratory ruling. The Petitioners contend that "the authority of this Honorable Tribunal extends beyond that expressly granted by statute to that necessarily implied." Supplemental Brief at p. 2. In support of this proposition, the Petitioners cite to *Turner v General Motors Corp*, 70 Mich App 532, 543; 246NW2d 631 (1976). In *Turner*, the appellants challenged the dismissal of appeals by the Workmen's Compensation Appeal Board, claiming that the Appeal Board exceeded its authority by dismissing the appeals. The Court of Appeals specifically held:

> Administrative bodies are inherently limited in their powers, being creatures of statute or constitution. Their powers generally do not exceed those expressly conferred upon them. But this rule is necessarily qualified by reason and practicality. Typically entrusted with the administration of complex programs, administrative bodies cannot properly function if burdened with inflexible procedure. Administrative authority thus extends beyond that expressly granted to that necessarily implied.

> 'In determining whether a board or commission has a certain power, the authority given should be liberally construed in light of the purposes for which it was created and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law.'
>
> The power of the Appeal Board to dismiss an employer's appeal for failure to comply with P.A. 34 is necessarily implied from the act. Were it not, the act would become meaningless; the very problem P.A. 34 was designed to alleviate would persist—the award of the disabled worker remaining unpaid while judicial enforcement of the act is sought. We cannot read the Legislature's intent as being directly contrary to its clear expression of policy.

70 Mich App at 543-544 (citations and footnotes omitted).

The Petitioners do not challenge this Tribunal's authority to dismiss this contested case. Rather, they contend that §64 of the APA impliedly authorizes this Tribunal to issue a declaratory ruling in a contested case. MCL 24.264. However, the declaratory ruling process is separate and distinct from the contested case hearing process. Requests for declaratory ruling are filed with the DEQ. R 324.81. In fact, "[a] denial or adverse decision of a declaratory ruling does not entitle a person to a contested case hearing." R 324.81(5). Rather, §64 expressly provides that "[a]n 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." MCL 24.264. Hence, relief from a denial or adverse decision of a declaratory ruling is with the Ingham County Circuit Court. MCL 24.263. This Tribunal simply has no express or implied authority to issue a declaratory ruling.

Second, the Petitioners have asserted that they are entitled to summary disposition under the reasoning of *Michigan v Environmental Protection Agency*, ___ US ___; 135 S Ct 2699; ___ L Ed 2d ___ (2015). In this case, the United States Supreme Court construed the Clean Air Act and held that the EPA must consider cost, including cost of

compliance, before deciding whether regulation is appropriate or necessary. 135 S Ct at 2710-2711. In essence, the Petitioners are asking this Tribunal to rule, as a matter of law, that (1) the reasoning of *Michigan v EPA* is applicable to the Clean Water Act; and (2) the cost of compliance obligations imposed on the EPA must also be imposed upon the DEQ. It should be noted that an administrative tribunal does not have authority to decide constitutional questions. [5] See *Dation v Ford Motor Co*, 314 Mich 152; 22 NW2d 252 (1946). Therefore, this Tribunal is unable to grant summary disposition in the Petitioners' favor based on their constitutional arguments.

Finally, the Petitioners have also asserted that they are entitled to attorney's fees in this action. The award of costs and fees is controlled by §123 of the APA. MCL 24.323. Under that provision, the APA has established a procedure for the award of costs and fees. To the extent that the Petitioners believe that they are entitled to such an award of costs and fees, they must follow the procedure set forth in the APA.

IT IS THEREFORE ORDERED:

1. The Motion to Dismiss filed by the WRD is **GRANTED**.
2. The Motion for Summary Disposition filed by the Petitioners is **DENIED**.
3. The Petitions for Contested Case Hearing filed by all of the Petitioners in this contested case are **DISMISSED**.

Daniel L. Pulter
Administrative Law Judge

[5] The authority to decide constitutional issues is vested in the judicial branch. See Const 1963 art VI, § 1. As a result, the prohibition on an agency of the executive branch deciding constitutional claims in a contested case is grounded on the separation of powers doctrine.

Michigan Administrative Code Currentness
Department of Environmental Quality (R 323.2101 Through R 323.2418)
Water Bureau
Water Resources Protection
Part 21. Wastewater Discharge Permits

Mich. Admin. Code R. 323.2161a

R 323.2161a Municipal storm water discharge; national permit minimum requirements.

Rule 2161a. (1) The national permit for a regulated MS4 shall require, at a minimum, that the permittee develop, implement, and enforce a storm water management program designed to do both of the following:

(a) Reduce the discharge of storm water pollutants to the maximum extent practicable (MEP).

(b) Protect water quality and satisfy the appropriate water quality requirements of the federal act.

(2) Unless authorized to discharge under an individual national permit applied for under 40 C.F.R. §122.26(d) (2000) or authorized to discharge under another permit that the regional administrator has determined is adequate to meet the requirements of the federal act, a person with a national permit for a regulated MS4 shall comply with the requirements of 40 C.F.R. §122.34 (2000) as specified in R 323.2161a(3) to (12).

(3) A storm water management program for a regulated MS4 shall include a plan for implementing, at a minimum, the measures described as follows:

(a) A public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(b) At a minimum, comply with state and local public notice requirements when implementing a public involvement/participation program.

(c) A program to detect and eliminate illicit connections and discharges. Under the illicit discharge elimination program, a permittee shall, at a minimum, perform all of the following:

(i) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls the permittee owns or operates, or points of discharge into an MS4 owned or operated by another public body, and the names and location of all waters of the state that receive discharges from the permittee's MS4.

(ii) Develop and implement a plan to detect and address non-storm water discharges to the municipal separate storm sewer system, including illegal dumping and failing on-site sewage disposal systems as appropriate.

(iii) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste into the municipal separate storm sewer system.

(iv) To the extent allowable under state or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the municipal separate storm sewer system and implement appropriate enforcement procedures and actions. Discharges already authorized under an NPDES permit are excluded from this requirement. Discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the state. The following categories of non-storm water discharges or flows need to be prohibited only if identified as significant contributors to violations of state water quality standards:

(A) Water line flushing.

(B) Landscape irrigation.

(C) Diverted stream flows.

(D) Rising ground waters.

(E) Uncontaminated ground water seepage into storm sewers.

(F) Uncontaminated pumped ground water, except for groundwater cleanups.

(G) Discharges from potable water sources.

(H) Foundation drains.

(I) Air conditioning condensation.

(J) Irrigation water.

(K) Springs.

(L) Water from crawl space pumps.

(M) Footing drains.

(N) Lawn watering.

(O) Water from noncommercial car washing.

(P) Flows from riparian habitats and wetlands.

(Q) Residential swimming pool discharges and dechlorinated swimming pool discharges.

(R) Street wash water.

(d) A storm water management program for areas of construction activity, which shall include all of the following:

(i) A procedure to notify the part 91 permitting entity and the department when soil or sediment are deposited to the regulated MS4 from a construction activity in violation of section 9116 of part 91 of the act or in violation of the effective prohibition on non-storm water discharges into the regulated MS4 separate storm sewer system as required in subdivision (c)(iv) of this subrule.

(ii) A procedure to ensure adequate allowance for soil erosion and sedimentation controls on preliminary site plans,

as applicable.

(iii) A procedure for receipt and consideration of complaints or other information submitted by the public.

(e) A program to address post-construction storm water runoff from new development and redevelopment projects that disturb 1 or more acres, including projects less than 1 acre that are part of a larger common plan of development or sale, that discharge into the regulated MS4. The program shall include an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law. The ordinance or other regulatory mechanism shall be designed to prevent or minimize water quality impacts, including resource impairment resulting from extreme flow volumes and flow conditions, and shall include all of the following:

(i) A requirement for review of post-construction storm water best management practices during initial site plan review, as applicable.

(ii) Strategies for implementation of structural or non-structural, or both, best management practices appropriate for the community.

(iii) Requirements for adequate long-term operation and maintenance of best management practices.

(f) An operation and storm water maintenance program that includes a staff training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations, using training materials that are available from EPA, the state, or other organizations. The storm water management program shall include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(4) A city, village, or township shall comply with the terms and conditions of its national MS4 permit in all areas within its political or territorial boundaries for which a permit application is required under R 323.2161(1)(c), (d), (e), or (f).

(5) A public body, other than a city, village, or township, that holds a national permit for a municipal separate storm sewer system or systems it owns or operates, shall comply with the terms and conditions of the national permit for the municipal separate storm drain sewer system or systems it owns or operates and for which a national permit application was submitted in accordance with R 323.2161(1)(c), (d), (e), or (f).

(6) If an existing qualifying local program requires the permittee to implement 1 or more of the minimum control measures of subrule (3) of this rule, the department may include conditions in the national permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of subrule (3) of this rule. A qualifying local program is a local or state municipal storm water management program that imposes, at a minimum, the relevant requirements of subrule

(3) of this rule.

(7) To request authorization to discharge in accordance with a general permit for a municipal separate storm sewer system, a public body shall submit to the department, on a form provided by the department, a national permit application which shall include the name of a contact person responsible for implementing or coordinating the storm water management program.

(8) A permittee shall comply with any more stringent effluent limitations in the national permit, including permit requirements that modify, or are in addition to, the minimum measures based on a total maximum daily load (TMDL) or equivalent analysis. The department may include more stringent limitations based on a TMDL or equivalent analysis that determines that more stringent limitations are needed to protect water quality.

(9) A permittee shall comply with other applicable national permit requirements, standards, and conditions established in the individual or general permit, developed consistent with the provisions of 40 C.F.R. §§122.41 to 122.49 (2000), as appropriate.

(10) A permittee shall evaluate compliance with the minimum measures required under subrule (3) of this rule, the appropriateness of the best management practices implemented to comply with the minimum measures, and progress towards achieving the measurable goals reported pursuant to subrule (12)(a)(ii) of this rule. The department may establish monitoring requirements in accordance with state or watershed specific monitoring plans or as needed for a permittee to demonstrate the pollution reduction achieved by implementing best management practices.

(11) A permittee shall keep records required by the national permit for not less than 3 years. A permittee shall submit the records to the NPDES authority if specifically asked to do so. The records, including a description of the storm water management program, shall be available to the public at reasonable times during regular business hours unless confidentiality is protected under 40 C.F.R. §122.7 (2000).

(12) A permittee shall submit annual reports to the department for the first permit term. For subsequent permit terms, the permittee shall submit reports in years 2 and 4 unless the department or national permit requires more frequent reports. The department may establish a reporting format that shall be followed by the permittee. Unless the department specifies otherwise, the annual reports shall include the following minimum information:

(a) The first annual report submitted by a permittee for approval by the department shall consist of a storm water management program plan which includes descriptions of all of the following:

(i) The best management practices that will be implemented for each of the storm water minimum measures specified in subrule (3)(a) to (f) of this rule.

(ii) Measurable goals for each of the best management practices, including, as appropriate, the years in which the

required actions will be undertaken, interim milestones, the frequency of the action, anticipated water quality benefit, and a description of water quality monitoring, if any, during the reporting period. The permittee is not required to meet the measurable goals identified in the first annual report in order to demonstrate compliance with any minimum measure in subrule (2)(c) to (f) of this rule for which the department has not issued a menu of best management practices. If the department does not issue a menu of best management practices, the permittee still shall comply with other requirements of the national permit, including good faith implementation of best management practices designed to comply with the minimum measures.

(iii) A summary of the storm water control activities to be undertaken during the next reporting cycle pursuant to the storm water management program plan.

(iv) The status of the water quality in the waters of the state within the permittee's political, territorial, property, or right-of-way boundaries. Narrative descriptions and/or numeric descriptions may be submitted. Narrative descriptions may include, but are not limited to, reports of unnatural physical properties such as turbidity, color, oil film, floating solids, foams, settleable solids, suspended solids or deposits, presence or absence of indicator animals, algae or bacteria, presence of trash and floatables, and streambank and streambed conditions. For numeric descriptions, permittees may seek alternatives to instream water chemistry monitoring or may limit chemical monitoring to a small number of parameters. Biological indexes are acceptable numeric descriptions. Permittees may partner to gather information, or may report information collected by other entities including county, state, or federal governments.

(v) An identification and prioritization of the stresses on the receiving waters within the permittee's political, territorial, property, or right-of-way boundaries. Stresses are negative impacts on surface water quality, navigation, industrial water supply, public water supply at the point of water intake, fish and other indigenous aquatic life and wildlife, human body contact recreation, and agricultural uses. Stresses include known or suspected pollutant sources that result in water quality status concerns reported under paragraph (iv) of this subdivision.

(vi) Notice that the permittee is relying on another owner or operator of a regulated MS4 to satisfy national permit obligations under 1 or both of the following conditions:

(A) The permittee lacks power or authority to comply with the national permit obligation.

(B) The other regulated MS4 owner or operator is already implementing a program that meets the national permit obligation for the permittee.

(vii) Notice provided under paragraph (vi) of this subrule is valid only if the other regulated MS4 owner or operator has national permit authorization to discharge and provides notice under paragraph (viii) of this subdivision for the applicable national permit obligations.

(viii) Notice that the permittee will satisfy some of the national permit obligations of another regulated MS4 owner

or operator, if applicable.

(ix) A city, village, or township permittee shall submit to the department the identification of regulated MS4 owners and operators other than itself within its political or territorial boundaries that have applied for or will apply for national permits, and shall submit descriptions of either the MS4s or the areas within its boundaries for which the other regulated MS4 owners and operators claim authority.

(b) All annual reports subsequent to the first annual report shall include all of the following information:

(i) The status of compliance with the storm water management program plan and other national permit conditions for which the permittee is responsible, an assessment of the appropriateness of the best management practices identified in the storm water management program plan, and an assessment of progress towards achieving the identified measurable goals for each of the best management practices.

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period.

(iii) A summary of the storm water activities to be undertaken during the next reporting cycle pursuant to the storm water management program plan.

(iv) Notice of a change in any identified best management practices or measurable goals for any of the minimum measures.

(v) A description of change in status of any agreement or agreements used by the permittee to rely on another public body to satisfy some of the national permit obligations, if applicable.

Credits

(By authority conferred on the department of environmental quality by sections 3103 and 3106 of 1994 PA 451, MCL 324.3103 and 324.3106)

Current through 2015 Register #18 (October 15, 2015)

Mich. Admin. Code R. 323.2161a, MI ADC R. 323.2161a

End of Document

Michigan Administrative Code Currentness
Department of Environmental Quality (R 323.2101 Through R 323.2418)
Water Bureau
Water Resources Protection
Part 21. Wastewater Discharge Permits

Mich. Admin. Code R. 323.2189

R 323.2189 Referenced federal regulations; definitions; adoption of standards by reference.

Rule 2189. (1) As used in the federal regulations referenced in R 323.2161, the terms "NPDES state" and "NPDES authority" shall mean the department of environmental quality as specified in this rule.

(2) The following federal regulations are adopted by reference in these rules, are available for inspection at the Lansing office of the department of environmental quality, and may be obtained from the Department of Environmental Quality, Water Division, P.O. Box 30273, Lansing, MI 48909, at a cost as of the time of adoption of these rules of 5 cents per page and a labor rate of $19.20 per hour, or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost as of the time of the adoption of these rules of $45.00 for 40 C.F.R. Parts 100-135, $56.00 for 40 C.F.R. Parts 400-424, and $61.00 for 40 C.F.R. Parts 425-699; or via the Internet at http://bookstore.gpo.gov:

(a) 40 C.F.R. §122.3(e) (2000).

(b) 40 C.F.R. §122.7. (2000).

(c) 40 C.F.R. §122.21 (2005).

(d) 40 C.F.R. §§122.26 to 27 (2000).

(e) 40 C.F.R. §122.28(b)(2)(v) (2000).

(f) 40 C.F.R. §§122.34 to 35 (2000).

(g) 40 C.F.R. §§122.41 to 122.43 (2000).

(h) 40 C.F.R. §122.44 (2005).

(i) 40 C.F.R. §§122.45 to 122.49 (2000).

(j) 40 C.F.R. §§125.80 to 125.99 (2005), except 40 C.F.R. §§125.89 and 125.98 (2005). "New source" as used in this subdivision is defined in 40 C.F.R. §122.2. "New source" as used elsewhere in these rules shall be as defined in R 323.2103.

(k) 40 C.F.R. §401.11 (2000).

(l) 40 C.F.R. §403 (2000).

(m) 40 C.F.R. §412 (2003) except that the definition for "land application area" shall be as defined in R 323.2103.

(n) 40 C.F.R. §451 (2005).

Credits

(By authority conferred on the department of environmental quality by sections 3103 and 3106 of 1994 PA 451, MCL 324.3103 and 324.3106)

Current through 2015 Register #18 (October 15, 2015)

Mich. Admin. Code R. 323.2189, MI ADC R. 323.2189

End of Document

Michigan Compiled Laws Annotated
Chapter 324. Natural Resources and Environmental Protection
Natural Resources and Environmental Protection Act (Refs & Annos)
Article II. Pollution Control
Chapter 1. Point Source Pollution Control
Part 31. Water Resources Protection (Refs & Annos)

M.C.L.A. **324.3113**

324.3113. New or increased sewage or waste disposal into waters of state; permits

Currentness

*** Start Section
...n 3109.[1]

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit application may be rejected by the department as being untimely.

Credits

P.A.1994, No. 451, § 3113, Eff. March 30, 1995. Amended by P.A.2004, No. 91, Imd. Eff. April 22, 2004.

Notes of Decisions containing your search terms (0)
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Footnotes

1 M.C.L.A. § 324.3109.

M. C. L. A. **324.3113**, MI ST **324.3113**
The statutes are current through P.A.2015, No. 172 of the 2015 Regular Session, 98th Legislature.

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