

Agency Report to the
JOINT COMMITTEE ON ADMINISTRATIVE RULES

This form must be completed by the department/agency that has the statutory authority for promulgating the rules. Please send an electronic copy of this form to the State Office of Administrative Hearings and Rules (SOAHR) at soahr_rules@michigan.gov. The SOAHR will review the document, the newspaper advertisements, and the corresponding rules prior to completing the legal certification of the rules. Please be sure to send to the SOAHR proofs of publication for the three newspaper advertisements required by MCL 24.242(1). You may mail them or send them as a scanned attachment.

Department

Department of Environmental Quality (DEQ)

Division/agency/bureau:

Water Bureau (WB)

Rule set number (as assigned by SOAHR)

2008-027EQ

Title of rules:

Supplying Water to the Public

1. Name, address, FAX and phone numbers of agency contact person:

Jean Shekter, DEQ, WB
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Lansing, MI 48909
517-241-1241
517-241-1328 (fax)

2. Purpose for the proposed rules and background:

These rules, Supplying Water to the Public, regulate public water supplies (PWS). The amendments to these rules adopt recently promulgated amendments to the National Primary Drinking Water Regulations, as required in order to maintain primary enforcement authority for the Public Water System Supervision Program. The four federal regulations are the Long Term 2 Enhanced Surface Water Treatment Rule (LT2), the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2), the Ground Water Rule (GWR), and the Lead and Copper Rule Short Term Regulatory Revisions and Clarifications (LCR). These amendments also update and expand long-standing PWS requirements to address waterworks system construction, planning, and operation; required training for water system operators; and rules to disburse grants for source water protection.

3. Summary of proposed rules:

The following summarizes each of the four federal rules incorporated into these administrative rules:

- The LT2 addresses Cryptosporidium treatment in PWS that use surface water or groundwater under the influence of surface water as a source.
- The Stage 2 further limits exposure to disinfection byproducts.
- The GWR establishes a risk-based approach for groundwater PWS that are vulnerable to fecal contamination.
- The LCR revises existing rules that limit exposure to lead and copper in drinking water.

The remainder of the proposed amendments updates and expands long-standing public water supply requirements to address waterworks system construction, planning, and operation; operator certification requirements; and rules to disburse grants for source water protection.

Exceptions currently exist for community water supplies (CWS) that serve facilities licensed by the state, such as manufactured housing communities and health care facilities and for CWS that serve fewer than 50 service connections or fewer than 200 people. The DEQ proposes to modify or remove those exceptions and provide a phase-in period for existing water supplies to comply with any new requirements. These exceptions address standby power in R 325.11206, private ownership provisions in R 325.11703 to R 325.11713, distribution system pumping capacity and redundancy requirements in R 325.11010, cross connection control programs in R 325.10504, contingency plans in R 325.12301 to R 325.12304, and general plans in R 325.11601 to R 325.11606.

Reliability studies in R 325.11203 are being expanded to include forecasted water supply needs for 5 years and 20 years. Updating the study every 5 years will remain a requirement. However, an updated reliability study that is submitted to the DEQ within the first 2 years of the new rule may be acceptable if it meets the current requirements.

Fluoride maximum contaminant level (MCL) in R 325.10604c was listed in the state rule as 4 mg/L, while the federal MCL is 4.0 mg/L. Due to mathematical precision implications of the decimal point, the state rule is not as stringent as the federal rule. The DEQ did not intend to be less stringent and this rule package corrects the state MCL.

Certified operator requirements in R 325.11901 et al. are being amended to require a minimum number of training hours from technical or managerial subjects, as categorized by the Advisory Board, within the currently required number of training hours. The rule changes also allow the DEQ to issue a site specific, restricted certificate to an operator on a case-by-case basis. The amendment also clarifies conditions under which an operator's certificate may be placed on probation, suspended, or revoked.

Requirements if adding chemicals that may affect public health are addressed in R 325.10505, R 325.11304, and R 325.11502: Currently, water supplies that alter treatment or add chemicals that affect public health must receive a construction permit, obtain a certified operator, and submit monthly operation reports. The amendment expands the applicability of these requirements to water supplies that add chemicals that may affect public health. For example, the change would apply to water supplies that add chlorine for the purpose of improving taste and odor because adding chlorine may affect public health.

Groundwater source requirements in R 325.10801 et al. are being updated. Groundwater source provisions formalize the acceptability of delineating the capture zone for a well as an often necessary aspect of the hydrogeologic study requirements for development of new wells. R 325.10828 clarifies that raw and finished water sample taps are required.

Source water protection grant assistance in R 325.12801 et al. expands rules to disburse grants, when funds become available, to eligible CWS to protect their surface water sources. Eligibility is based on a scoring method similar to that used in the Wellhead Protection Grant Program.

Provisions in R 325.10831, R 325.11110, and R 325.11117 requires that disinfectant levels be normal and total coliform be undetected before infrastructure is put in service following installation or repair. The purpose of the change is to ensure that high levels of disinfectant, used to flush infrastructure following construction or repair, do not mask the presence of coliform.

Classification of PWS owned by the same person is clarified in R 325.10503: A CWS or noncommunity water supply (NCWS) and a PWS that is neither a CWS nor an NCWS in the same general location collectively owned or operated by the same person, may be considered by the DEQ to be a single PWS.

Adequate pressure is clarified in R 325.11015 and R 325.11105: The amendment specifies a minimum pressure in pumping facilities and distribution systems of 35 pounds per square inch (psi) under normal operating conditions and 20 psi during emergencies.

4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):

Detroit Legal News, 5-20-09
Grand Rapids Press, 5-20-09
Marquette Mining Journal, 5-20-09

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

9:00 a.m., June 12, 2009, Constitution Hall, Con Con Conference Room, Lansing, 14 minutes

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

June 1, 2009

7. Agency representative(s) attending hearing (include agency name and title of representative[s]):

All agency representatives are from the DEQ.

Water Bureau

Richard Benzie, Chief, Community Drinking Water Unit

Jason Berndt, Environmental Quality Analyst

Elgar Brown, Chief, Drinking Water and Environmental Health Section

Jim Cleland, Chief, Lansing Operations Division

Pat Cook, Water Treatment Specialist

Brant Fisher, Environmental Engineer Specialist

Brock Howard, Environmental Engineer Specialist

Rich Overmyer, Chief, Noncommunity Drinking Water Unit

Kristen Philip, Environmental Quality Specialist

Scott Ross, Chief, Source Water Protection Unit

Jean Shekter, Environmental Quality Analyst

Dave Timm, District Supervisor, Grand Rapids District Office

Eric Way, Chief, Operator Training and Certification Unit

Office of Pollution Prevention and Compliance Assistance

David Fiedler, Manager. Mr. Fiedler served as hearing officer.

8. Names of persons (and organization represented) attending the hearing:

John A. Fiero, P.E., Boss Engineering Company representing the Michigan Manufactured Housing Association

Bill Hunsberger, Pfizer, Inc.

William Maier, Lansing Board of Water and Light

Tim Neumann, Michigan Rural Water Association

William J. Perrone, Dykema Gossett PLLC representing the Michigan Manufactured Housing Association

Mary Lynn Semegen, Detroit Water and Sewerage Department

Bill Sheffer, Michigan Manufactured Housing RV & Campground Association

9. Persons submitting letters, comments and testimony of support:

The following persons are generally in support of the rules with modifications:

1. George Champlin, Department Manager and Mike Smith, Cross Connection Inspector, Grand Traverse County Department of Public Works.
2. Richard Benzie, DEQ, Water Bureau.
3. William J. Perrone, Dykema Gossett PLLC representing the Michigan Manufactured Housing Association.
4. John A. Fiero, P.E., Boss Engineering Company.

The following U. S. Environmental Protection Agency (U.S. EPA) staff have conducted the program and legal review of the draft rules and are generally in support of the rules with modifications:

5. Jennifer Kurtz Crooks, Michigan Program Manager, Ground Water and Drinking Water Branch, U.S. EPA, Region 5, 77 West Jackson, Chicago, IL 60604.
6. Joanna S. Glowacki, Office of Regional Counsel, U.S. EPA, Region 5.
7. Cynthia Kawakami, Office of Regional Counsel, U.S. EPA, Region 5.
8. Richard Murawski, Office of Regional Counsel, U.S. EPA, Region 5.
9. Diana Embil, Office of Regional Counsel, U.S. EPA, Region 5.

10. Persons submitting letters, comments and testimony of opposition:

None.

11. Summary of suggestions to modify proposed rules:

For ease of reading, these comments generally use a shortened version of each rule citation, for example R 325.11703 is Rule 1703 and R 325.10611b is Rule 611b. The first three items concern rules that do not affect the adoption of the federal provisions and are offset from the remaining U.S. EPA Region 5 comments.

Rule 106(j) on page 9. Richard Benzie of the DEQ noted that the proposed rule adds "and bottlers of water" to the definition of "nontransient noncommunity water supply." This definition is in MCL 325.1002(l) and should not be altered by the rule. The DEQ does not intend to change definitions that are also in statute and returned the rule to mirror the statute to read, "...means a noncommunity public water supply that serves not fewer than 25 of the same individuals on an average daily basis over 6 months per year. This definition includes water supplies in places of employment, schools, and day care centers.

Rule 1404 on page 206 and Rule 113 on page 14. George Champlin and Mike Smith of the Grand Traverse County Department of Public Works expressed concern that to remove "but not limited to" from the cross connection control program items could be interpreted to mean only the listed program items. A comprehensive cross connection control program should include many more items, such as a time schedule for the testing of all testable backflow assemblies. This item is equally as important as the time schedule for inspection of cross connections, which is an existing program item. The commenters suggested the DEQ reinsert "but not limited to,"

add a program element to address frequency of testing, remove the unnecessary phrase "and in working order," and cite the Cross Connection Rules Manual as guidance when developing a program.

The DEQ appreciates the suggestion to cite the Cross Connection Rules Manual as a guidance document. Since its first edition in 1977, the guidance document has described the elements of a cross connection control program. Over the decades, water supplies have used this document and have incorporated the guidance into their programs. The DEQ agrees that to remove "but not limited to" could be interpreted to mean only the program items listed in the rule. This is not the intent of the DEQ. Rather than reinsert "but not limited to," the DEQ will codify present practice adding the suggested element and two other elements also listed in the guidance document and already incorporated into water supplies' programs: the time allowed for a customer to complete necessary corrections and a description of the record keeping methods. The DEQ believes a water supply may add other program elements not listed in the rule and will preface the list with the phrase, "As a minimum." The DEQ believes the program elements can be further clarified by using "backflow preventers" instead of "protective devices." The DEQ agrees with the commenters that the phrase "and in working order" is unnecessary. Checking the working order is inherent in the added program element. Rule 1404 is changed to cite the Cross Connection Rules Manual in subrule (1), to add "As a minimum" to subrule (2), to replace "protective devices" and "devices" in subdivision (2)(b) and (c) with "backflow preventers," to strike "and in working order" from subdivision (2)(b), and to add program elements in subdivisions (2)(d) to (f). Rule 113 is changed to add the Cross Connection Rules Manual in the list of guidance documents water supplies may use to comply with these rules.

Rule 1703(2)(c)(ii) on page 214. William Perrone of Dykema Gossett PLLC and John Fiero of Boss Engineering Company requested retaining the exception from private ownership provisions for facilities licensed by the state, such as manufactured housing communities and health care facilities. To remove the exception and require an escrow fund was viewed as unnecessary due to existing licensing provisions through the Department of Energy, Labor and Economic Growth. Furthermore, an escrow fund was viewed as an economic burden on these facilities. The DEQ agrees the escrow fund may be unnecessary for licensed facilities, but that other private ownership provisions should apply. The DEQ added rule text to the escrow requirement to read, "This paragraph does not apply to facilities that are required to be licensed by the state, such as manufactured housing communities and health care facilities."

The remainder of the comments is from the U.S. EPA, Region 5 concerning the four federal regulations listed in item #2 of this report. These regulations were promulgated at the federal level in 2006 and 2007. Since that time, DEQ and the U.S. EPA have been working with Michigan water supplies to educate them on the new requirements and conduct early implementation to help them comply with these new federal regulations. In order to retain primary enforcement authority for the Public Water System Supervision Program, states must adopt rules as stringent as the federal regulations. To ensure stringency, the Ground Water and Drinking Water Branch conducts a program review and the Office of Regional Counsel conducts a legal review of the draft rules. The DEQ does not intend to promulgate rules that are less

stringent than the federal rules. The DEQ agrees that the noted changes are necessary to avoid a stringency issue. The DEQ has discussed these rule changes with the U.S. EPA and they are satisfied with the DEQ responses.

Rule 102(e) on page 2 and Rule 105(a) on page 6. Capitalize the letter p in "part." The DEQ believes the word "part" must remain in lowercase. According to the "Administrative Rules in Michigan: A Manual of Style and Procedures" published by the Legislative Service Bureau (LSB Style Manual), a proper noun that can be used as a common noun should be in lowercase as explained in the capitalization section of Chapter 2 on page 17. Citing federal regulations in chapter 3 of the LSB Style Manual does not specifically address using "part" when referencing the Code of Federal Regulations, however Example 5-1 on page 29 uses lowercase "part" as in "28 C.F.R. part 20." The LSB Style Manual can be downloaded from the Internet. Visit www.michigan.gov/soahr, click on The Rulemaking Process, click on Legislative Service Bureau Style. The DEQ is keeping "part" in lowercase. The DEQ discovered other instances of capitalized "Part" and has changed them to lowercase "part" to comply with the LSB Style Manual: Table 1 of R 325.10401a footnote 5 on page 30, R 325.10605 on page 87, R 325.10710a(1)(b) on page 128, R 325.10719g(2) and (2)(a) on page 161, R 325.10720b(2) and (2)(a) on page 171, R 325.10722(3)(b) on page 180, and R 325.11507(a) on page 210.

Rule 105(f) on page 7. The definition of "GAC10" is missing a comma after "180 days" and "running" should be inserted to read, "locational running annual average." The DEQ believes the U.S. EPA intended to cite Rule 105(g), which is the definition of "GAC10." The DEQ has struck the period, added a comma, and added "running."

Table 1 of Rule 401a on page 26 Violations of Enhanced treatment for Cryptosporidium line. This comment concerns the column, "Monitoring & testing procedure violations." Add § sign after "CFR" and before "141." The state rule reads, "Failure to sample any 3 months..." while the federal footnote reads, "Failure to collect at least 3 samples for Cryptosporidium analysis..." The state rule must mirror the federal footnote to meet stringency. As a result, the "Tier of Public Notice Required" column can read "2,3." The DEQ intends to be as stringent as the federal rule and has changed the table to mirror the federal footnote to read, "40 CFR §141.701 to §141.705, as adopted by reference in R 325.10720b, and R 325.10720c and R 325.10720d. Failure to collect 3 or more samples for Cryptosporidium analysis is a Tier 2 violation requiring special notice as required in R 325.10408d. All other monitoring and testing procedure violations are Tier 3." The DEQ also entered "2,3" in the Tier column.

Table 1 of Rule 401a on page 28 line G Haloacetic acids. The cite should read, "R 325.10610(2)." The DEQ agrees and has added "(2)" to the cite R 325.10610.

Table 1 of Rule 401a on page 29 Unregulated Contaminants. Add § sign after CFR in the table and in footnote 5. The DEQ agrees and has made the changes.

Rule 403(2)(a) on page 32. The federal rule states that it is not appropriate to grant extensions of the 30 day public notification requirement for "any unresolved violation" while Rule 403(2)(a)

appears to allow extensions for other types of violations using "unresolved violations posing potential risk from short-term exposure." This would not meet stringency. Rule 403(2)(a) should strike "posing potential risk from short-term exposure." The DEQ intends to be as stringent as the federal rule and has struck the phrase.

Table 1 of Rule 405 on page 38. Capitalize the acronym "ntu" in the Key section of the table. The DEQ agrees and capitalized the acronym.

Rule 410(1) on page 54. For clarification purposes, insert "water" before "supply" in the last sentence. The DEQ agrees and has added the word.

Rule 413(7)(a)(ii) on page 63. Add the symbol § before "141." The DEQ agrees and has made the change.

Rule 604f(2)(b)(ii) on page 78. The reference to (3)(f) should be (3)(g). The DEQ agrees and has made the correction.

Rule 604f(4)(a)(i) on page 83. The rule omits the phrase "within 180 days." The DEQ inadvertently omitted the phrase. The DEQ believes the U.S. EPA intended to use "no later than 180 days" as in 40 CFR §141.83(a). The DEQ added the phrase "not later than 180 days" after the word "subdivision."

Rule 605 on page 87. The federal regulation uses the term "disinfectant residuals." The DEQ believes the U.S. EPA inadvertently transposed the words in the second sentence of its comment, which reads, "add 'disinfectant' after 'residuals.'" To mirror the federal language, the phrase should be as the U.S. EPA stated in its first sentence, "disinfectant residuals." The DEQ intends to mirror the federal language and has changed the rule from "residual disinfectants" to "disinfectant residuals."

Rule 610(2)(b) on page 88. Add the phrase to the beginning of the sentence, "For all supplies that disinfect their source water." The DEQ agrees and has added the phrase.

Rule 610b(1)(a) on page 90. Add to the end of the sentence, "with the maximum contaminant levels and maximum residual disinfectant levels of R 325.10610 and R 325.10610a." The DEQ agrees and has added the phrase.

Rule 610b(3)(b)(i) and (ii) on page 91. The federal rules use "acute violation" and "nonacute violation," while the state rule uses, "tier 1 violation" and "tier 2 violation." "Acute" and "nonacute" refer to the type of violation while "Tier 1" and "Tier 2" refer to the type of public notification. The state should change "tier 1 violation" to "acute violation" and "tier 2 violation" to "nonacute violation." The DEQ appreciates the clarification on these terms and has made the changes.

Rule 610b(4) on page 92. At the end of the last sentence add "and must notify the public." The

DEQ agrees and has added, "and shall notify the public."

Rule 610d(3)(a) on page 97. In the table add the symbol § before "141." The DEQ agrees and has made the change.

Rule 611d on page 100. Change "R 325.10611e" to "R325.10611d" in all instances following "this rule" to avoid confusing the reader of which rules are included as part of the LT2. The DEQ agrees the change might reduce reader confusion and made the changes.

Rule 611d(3)(b) on page 101. The state references to Rule 720c to Rule 720d do not cover the equivalent references in the federal rule. The state cite should read Rule 720c to Rule 722(4)(b). The DEQ agrees that in order to span the equivalent references in federal rule, the references concerning disinfection profiling and calculating disinfection benchmarks should also include Rule 722(4)(b). The DEQ has changed the references to read, "R 325.10720c to R 325.10720d and R 325.10722(4)(b)."

Rule 611e(1), (2), and (4) on page 101. Add the symbol § before "141." The DEQ agrees and has made the changes.

Rule 611f(3) on page 104. The federal rule reads, "failure by a system in any month to achieve," while the state rule reads, "failure by a supply in a month to achieve." The use of "a" rather than "any" sets up a substantive difference between the federal and state rules. The federal rule contemplates that the failure to achieve a treatment credit occurs within any given calendar month. The state rule sets out a failure occurring in a 30 to 31 day period ("a month"), which begins at any point in time and runs for a month long period. The comment recommends that the rule read "in any month" to avoid a substantive difference from the federal rule. The DEQ does not intend the rule to be substantively different than the federal rule and has changed the rule to read, "in any month."

Rule 611f(4) on page 104. Add the symbol § after "CFR" and before "141." The DEQ agrees and has made the change.

Rule 611i(1)(b)(i) on page 108. The state cite should be (e)(ii). The DEQ agrees and has changed the rule to read, "subdivision (e)(ii) of this subrule."

Rule 611i(1)(e)(i) on page 108. The federal rule reads, "addressing any shortcomings," while the state rule reads, "addressing the shortcomings." The comment recommends using "any" or "all" to avoid any stringency issue. The DEQ does not intend to be less stringent than the federal rule and has changed the rule to read, "any shortcomings."

Rule 611i(2) on page 109 and Rule 611j(3) on page 110. Add the symbol § before "141." The DEQ agrees and has made the change.

Rule 611j(2) and (3) on page 110 and Rule 611k(1) on page 111. The state refers to surface

water supplies in these rules as "subpart H supplies," yet in these cites uses only "supplies." Why not use "subpart H supplies"? The DEQ agrees that for consistency the term "subpart H supplies" should be used and has made the change.

Rule 611n(1) on page 121. The state's definition of sanitary survey does not match the definition of sanitary survey in Rule 612(2)(a). The DEQ intended to reference the sanitary survey definition in Rule 108(a) as was done in Rule 612(2)(a). The DEQ has changed the first sentence to read, "A sanitary survey is defined in R 325.10108(a)."

Rule 612(2)(c) on page 122 and Rule 612a(1)(d) on page 124. The phrase "but are not limited to" was omitted from the definition of significant deficiency in Rule 612(2)(c) and Rule 612a(1)(d), but is in 40 CFR §141.403(a)(4). The U.S. EPA, Region 5 conducted a legal review of the rules and the Region has strong concerns about the wording in this rule with regard to stringency. This omission changes the substantive meaning of "significant deficiencies," in that it makes the state rule less stringent than the federal rule. The federal rule is broader and encompasses more scenarios. The phrase "but not limited to" needs to be included in the Michigan rule, as in the Federal rule. Without such a phrase, the definition is limited and not as broad as the federal rule.

The DEQ realizes it is impossible to identify every possible significant deficiency, so the DEQ is working with stakeholders to develop guidance and procedures for field staff to follow in identifying and pursuing resolution of significant deficiencies. Including stakeholders in the policy making process is an internal DEQ requirement. The DEQ understands that the rules must be as stringent as the federal regulations in order for Michigan to retain primary enforcement authority (primacy) for the Public Water System Supervision (PWSS) Program. Losing primacy would result in the loss of federal PWSS Program funding of about \$4.2 million per year in addition to the loss of Michigan's allotment each year of the federal Drinking Water Revolving Fund (DWRF). Historically, the DWRF allotment has been about \$28 million per year, but is expected to be significantly higher based on the President's DWRF Budget Request for FY2010. Loss of the DWRF allotment would result in a loss of \$39 million per year to support the low-interest loan program for public water supplies. In order to retain primacy, the DEQ must be as stringent as the federal rule and intends to insert the phrase "but is not limited to," after "includes" in Rule 612(2)(c) and ",but are not limited to," after "include" in Rule 612a(1)(d).

Rule 710a(1)(a) on page 128. The last line of the federal rules reads, "Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants." The last line of the state rule reads, "Sampling sites may include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants only if the devices have been approved by the department for the purpose of optimizing corrosion control." The state rule is not as stringent as the federal rule. Change the last line of Rule 710a(1)(a) to read the same as the last line of the corresponding Federal rule. The DEQ intends to be as stringent as the federal rule and changed the last line to mirror the federal rule by adding "not" and striking "only if the devices have been approved by the

department for the purpose of optimizing corrosion control."

Rule 710c(4)(a)(ii) on page 146. Add "once during each calendar year" at the end of the first sentence. The DEQ agrees and has added the word "calendar."

Rule 710d(e)(ii)(A) on page 151. The reference to R 325.10604f(4) should be R 325.10604f(5)(e).

Rule 710d(f)(i) on page 151. The reference to R 325.10410(b) should be R 325.10410(3).

Rule 710d(f)(iii) on page 152. The reference to R 325.10410(3) should be R 325.10410(5).

Rule 710d(h) on page 152. The reference to (1)(a)(i)(D) should be (a)(i)(C).

Rule 710d(h)(ii)(A) on page 152. The reference to (a)(i) should be (a)(i)(A).

The DEQ agrees and has made the corrections to Rule 710d.

Rule 719g(2) on page 161. Add the symbol § before "141" (this concerns instances that are federal sections.) Add the word "Part" after "CFR" and before the number "141" (this concerns the instance that refers to the entire Part.) The DEQ added the § symbol. The DEQ has added the word "part" in subdivision (b) in lowercase to be consistent with the LSB Style Manual (see comment for Rule 102.)

Rule 719h(1) on page 162. Add the words "in the" before the word "months" in the first sentence. Add the word "Part" before the number "141." Add the symbol § before "141." The DEQ believes the U.S. EPA did not intend to insert the word "Part" in Rule 719h(1) because all instances in this subrule reference federal sections, not the federal Part. Rather, the DEQ believes the U.S. EPA intended to add "Part" in subrule (3) on page 163 to read, "40 CFR Part 141 Subpart U." The DEQ agrees and has added "in the" and added the § symbol in subrule (1). The DEQ has added "part" in subrule (3) in lowercase to be consistent with the LSB Style Manual (see comment for Rule 102.)

Rule 719i(1)(b) on page 163 last sentence. Delete "40 CFR 141 sections" and substitute with "sections under 40 CFR Part 141." The DEQ agrees and has made the change using the word "part" in lowercase to be consistent with the LSB Style Manual (see comment for Rule 102.)

Rule 719j on page 165. The state chart in subrule (1) requires quarterly monitoring for supplies serving 3,301-9,999, while the federal chart requires annual monitoring for these supplies. The reference in subrule (2) should be changed from 719e(2)(a)(3) to 719e(2)(a)(iii). The DEQ does not intend to be more stringent than the federal rule and has changed the chart from "per quarter" to "per year." The DEQ has also corrected the paragraph cite (3) to (iii) on page 167.

Rule 719m(1) on page 168. Add the § symbol after "CFR." In the last sentence, add the words, "provisions of" after the first "The." The DEQ agrees and has made the changes.

Rule 720b(2) on page 171. Add the word "Part" after "CFR" (this concerns the instances that refer to the Part.) Add the § symbol before "141" (this concerns instances that are federal sections.) The DEQ has added the § symbol. The DEQ has added the word "part" in the first

sentence of subrule (2) and in subdivisions (2)(b) and (c) using lowercase to be consistent with the LSB Style Manual (see comment for Rule 102.)

Rule 720e(1) on page 173. Add the symbol § before "141." The DEQ agrees and has made the change.

Rule 722(3)(a) on page 179. The state omitted "for Giardia lamblia and viruses" after "inactivation." Adding it would provide clarity. The DEQ agrees and has added the phrase.

Rule 722(3)(b) on page 180. Add the symbol § before "141." The DEQ agrees and has made the change.

Rule 722(4)(b)(iii) on page 182. Correct typographical error of "levels of disinfection" (plural) to "level of disinfection" (singular). The DEQ agrees and has made the change.

Rule 722(4)(e) on page 183. The state references (3)(a) to (c) do not cover the equivalent federal references. The state reference must also include Rule 720d(3). The DEQ agrees that in order to span the equivalent references in the federal rule, the references concerning disinfection profiling and calculating disinfection benchmarks should also include Rule 720d(3). The DEQ has added, "and R 325.10720d(3)" to the references.

Rule 739(2)(d) and Rule 739(3)(b) on page 187 and Rule 739a(3)(a)(i) and Rule 739a(3)(a)(ii) on page 189. These sections discuss analysis of groundwater samples. These cites should reference Rule 605 where analytical methods are adopted by reference. This will prevent ambiguity about how a water supply should analyze its samples. The DEQ agrees and has added the phrase, "using analytical methods adopted by reference in R 325.10605" in Rule 739(2)(d) after "samples," in Rule 739(3)(b) after "the same fecal indicator," and in Rule 739a(3)(a)(i) and Rule 739a(3)(a)(ii) after "concentration."

Rule 739b(1)(a) on page 190. The phrase "but not limited to" was omitted from department specified requirements in Rule 739b(1)(a), but is in 40 CFR §141.405(a)(1). The U.S. EPA, Region 5, conducted a legal review of the rules, and the Region has strong concerns about the wording in this rule with regard to stringency. This omission changes the substantive meaning of "department specified requirements," in that it makes the state rule less stringent than the federal rule. The federal rule is broader and encompasses more scenarios. The phrase "but not limited to" needs to be included. Without such a phrase, the definition is limited and not as broad as the federal rule.

The DEQ understands that the rules must be as stringent as the federal regulations in order for Michigan to retain primacy for the PWSS Program. Losing primacy would result in the loss of federal PWSS Program funding of about \$4.2 million per year in addition to the loss of Michigan's allotment each year of the federal DWRF. Historically, the DWRF allotment has been about \$28 million per year, but is expected to be significantly higher based on the President's DWRF Budget Request for FY2010. Loss of the DWRF allotment would result in a

loss of \$39 million per year to support the low-interest loan program for public water supplies. In order to retain primacy, the DEQ must be as stringent as the federal rule and intends to insert the phrase ", but not limited to," after "including."

Rule 1506(1) on page 209. Remove the two commas. The DEQ agrees and has struck the two commas.

Name of person completing this report:

Jean Shekter, DEQ

Date report completed:

August 19, 2009

(SOAHR-JCAR January 2009)