



October 17, 2008

Teresa Walker
Air Quality Division
Department of Environmental Quality
525 West Allegan Street, P.O. Box 30260,
Lansing, Michigan 48909-7760

Sent Via Email: walkert1@michigan.gov.

Dear Ms. Walker:

MMA appreciates the opportunity to share our views and express our opposition to the proposed state administrative rule, SOAHR 2005-038EQ. These comments will outline our reasons for opposition. This document includes a link (on page 4 of this document) to a separate document identifying our objections to the content of the Regulatory Impact Statement for this rule. We would like our comments on the Regulatory Impact Statement formally considered as part of our comments on the proposed rule.

MMA represents about 3,000 members that operate in the full spectrum of manufacturing industries, and which account for 90% of Michigan's industrial workforce. Manufacturing provides about 575,000 direct jobs in Michigan.

Michigan is a manufacturing state. Manufacturing, along with allied industries of mining and utilities, is the largest single sector of the Michigan economy, creating 21% of the gross state product (GSP), or \$76 billion. This contribution is nearly double the contribution of the next largest sector, real estate, with just \$43 billion in GSP.

Most Challenged Economy

As we all know, Michigan's economy is struggling significantly in the face of the cost based global economy. Michigan's unemployment rate continues to rank the highest in the nation at 8.9% well above the national average of 6.1%. Our job losses have been astonishing. We have lost 303,400 manufacturing jobs since the year 2000, with 53,000 manufacturing jobs lost in just last year alone (April to April). Highlighting the importance of manufacturing to the rest of the Michigan economy, we have lost about 500,000 total jobs since 2000. We have lost 70,000 jobs in the last year with about 20,000 jobs lost in just the last month.

Lack of Cost Benefit Analysis

We have just laid out a lot details about manufacturing and the Michigan economy to provide some context to our concerns about this rule package. In general terms we are concerned about increasing the cost of doing business in Michigan, relative to other states, when we have the most challenged economy in the nation. But more specifically, this rule lacks clear justification in the form of a cost benefit analysis.

This rule is a discretionary state only rule that will increase the cost of doing business without a clearly identified environmental benefit. The EPA is developing a federal rule that will no doubt be more stringent than the rule previously vacated in federal court. This situation requires two obvious questions: First, "What is the incremental environmental benefit that will be achieved by this rule?" And second, "What is the cost of the effort for Michigan citizens?"

Unintelligible Agency Costs Estimate

Unfortunately, the agency has never performed a cost benefit analysis. The agency has neither identified the incremental environmental benefit nor provided credible costs. In October of 2007, MMA conducted an evaluation the draft rule. While the evaluation looked at an earlier version of the rule, it concluded the cost of the rule would be \$1.2 billion more than the now vacated federal rule. We made that study public at the time and can make it available now. However, the proposed rule content has changed since our evaluation, and since the filing of the agency's regulatory impact statement.

Unfortunately, the agency's cost estimates leave little basis for rational decision making. The Agency's regulatory impact statement in question E. 18, indicates that the cost estimate to small business could range from "...\$11.4 million per year to \$498 million per year statewide". This is an incomprehensible range of costs. How can policymakers determine an intellectually honest course of action given a cost range of that magnitude? Consider this situation: If a restaurant offered a steak on the menu with a cost of anywhere between \$11.40 and \$498 dollars, and you wouldn't know what the actual cost is until they deliver the steak to your table, would you order the steak? Would you even go to that restaurant? We believe the people of Michigan deserve a better understanding of the cost that will be imposed.

Absence of Incremental Environmental Benefit

On the benefits side, the agency has fallen far short of quantifying or even clearly identifying the incremental environmental benefits of a state only rule. The agency's own mercury workgroup report included a study that modeled mercury deposition in Michigan. It reported that even if all coal fired utilities we shut down; mercury air based deposition in Michigan would be reduced by only 2%-3%. The agency's regulatory impact statement tends to leave the false impression that reductions in power plant air emissions will lower fish tissue mercury concentrations. However, identifying some amount of anthropogenic reduction, without providing a context to the total contributions from natural sources and locations outside of Michigan, does not adequately define an environmental benefit. MMA would like to emphasize our position that utility missions do not measurably affect fish tissue levels and this proposed rulemaking will have no measurable benefit in that regard. The agency should be able to identify and quantify the benefit, with a predictable benefit of reducing fish tissue levels, but they have not and it is our position that they cannot predict such a quantifiable benefit.

On the environmental benefits side of the equation, the agency offers the false impression that reductions in power plant air emissions will lower fish tissue mercury concentrations. MMA wants to emphasize that Michigan power plant emissions do not measurably affect fish tissue levels and this proposed rulemaking will have no measurable environmental benefit.

Power plants do not measurably affect fish levels of mercury. In fact Lake Erie, the site of the state's largest coal fired powered plant, which accounts for about half of the power plant mercury emissions statewide, has some of the lowest mercury fish tissue levels in all of Michigan waters. Mercury concentrations are higher in Lake Superior fish than they are in Lake Erie fish, but the amount of coal fired power generation around Lake Superior is about 5 times lower than the amount around Lake Erie. Similarly there are no clear patterns in either inland lakes or streams, near power plants across the state that would lead to a conclusion that power plants have a direct and measurable effect on fish tissue mercury concentrations. Mercury is a global pollutant that is widely dispersed. Scientists' best estimates are that elemental mercury, the most prevalent form in power plant emissions, stays in the atmosphere for over 6 months, on average, before being deposited back to the earth. Furthermore; much of the mercury deposition is from natural sources, such as volcanoes and forest fires, globally.

In addition, the mercury emitted by China has more of an effect on mercury levels in Michigan than the mercury emitted by Michigan power plants. China emits about 1,000 tons of mercury annually (http://www.epa.gov/mercury/control_emissions/global.htm). U.S. power plants in contrast only emit about 50 tons per year, and Michigan plants emit less than 2 tons per year. Natural sources emit about 3,000 tons of mercury annually to the atmosphere globally. Only a very tiny amount of the mercury in the atmosphere ends up as mercury in fish. Fish naturally contain mercury and always have. Mummies uncovered in Alaska demonstrate that ancient native people had mercury levels in their diet much greater than present levels in the diet of the Michigan population (http://www.epi.hss.state.ak.us/bulletins/docs/rr2004_11.pdf).

A number of complex factors determine the extent to which mercury accumulates in fish, but it is not the presence of U.S. or Michigan power plants. These complex factors include but are not limited to soil's role as a large and complex reservoir for mercury (approximately 1000 years of mercury deposition is stored in the first few inches of soil, but this mercury can be released if the land is disturbed), the trophic structure of water bodies (different fish food webs having varying propensities to concentrate methyl mercury), and the importance of other water quality parameters, such as alkalinity, dissolved organic carbon, D.O. and nutrients in determining how much mercury is converted to the methyl mercury form. Water quality parameters seemingly unrelated to methyl mercury levels, often are more critical in determining fish tissue levels than total mercury loadings. Many of these factors are discussed in the Annapolis Centers Report "Mercury in the Environment" (http://www.annapoliscenter.org/skins/default/display.aspx?moduleid=8cde2e88-3052-448c-893d-d0b4b14b31c4&mode=User&action=display_page&ObjectID=c69722a1-5eca-41ba-a492-757235a0218f#environment).

The actual results over the last 20 years, however, provides the most convincing proof that reductions in Michigan air emissions are not linked to changes in fish tissue concentrations of methyl mercury. For the last 20 years the State of Michigan has sought, and achieved, major reductions in mercury air emissions. There has been more than a 50% decrease in the oxidized form of mercury emissions since the state began its inventory in 1992 (MDNR. 1992 June 24. *Mercury in Michigan's environment: causes and extent of the problem.*) Yet, despite these huge reductions in emissions, there has been no corresponding trend in reduced levels of mercury in fish. For about the same 20 year period the state has issued annual Michigan Fish Contaminant Monitoring Reports. Every year these reports document that some lakes had increasing fish tissue levels of mercury, some lakes had decreasing levels and many lakes remained nearly the same.

The 20 years of fish tissue monitoring demonstrates 2 points. One, there is a lot of variability in fish tissue levels. Two, this variability is not related to Michigan air emissions. Factors other than mercury emissions control the methyl mercury levels in Michigan fish. Historical controls on the most important sources of oxidized mercury emissions have not resulted in any measurable change in fish tissue levels. We cannot expect any changes in fish tissue by controlling smaller sources. So, we ask, why should Michigan citizens and job providers spend significant dollars in electrical rate increases, in excess of the expenditures that will be required by other states in the impending federal rule, when the environmental benefit for Michigan is essentially nil, and cannot be quantified? To ask for such significant additional expenditures, the state should be able to identify the incremental environmental benefit of the action, relative to the federal action. The agency has not done so.

What is clear to us; is that by moving ahead with a discretionary state rule prior to promulgation of the federal rule will inevitably cause expensive regulatory conflicts with the federal rule. Different compliance schedules and methods, different reporting mechanisms and schedules, will increase the cost of regulation. Duplicative and conflicting regulations complicate Michigan's business climate and dissuade entrepreneurial investment. However, in this case the duplication and conflict will cause inevitable regulatory conflict, which will result in unnecessary increased cost of electricity for consumers.

Unfortunately, these increased costs will not provide any environmental benefit. The combination of unnecessary increased bureaucratic costs and the absence of quantifiable environmental benefits are the epitome of bad bureaucracy.

Regulatory Impact Statement

MMA has reviewed the agency's Regulatory Impact Statement (RIS) submitted to SOAHR on April 16, of 2008. We found it to be woefully inadequate. It is full of inaccuracies and obfuscations. We believe the report is so inadequate that the agency should rescind the report and start over. We are filing our evaluation of the RIS as part of our formal comments. Here is the link:

http://www.mma-net.org/content/pdf/mmacomments_degregulatoryimpactstatement100108.pdf

Let me provide a few of the many examples of our concerns:

B.6 Identify the conduct and its frequency of occurrence that the rule is designed to change.

DEQ Response: *The rules will reduce mercury emissions from coal-fired EGU's, which will reduce the mercury impacts to surface waters in Michigan and downwind areas.*

MMA Comment: We believe Michigan's rule may reduce an additional, indiscernibly small increment of mercury deposition over the federal but that incremental environmental benefit has never been identified. When the vast majority of mercury deposition comes from global sources, both natural and anthropogenic. The agency should be able to identify for the legislature and the people of Michigan how much benefit will be achieved, if any, compared to the federal rule.

B.7 Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

DEQ Response: *Mercury emissions to the air deposit in water bodies, bioaccumulate, and have resulted in statewide fish consumption advisories in Michigan and numerous other states. The advisories are to protect public health.*

MMA Comment: We find it interesting that the DEQ does not even predict that the state only rule will reduce any fish advisories.

B.9 Identify any alternatives to regulation by rule that would achieve the same or similar goals.

DEQ Response: *The provisions could be adopted in legislation instead of through rulemaking.*

MMA Comment: The response omits the impending federal rule. The option of meeting federal requirements like many other states was not even mentioned.

C.11 Estimate the cost of rule imposition on the department or agency

DEQ Response: *The rules are expected to result in minimal additional costs to the agency. They will become part of the normal compliance activity of the agency.*

MMA Comment: We find it incredible that the agency believes that a rule of this magnitude would not create significant costs for the agency. The agency often indicates they have limited funds and find it difficult to meet its current regulatory obligations.

D.13 Estimate the actual statewide compliance costs of the rule to individuals

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: While the rules do not apply to individuals, the increase in electric rated, resulting from this discretionary rule, will apply to each and every citizen who purchases electricity.

E.18 Estimate the actual statewide compliance costs of the rule to specifically include small businesses

DEQ Response: *...costs could range from \$11.4 million per year to \$498 million per year statewide.*

MMA Comment: The DEQ knows full well that the State's utilities are already implementing controls and what those controls will be. The DEQ is also aware of the incremental cost estimates for implementing a State rule. The State-specific data that the DEQ has in its hands clearly states:

- Incremental costs to go beyond CAMR and accommodate the State's rule,
 - Consumers Energy: \$79 million additional annual revenue requirement
 - DTE Energy: \$100 million additional annual revenue requirement
- Incremental Rate Increases due to implementing the State rule:
 - Percentage Increase: 2.4% to 4.0%
 - Typical Residential Customer: \$18.50 to \$48.00 per year Average
 - Commercial Customer: \$114 per year
 - Average Industrial Customer: \$1975 per year
 - Typical Large Industrial Customer: \$900,000 per year

F.30 Are the direct and indirect benefits of the rule likely to justify the cost?

DEQ Response: *A better environment resulting in better health and productivity for Michigan's citizens justifies the costs involved in implementing these rules.*

MMA Comment: The response provided to this question is absurd. The DEQ has not conducted any semblance of a cost-benefit study with regard to this rule. The DEQ offers absolutely no quantification of any discernable benefits that the State will realize from this discretionary action. And the estimates of costs, discussed earlier are woefully inaccurate.

Conclusion

In conclusion, MMA believes that this proposed rule will impose significant costs on Michigan citizens and job providers. The agency only provided an incomprehensible range of potential costs statewide. We believe the job providers and the people of Michigan deserve an intelligible cost estimate of a program of this magnitude. And it should identify the costs relative to the costs imposed by the federal government, so they can evaluate in context, the amount of incremental costs relative to the incremental environmental benefit anticipated. The data provided makes that calculation impossible. Further, and remarkably, the agency has not identified the incremental benefits to be gained, relative to the impending federal rule. They tend to hint that the reductions will result in lower fish tissue concentrations, with the possible benefit of reducing fish advisories in Michigan. However, these conclusions are not articulated in any quantifiable way and therefore do not provide the justification for the costs to be incurred. Consequently,

the rule is not justified. We believe the agency's Regulatory Impact Statement is woefully inadequate to justify a discretionary state rule that would go beyond the anticipated federal rule.

MMA respectfully opposes this rule and further suggests the agency withdraw this rule prior to submitting it to the legislature for review.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Johnston". The signature is written in a cursive, slightly slanted style.

Michael Johnston
VP Government Affairs