



# WRC

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## WATER RESOURCES COMMISSIONER

*Jim Nash*

August 1, 2018

Via U.S. Mail

FOIA Coordinator  
Department of Environmental Quality  
PO Box 30473  
Lansing, MI 48909

Re: FOIA Request for Records Regarding Changes to Lead and Copper Rule

Dear FOIA Coordinator:

Under provisions of the Michigan Freedom of Information Act (MCLA 15.231 et seq; MSA 4.1801 (1) et seq) I request copies of and/or access to the following public records (as the term is defined by FOIA).

For each listed request the word “records” includes but is not limited to: documents, drafts, correspondence, emails, text messages, memoranda, notes, summaries, charts, analyses, data and other writings. Any reference to the “Rules” means the “Supplying Water to the Public” administrative rules (R 325.10102 et seq) promulgated under the Michigan Safe Drinking Water Act, MCL 324.1001, et seq, that went into effect in June 2018.

1. In preparing a Regulatory Impact Statement (RIS) respecting the Rules, the department is required to identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. In its response to this requirement, the MDEQ stated “Removing LSLs from homes all over Michigan and lowering the lead action level will clearly reduce the public exposure to lead, and therefore, protect the health of Michigan’s current and future population.” Please submit all records relied on in developing this response, including, but not limited to, any records documenting current blood lead levels in Michigan and the quantification of reductions in lead blood levels expected as a result of the Rules.
2. All research reviewed that supports the expected public health benefits of the Rules and conclusions reached by staff including but not limited to records showing the MDEQ’s analysis of differing blood lead level reductions resulting from differing Lead Action levels.
3. In preparing a RIS, the department is required to “describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory



environment in Michigan that is the least burdensome alternative for those required to comply. In its response to this requirement, the MDEQ stated "... the removal of LSLs is the most effective way to reduce lead exposure from drinking water and therefore is incorporated in the rules." Please supply all records relied on in concluding that the removal of lead service lines is the most effective way to reduce lead exposure from drinking water. Please supply records regarding the department's estimates of the benefits of corrosion control and replacement of indoor plumbing.

4. All records related to the decision to remove the Household Action Level from the Rules.
5. In preparing a RIS, the department is required to identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter as well as estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). The MDEQ is required to answer the question: "What is the desired outcome?" Please supply records documenting the desired outcome, and records relied on to craft the desired outcome response.
6. In preparing a RIS, the department is required to identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In its response to this requirement, the MDEQ stated there are no reasonable alternatives to these rules that would provide for the removal of LSLs in order to protect public health. Please submit records relied on to conclude that alternatives proposed in all public comments including but not limited to Great Lakes Water Authority and the Detroit Water and Sewerage Department were not reasonable alternatives.
7. In preparing a RIS, the department is required to discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s) including ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups. In its response to this requirement, the MDEQ stated "stakeholders had concerns regarding the cost and logistics of replacing the private portion of LSLs that could not be addressed within the scope of these rules. Please submit records, including during internal discussions, relied on to conclude that the logistics of replacing the private portion of LSLs could not be addressed within the scope of these rules.
8. In preparing a RIS, the department is required to describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals, including fiscal burdens. Please supply records documenting the department's analysis of the fiscal burdens the Rules will place on individuals, including individuals classified as living in poverty.
9. In preparing a RIS, the department is required to estimate the actual statewide compliance costs of the proposed rule(s) on regulated individuals or the public. In its response to this requirement, the MDEQ stated there are no direct compliance costs to the public for the

Rules. There is a likelihood that PWSs will pass along at least some of the costs associated with Rule compliance to their customers. Please submit records relied on to conclude there are no direct compliance costs, including but not limited to: the legal basis for determining that public funds can be used to pay for the improvements on private property required in the Rules, that utilities could legally pay these costs without recovering them from the property owner and still comply with *Bolt v City of Lansing*, 459 Mich 152 (1998), and that the State is not required for any compliance costs in order to comply with the Headlee Amendment.

10. In preparing a RIS, the department is required to compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. If the rule(s) exceed a federal standard, the department is required to identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation. Please supply all records and analysis used in preparing the MDEQ's response, including records showing the costs and benefits arising out of the MDEQ's deviation from the federal standard.
11. In regard to costs of implementation and funding the actions mandated by the Rules, all:
  - a. Records; and,
  - b. Methodologies considered for calculating costs; and,
  - c. Records showing the comparative costs and benefits of other options considered.
12. All records of the legal authority for all aspects of the Rules including any determination that there are no conflicts with the Headlee Amendment or *Bolt v City of Lansing*, 459 Mich 152 (1998).
13. All records reviewed in the process of drafting the Rules that relate to ownership of the service lines to be replaced both inside and outside of home or buildings.
14. All communications with *and* documents shared with third parties such as consultants, experts, advisors and others retained to advise on the changes to the Rules, specifically, but not limited to the:
  - a. University of Michigan; and,
  - b. Office of Regulatory Reinvention; and,
  - c. any other State of Michigan department.
15. All communications and records with the members or staff assigned to the Joint Committee on Administrative Rules including communications related to JCAR's request that the Rules be withdrawn and resubmitted.
16. All drafts of the Rules that took place after rules were requested back from JCAR at any point during 2018 prior to filing including but not limited to records relied on for

changing the Action level between the time of the draft proposed for the public hearing and the final rule.

17. All records and drafts and alternate versions of such records related to initiating, researching, deliberating, drafting, submitting, executing and otherwise creating the:
  - a. Rules; and,
  - b. Draft Rules; and,
  - c. Request for Rulemaking to the Office of Regulatory Reinvention; and,
  - d. Regulatory Impact Statement associated with the Rules submitted on or about January 29, 2018.

If you determine that some of this requested information is exempt from disclosure, please detail what is being withheld and cite the exemption under FOIA.

To reduce or avoid the costs and labor of printing and/or photocopying records, I request that records be provided in an electronic format wherever possible if that is the least costly option, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense if requested.

Respectfully,



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