

Protecting Michigan's Water: HB5205 Offers Critical Path Forward

In 2006, changes were made to Part 31 of the Natural Resources and Environmental Protection Act (NREPA) which prescribes rules for water resources protection in the state. Under the section that determines general powers and duties of the Department of Environment, Energy and Great Lakes (EGLE) (324.3103), the following statement was added: "...the department shall not promulgate any additional rules under this part after December 31, 2006."

Because of this language, EGLE is unable to update or issue many rules to better protect state waters, leaving Michigan out of compliance with federal standards in some cases and in others, unable to adequately protect human health. HB5205 simply reinstates EGLE's ability to promulgate rules under Part 31, which was revoked in 2006. It does not provide any new regulatory authority to EGLE, and any rules proposed would still go through the rule-making process as prescribed by the Administrative Procedures Act. The following examples showcase the urgent need to strike the 2006 language as provided by HB5205.

FLOODPLAIN PROGRAM AND FLOOD INSURANCE

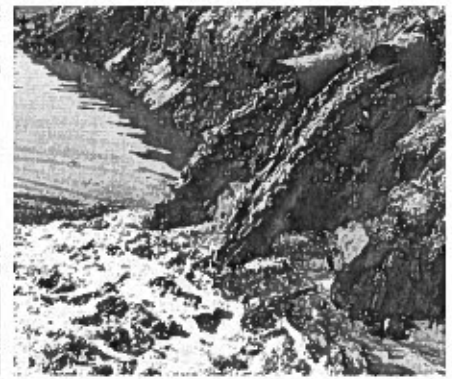
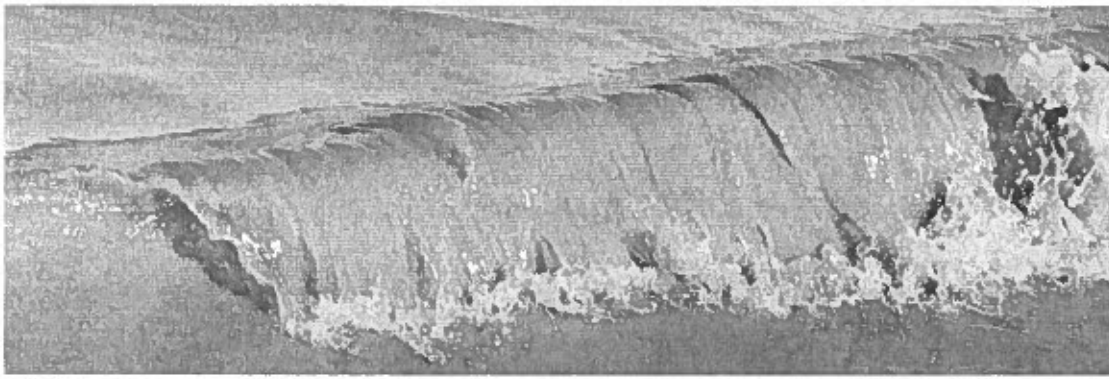
The lack of rule-making authority under Part 31 has impacted EGLE's floodplain program in multiple ways, including being unable to update floodplain maps or keep up with federal requirements. This led to regulatory confusion when FEMA updated their floodplain maps nearly two decades ago and EGLE had to rescind the references to the outdated maps instead of updating the references. Amendments and additions to definitions are needed to comply with federal regulations more closely. Because EGLE lacks the ability to make these needed changes, Michigan is currently noncompliant with federal floodplain requirements. **If the state loses its ability to participate in the National Flood Insurance Program, it could lead to residents losing their flood insurance statewide and risking our eligibility for federal disaster funds.**



BIOACCUMULATIVE CHEMICALS OF CONCERN AND E. COLI DETECTION

Bioaccumulative Chemicals of Concern (BCCs) accumulate in aquatic organisms once entering surface waters. Aquatic organisms absorb dissolved chemicals directly from the water and certain types of chemicals accumulate to higher concentrations as they progress through the food web. PCBs and mercury are well known examples of bioaccumulative chemicals that frequently cause do-not-consume fish advisories. Currently, EGLE is unable to update the definition of what is considered a BCC, even as new chemicals come under investigation and scientific knowledge advances. Additionally, changes under this part to acknowledge new technologies and monitoring techniques will aid in quicker interpretation of E. coli data collected in surface waters and help Local Health Departments in beach closure decisions. **Lacking the ability to update Part 31 based on the best science available presents a critical gap in adequately protecting public health.**





SURFACE WATER QUALITY STANDARDS

Michigan lacks a numeric standard for Total Phosphorus (TP) or Total Nitrogen (TN) in ambient surface waters (except for TN in drinking water sources). These nutrients provide the fuel that promotes the rapid growth of Harmful Algal Blooms which cause many impacts, including economic. The closure of drinking water sources requires residents to purchase bottled water and fund water treatment plant upgrades through rate increases. Those employed in the tourism industry face a loss of revenue from cancelled recreation trips. Algal blooms fueled by excess nutrient loads also cause ecologically devastating dead zones in our waters, as well as direct physical harm to humans by exposure to toxins like microcystin through skin contact or breathing the aerosol particles produced by wave action. **The EPA has identified formula criteria to set numeric standards for nutrients, but EGLE would be unable to do so with the current Part 31 rule prohibition in place.**

SPILLAGE OF OIL AND POLLUTING MATERIALS

This section of Part 31 regulates land-based facilities that store oils, salts or any other chemical included in a list of over 950 labeled as flammable, explosive, corrosive, etc. This rule ensures permittees maintain proper storage for contained chemicals, provide a pollution incident prevention plan and require report or notification of accidental releases of these materials. It also requires adequate surveillance of storage areas are maintained to detect and respond to spills to prevent releases to waters of the state. **Currently, PFAS and PFOA are not included as polluting materials under this part and are thus not subject to these requirements, despite our knowledge that spillage of these materials would cause significant impacts to the environment and public health.** EGLE cannot add PFAS and PFOA to this list because of the current rule prohibition in place.

INDUSTRIAL PRETREATMENT

Changes under this part would allow for municipalities to streamline their permitting process when it comes to the pretreatment of chemicals before they travel to a wastewater treatment plant. The Clean Water Act sets standards for the pretreatment of pollutants because some require a reduction of pollutants to prevent the failure of machinery and threats to worker health and safety at the receiving wastewater treatment plant. Pretreatment also offers the opportunity to recycle and reclaim municipal and industrial wastes and avoid interference with the disposal of municipal sludge. The EPA revised its federal pretreatment rules, but EGLE has been unable to update its rules to be consistent with these updates. **Therefore, it is more difficult for municipalities to issue needed permits intended to protect, preserve and improve the surface water quality of Michigan by implementing source reduction of toxic pollutants.**

In conclusion, removing the ability of EGLE to promulgate additional rules under Part 31 has left Michigan nearly two decades behind protecting its environment and results in serious and unnecessary threats to public health. **HB5205 is a simple, straightforward fix needed to incorporate the most up-to-date science to better protect the waters and residents of the Great Lakes State.**

CONTACT



MEGAN TINSLEY

Water Policy Director, Michigan Environmental Council

megan@environmentalcouncil.org