

ALERTS

Environmental Law Alert - Michigan Air Toxics Program Status Quo Continued As DEQ Rejects Revisions

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On April 4, the [Michigan Department of Environmental Quality \(DEQ\)](#) announced that Michigan's air toxics regulatory program will continue unchanged. This announcement is significant because for the last five years Michigan DEQ and stakeholders have been working to more closely synchronize Michigan's air toxics program with the federal Clean Air Act Hazardous Air Pollutants (HAPs) scope. The Office of Regulatory Reinvention (ORR) was created by Michigan Gov. Rick Snyder in 2011, and is credited with eliminating or revising thousands of administrative rules, including many DEQ regulations and guidance documents.

Pursuant to the Dec. 23, 2011 ORR recommendations regarding environmental regulations, the very first recommendation "A-1" included limiting the number of air toxics to the federal HAPs list, and rescinding the provision allowing the Michigan DEQ Air Quality Division to go beyond the requirements of the administrative rules.

A work group of various stakeholders pursuing the 2011 ORR recommendation developed proposed administrative rule changes restricting DEQ authority to approximately 600 air toxic chemicals. Even though the proposed rule would have reduced the number of toxic air contaminants regulated in Michigan, the proposed air contaminant list was still more than three times larger than the federal HAPs list.

Under the status quo resulting from Michigan DEQ's rejection of the proposed rulemaking, facilities seeking new or modified air emissions permits-to-install will continue to be subjected to a complicated Michigan DEQ air toxics review. As a result, uncertainty will continue as to what perceived risks to the environment or human health might justify Michigan DEQ regulating a toxic air contaminant not specifically listed.

While the Michigan DEQ heralded its position as defense of clean air, some view this as a significant setback to regulated air emissions sources in Michigan, and another example of a Michigan environmental regulatory program that is stricter than federal EPA requirements. There is speculation that opposition to these air toxics revisions by environmental public interest groups in the context of the Flint safe drinking water crisis resulted in this environmentally unrelated decision by Michigan DEQ.

For more information on air emissions permitting compliance and enforcement, contact any of the following Barnes & Thornburg LLP Environmental attorneys: Joel Bowers at joel.bowers@btlaw.com or 574-237-1287; Charles Denton at charles.denton@btlaw.com or 616-742-3974; Anthony Sullivan at anthony.sullivan@btlaw.com or 317-231-7472; or Cheryl Gonzalez at cheryl.gonzalez@btlaw.com or

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