



December 18, 2015

Lynn Fiedler, Chief
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909-7760
E-Mail: debrulerc@michigan.gov

Re: Air Toxic Rule Changes, ORR 2014-153 EQ and ORR 2014-154 EQ

Dear Ms. Fiedler,

The Michigan Environmental Council is a coalition of more than 65 environmental and conservation groups located across the State of Michigan working to keep Michigan's air and water clean for future generations. We appreciate the opportunities we have to serve on the stakeholder group regarding this issue.

However, we are deeply disappointed with the proposed rules, their failure to incorporate basic scientific principles in their design and the willingness of the department to allow Michigan families to be used as guinea pigs by companies in Michigan wishing to emit toxic chemicals that have had no testing regarding their health impacts.

Background - Recommendation to Deregulate Emissions of over 500 Toxic Chemicals

In Michigan, when a person or company wants to emit chemicals into the air it must get a permit to install the required equipment. There is no charge for the permit. In Michigan, we have regulated anything which may be harmful which is emitted. Over time, over 1200 different chemicals and compounds have been permitted. When evaluating the potential impact that a chemical may have on the adjoining community the state considers 1) the toxicity of the chemical, 2) the quantity being emitted, and 3) how close the industrial facility or specific stack is to nearby homes.

The administration's current proposal would reduce the number of toxic chemicals regulated by more than 500 (list of chemicals included with the workgroup report - Appendix B). Those chemicals fall into two categories:

- 1) Eliminating regulation of toxic chemicals that have not been tested for their impact on public health or their potential to cause cancer.** Michigan's current regulation assumes any chemical that has not been tested for health impacts is very toxic and a default value is used for evaluating its impact on the local community. The permit application has the choice of using the default value or conducting basic health testing on the chemical to establish a specific value.

2) **Eliminating regulation of the less toxic non-carcinogen chemicals (regardless of the quantity being emitted).** The proposal arbitrarily draws the line based on toxicity and proposes deregulating the 25% least toxic chemicals currently regulated. Importantly, the chemicals would not be regulated regardless of the quantity being emitted.

Concerns with the Proposed Changes

1. The changes fail to protect the public health of Michigan families

Under the proposal, industrial facilities will be allowed to emit chemicals that have not been tested for their impact on human health or natural resources. This makes Michigan families the equivalent of guinea pigs. It is our position that the company using the chemical (and reaping the financial benefits of its use) should bear the burden of demonstrating it is safe before emitting it into the air we breathe. **Instead this proposal transfers to those living next to the factory the risk that the chemical can cause cancer or have other negative consequences.**

Under current regulations, state regulators can credibly tell residents they have looked at the public health aspects of a new factory or proposed expansion and are basing their issuance of a permit on the demonstration that will be safe for the community. **If this proposal is adopted, regulators would have no basis to claim they have thoroughly examined a toxic chemicals impact on local residents, including whether the chemicals emitted cause cancer.**

2. The change ignores the science of toxic chemical exposure

The proposal to deregulate chemicals for which no health or safety data exists goes against our knowledge of toxic chemicals. The current program, at least, creates a presumption that an untested chemical is fairly toxic. If modeling shows that emitting a chemical is safe due to the relatively small quantity emitted, the state can issue a permit satisfied it has performed its duty to protect the health and safety of its residents. However, under the proposed change, the state assumes an untested chemical has no potential impact even though it may be carcinogenic.

The second category of chemicals being deregulated are those that have been found not to cause cancer and are less toxic than other chemicals, but which can still have impacts on public health. These chemicals have a wide variety of impacts including respiratory impacts and links to liver or kidney diseases. As explained above, the potential impact on human health is driven by both the toxicity of the chemical and the quantity of the chemical being emitted. The second category ignores this question of quantity and deregulates a chemical based solely on its toxicity. This change is also contrary to the science behind protecting people from the impacts of toxic chemicals.

3. Changes will have disproportionate impact on low-income areas and communities of color

Numerous studies have shown that residential neighborhoods next to industrial areas tend to have below-average income and have a greater likelihood to be communities of color¹. By deregulating more than 500 chemicals the proposal will have the greatest impact in those communities with the highest concentration of industrial facilities and toxic air emissions. Residents in these areas of the state already are at greater risk because our program does not take into account the impacts of multiple pollutants from multiple sources when setting acceptable emissions limits. Further deregulating individual toxic chemicals will place these communities at even greater risk.

4. Change will increase resistance to siting industrial facilities

Under current regulation, the department can tell a community when it issues a pollution discharge permit to an industrial facility that it has checked and does not pose an increased cancer risk or other health risk to area residents. However, under the new regulation the level of review will be reduced. In the past an applicant had to demonstrate through computer models or other methods using the most recent health data that their emissions did not pose a risk. This change eliminates that comprehensive review. This has the potential to result in greater conflict between industrial facilities and adjoining residents, and greater community resistance to new factories proposed in their communities.

5. Department failed to consider the health and safety benefits of the current rule

The Executive Order that prompted the review of the Air Toxic rule enumerated seven factors that were supposed to be considered when reviewing an existing administrative rule. The first factor to be evaluated was the “health or safety benefits of the rules.” The department has conducted no study regarding the potential impact of this rule.

In addition, MCLA 324.1705(2) states specifically:

¹ Race, Income, and Environmental Inequality in the United States, Liam Downey and Brian Hawkins, *Sociol Perspect.* Dec 1, 2008; 51(4): 759–781, doi: [10.1525/sop.2008.51.4.759](https://doi.org/10.1525/sop.2008.51.4.759)

Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial Facilities: Evidence From the Americans' Changing Lives Study, Paul Mohai, PhD, Paula M. Lantz, PhD, Jeffrey Morenoff, PhD, James S. House, PhD, and Richard P. Mero, MS, *Am J Public Health.* 2009 November; 99(Suppl 3): S649–S656., doi: [10.2105/AJPH.2007.131383](https://doi.org/10.2105/AJPH.2007.131383)

In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

In this case the department conducted no assessment of the potential health and safety risks that could be presented by deregulating over 500 toxic chemicals in Michigan. This failure to evaluate the potential impacts will place Michigan residents at-risk. In addition, the rule does not require an applicant requesting permission to discharge an untested chemical to show that there is not a previously tested chemical which can be substituted or a process change which can be adopted which would eliminate the discharge that is a feasible and prudent alternative to the emission of the untested chemicals. Therefore, this rule change results in a violation of MCLA 324.1705.

6. Technical problems with the rule design

- a) Definition of toxic air containment is circular – The definition states the following:

~~"Toxic air contaminant" or "TAC" means any air contaminant for which there is no national ambient air quality standard and which is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration. For the purpose of this definition, all of the following substances shall not be considered to be toxic air contaminants known or reasonably anticipated to be emitted from a process or process unit within the state and which meets any of the following conditions based upon the best available information:~~

- ~~(i) Acetylene. It is a carcinogen.~~
- ~~(ii) Aluminum metal dust. An ITSL derived pursuant to R 336.1229(2) would be at or below any of the following values:~~
 - (A) 100 ug/m³ with an annual averaging time.
 - (B) 522 ug/m³ with a 24 hour averaging time.
 - (C) 2330 ug/m³ with an 8 hour averaging time.
 - (D) 300 ug/m³ with a 1 hour averaging time.

The definition of "ITSL" states the following:

"Initial threshold screening level" or "ITSL" means a concentration of toxic air contaminant in the ambient air ~~which~~ that is used to evaluate noncarcinogenic health effects from a proposed new or modified process and ~~which~~ that is calculated, for regulatory purposes, according to the procedures in R 336.1229(2).

Therefore, the process for determining whether a chemical is a "toxic air contaminant" only applies to chemicals that are already considered to be "toxic air contaminants".

- b) The rule allows for the potential emission of carcinogens - The only way to determine whether a chemical is carcinogen is to conduct tests on it to determine whether it has cancer causing properties. However, since the rule includes no requirement to test chemicals, it allows for the emission of chemicals which may be carcinogens.

Potential changes to the rule to mitigate its impacts

The undersigned organizations urge the administration to revise this rule package to incorporate the following changes:

- For chemicals that have not been tested for health impacts
 - Retain the current requirement which requires an applicant which emits a chemical that has not been tested to assume the chemical is extremely toxic and model the impacts accordingly.
 - Require the applicant to demonstrate that there is not a tested chemical or process change which would eliminate the emission of the untested chemical.
 - Place a two-year sunset on the authorization to emit an untested chemical during which time the applicant should be required to perform health testing on the chemical or switch to a chemicals which has been testing for health impacts or institute a process change which eliminates the discharge.
- For those chemicals that have been tested:
 - If the permit includes other chemicals that must be screened or modeled, then the applicant should go through the relatively easy task of screening or modeling all chemicals emitted.
 - For those permits which only emit and meet the requirements under the new definition of toxic air contaminant, establish a maximum emission threshold based of the most recent toxicological data which ensures that it will not be emitted at a rate which may be injurious to local residents.

Unfortunately, we believe the changes will result in the emission of toxic chemicals that have not been properly reviewed and result in a significant increase in costs for the department for permits which are issued at no cost to the person or company emitting the pollution. We request the department withdrawal these rule changes and make the suggested changes before proceeding.

Sincerely,

James Clift, Policy Director
Michigan Environmental Council

Judy Karandjeff, President
League of Women Voters

Alexis Blizman, Legislative and Policy Director
Ecology Center

Charlotte Jameson, Policy Manager
Michigan League of Conservation Voters

Stephanie Karisny, Staff Attorney
Great Lakes Environmental Law Center

Wes Raymond, Administrator
Citizens for Alternatives to Chemical Contamination

Anne Woiwode, Policy Director
Sierra Club – Michigan Chapter

Margaret Weber, Convener
Zero Waste Detroit
Coordinator, Rosedale Recycles

Guy Williams, President and CEO
Detroitters Working for Environmental Justice