

Michigan PFAS Regulations Struck Down By Court

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On November 15, 2022, a Michigan state court struck down Michigan PFAS regulations related to drinking water enforceable limits. While several arguments were advanced by [3M](#) in challenging Michigan's PFAS drinking water standards, the Court ultimately found in favor of 3M because it felt that the state, when creating the drinking water standards, did not adequately consider the cost implications of the standards. The Court stayed the [ruling](#) to allow for the parties to appeal if they wish; however, the ruling provides clues as to similar arguments that we predict will be advanced when certain companies challenge federal drinking water standards and the CERCLA PFAS designation in courts.

Michigan PFAS Regulations

Michigan recently enacted PFAS drinking water standards for seven types of PFAS – PFOA (8ppt), PFOS (16ppt), PFNA (6ppt), PFHxA (400,000ppt), PFHxS (51ppt), PFBS (420 ppt) and the Gen-X chemical HFPO-DA (370 ppt). 3M challenged the regulations on three grounds: (1) Michigan had not shown that the standards were necessary, (2) the standards were enacted in a manner such that they were arbitrary and capricious and (3) there were deficiencies in the state's regulatory-impact statement (a required part of the regulatory process). The Court dismissed the first two arguments; however, it found in favor of 3M on the third ground. In short, the Court found that Michigan had not properly considered the cost impacts of the standards to companies and so the impact statement that was written was faulty.

While the ruling technically does strike down the Michigan regulations, the Court also ruled that it would stay its decision and not make it effective until final judgment is entered. As such, the Michigan PFAS regulations will remain in effect during the period of time when parties can appeal the ruling or the state can attempt to correct the errors in process that the Court noted. The Court also made note that the entire lawsuit and the drinking water standards could be moot if the EPA's drinking water standards are ultimately more aggressive than Michigan's.

Impact On PFAS Developments

The Michigan court ruling certainly demonstrates to companies contemplating whether to legally challenge the EPA's upcoming PFAS drinking water MCLs or the proposed CERCLA designation of PFOA and PFOS that there are courts willing to scrutinize the undertaken legislative process to

ensure that all necessary procedures were followed. This will be especially important as we have previously predicted that the drinking water standards are likely to be challenged on grounds similar to the Michigan lawsuit (as well as others) and the CERCLA designation is likely to be heavily opposed in court proceedings due to the EPA not conducting a rigorous RIA process.

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