



March 12, 2015

House Appropriations – Environmental Quality

Re: Air Program, Regulation of Air Toxics, ARC Recommendation , No. A-1

Dear Representatives,

The Environmental Advisory Rules Committee (ARC) was created by the Office of Regulatory Reinvention (ORR) in accordance with Executive Order 2011-5. The purpose of the Environmental ARC was to produce advisory recommendations to the ORR for changes to Michigan's existing environmental regulations. The Michigan Environmental Council participated as one of the members of the council.

The first priority of the ARC on the topic of air pollution regulation was the deregulation of the emission of over 500 toxic chemicals. We strongly disagree with this recommendation and believe legislative oversight and review of any change is appropriate before further action is taken by the department.

Nine states including Michigan do not use a discrete list of toxic chemicals and therefore can cover virtually any chemical. Those states include Minnesota, Delaware, Georgia, Maryland, New Jersey, Oklahoma and Texas.

In Michigan the regulated list currently includes about 1200 chemicals. 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 is currently assessing a proposal that 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.** 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.

Our concerns with the proposed changes include the following:

**a) 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. It is our position that the company using the chemical should bear the burden of demonstrating it is safe before emitting it into the air we breathe. Instead this proposal would transfer 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 its impact on public health. 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.

**b) The changes are not supported by sound science**

There is no science behind the proposed change. The proposal to deregulate chemicals for which no 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 quantity emitted, the state can issue a permit satisfied it has performed its duty to protect the health and safety of its residents.

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. However, 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.

**c) 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 color<sup>1</sup>. By deregulating more than 500 chemicals the proposal

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<sup>1</sup> 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)

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.

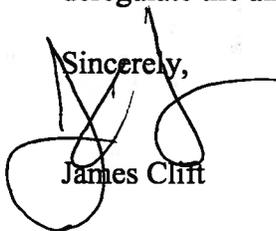
**d) Department failed to consider the health and safety benefits of the current rule**

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.” 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.

Michigan for several decades, a source emitting any toxic air contaminant, not specifically exempted, had both the duty to identify and characterize such an emission in a quantitative manner, and then perform a community health risk assessment by evaluate the ambient consequences of those emissions against a system of screening values. By reducing the number of chemicals covered by the rules this change significantly weakens the community health risk assessment performed by the applicant.

The legislature should take steps to prevent the promulgation of any rules which seeks to deregulate the air emissions of toxic chemicals.

Sincerely,



James Clift

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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)

