

# CLIENT ALERTS

---

## Court Strikes Down Michigan PFAS Water Rules

### Client Alert

11.17.2022

On Tuesday, November 15, 2022, the Michigan Court of Claims struck down the state's seven PFAS drinking water standards, agreeing with 3M that EGLE's failure to fully consider the cost/benefit of the rule, resulted in a faulty regulatory impact statement. The Court stayed the effect of its ruling pending exhaustion of the parties' appellate remedies citing the public health benefits of the rule.

3M had argued that because the promulgation of drinking water standards for PFOA and PFOS would automatically set groundwater standards for those same substances, EGLE should have considered the costs on those who would be affected by the new groundwater standards as part of its regulatory impact statement. EGLE had only considered the costs/benefits of the drinking water standards on public water supplies who would be impacted and declined to do a similar cost/benefit analysis on the groundwater standards which would by operation of law be set with promulgation of the drinking water standards, saying it would do so when groundwater rules were established for those five additional PFAS parameters not set by operation of law. However, EGLE failed to analyze the cost/benefits of the PFAS groundwater standards in its subsequent rulemaking as well. Invalidating the rules, the Court held that "[a]mong other things, a regulatory-impact statement must include "[a]n estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups." MCL 24.245(3)(n). Failure to comply with the requirements invalidates the entire rule."

The Court rejected 3M's other arguments that EGLE exceeded its authority in setting the standards that were not necessary for the public health and that the rules were arbitrary and capricious.

### Related People

Beth S. Gotthelf  
Shareholder

### Related Services

Environment, Energy &  
Sustainability

## CLIENT ALERTS

---

While the Court's ruling may not provide any immediate relief to the regulated community, it does validate the widespread criticism of EGLE's rulemaking process by industry in setting the PFAS standards. Moreover, should EPA move forward and set MCLs for PFAS, 3M's challenge might become effectively moot under MCL 324.20120a(5,) which requires the more stringent of the standards to apply.

**Beth Gotthelf**

248.258.1303

gotthelf@butzel.com

**Susan Johnson**

248.258.1307

johnsons@butzel.com