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Michigan Supreme Court Vacates Court of Appeals Decision Striking Down EGLE PFAS Drinking Water Standards

Client Alert

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On August 22, 2024, the Michigan Court of Appeals upheld 3M Company's challenge to rules promulgated by the Michigan Department of Environment, Great Lakes and Energy (EGLE) that set forth standards for certain per- and polyfluoroalkyl substances (PFAS) in drinking water. In doing so, the court found that EGLE violated the Administrative Procedures Act (APA) by failing to include a complete Regulatory Impact Statement (RIS) estimating the true cost of the proposed rule on businesses and other groups. Attorney General Dana Nessel filed an application for leave to appeal that decision on behalf of EGLE and the State of Michigan to the Michigan Supreme Court. In a November 22, 2024, order, the Supreme Court asked the parties to file supplemental briefing addressing several questions relating to mootness and exhaustion of administrative remedies.

On March 7, 2025, the Michigan Supreme Court, having received the parties' supplemental briefs, and in lieu of granting the State's leave to appeal, vacated the August 22 judgment of the Court of Appeals and remanded the case back to the Court of Appeals to address: "(1) whether the plaintiff-appellee's challenge to rule set 2019-35 EG, "Supplying Water to the Public," codified at and amending in part Mich Admin Code, R 325.10101 to 325.12820, became moot when the defendant-appellant promulgated rule set 2020130 EQ, "Cleanup Criteria Requirements for Response Activity," codified at and amending in part Mich Admin Code, R 299.1 to 299.50; (2) whether any exception to the mootness doctrine is applicable; (3) whether the plaintiff-appellee failed to exhaust its administrative remedies by not requesting a declaratory ruling from the agency as to the validity of the challenged rule before commencing this lawsuit, MCL 24.264; and (4) if the administrative remedies were not properly exhausted, what effect, if any, that had on the justiciability of this lawsuit,

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including plaintiff-appellee's standing and the court's subject-matter jurisdiction over the claims presented."

In its initial challenge of EGLE's PFAS drinking water standards, 3M Company argued that it had standing to challenge rule set 2019-35 EG, which established criteria for PFAS in drinking water, because those criteria could be applied as groundwater cleanup criteria to require remediation of groundwater contamination at one of its facilities or be used to establish damages for groundwater contamination in lawsuits filed against it. The State has argued that since EGLE has since promulgated standalone PFAS groundwater clean up criteria, there is no longer any need to use the drinking water standards that 3M Company alleges were improperly promulgated, as groundwater clean up criteria and therefore, 3M Company's claim is now moot.

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