

November 11, 2019

Michigan Environmental Rules Review Committee
Constitution Hall
525 West Allegan Street
Lansing, Michigan

RE: Conflict of Interest with Rule Set 2019-035 EG, Supplying Water to the Public (PFAS MCL)

Dear Michigan Environmental Rules Review Committee Members:

In 2018 the Michigan Legislature enacted and then Governor Snyder signed a bill to establish the Michigan Environmental Rules Review Committee (ERRC). The ERRC was tasked with reviewing all environmental rules packages that are undertaken by the Department of Environment, Great Lakes, and Energy (EGLE). It is staffed by people representing various special interests across the state including local governments, manufacturing and agriculture, as well as environmental and conservation groups.

As with any decision-making body, it is of utmost importance that there is clear transparency from the individuals invested with authority. In the case of a decision-making body staffed by representatives and employees of interest and business groups that could be directly financially impacted by rules promulgated by EGLE, that transparency should include disclosure of conflicts of interest and members recusal from voting on rule packages where a conflict is present. Because the members of the ERRC represent a broad array of industry and special interests and because rules promulgated by EGLE in any given year can cover a broad array of topics, it is clear that occasionally members of the ERRC will have conflicts of interest during their tenure on the committee.

Unfortunately, the statute that enacted the ERRC is silent on the question of what process should be undertaken when a conflict arises. In a clear failing of the legislation, the statute does not require disclosure of conflicts nor recusal from voting despite both of these steps being common practice in governance institutions and decision-making bodies.

Individual members of the ERRC can take it upon themselves to disclose conflicts and recuse themselves from decision-making when those conflicts are present. Alternatively, the committee as a whole can ask members to recuse themselves where a concern over a conflict of interest exists. The ERRC should make both disclosure and recusal its standard practice and should adopt a formal conflict of interest policy to govern its members.

In the near term, however, we would ask the ERRC to take action in the case of Rule Set 2019-035, Supplying Water to the Public, which establishes maximum contaminant levels (MCLs) for several compounds of PFAS. Given the financial impact that PFAS drinking water standards will have both on drinking water systems and on brownfield sites contaminated by PFAS, likely several members of the ERRC have conflicts of interest that would bias their decision on the rules.

The undersigned are particularly concerned by the clear conflict present by Grant Trigger's employment with Racer Trust. Racer Trust owns several properties contaminated by PFAS and, in his private capacity overseeing Racer Trust, Mr. Trigger is responsible for the design,

implementation and cost of remediation of those contaminated properties. The Trust's properties will be directly impacted by the PFAS rules and in particular the lowering of the cleanup criteria standard for PFOS and PFOA that occurs in conjunction with the adoption of a new MCL for those substances. Mr. Trigger's organization will be directly and negatively financially impacted by the PFAS MCL. That is a very clear conflict of interest and we would call on the ERRC to ensure that Mr. Trigger recuses himself from any future role in the ERRC's deliberations on the PFAS MCL rules.

PFAS contamination of our drinking water is a public health crisis and requires swift action grounded in the best science available. Residents across the State of Michigan are looking to our decision-makers to protect drinking water and public health. No person involved in that decision should be biased by a private pecuniary interest. As an unelected oversight body, the duty to hold members accountable for their decisions falls to the members of the committee.

We urge the ERRC to take that role of self-accountability seriously and ensure that conflicts of interest are quickly disclosed and resolved.

Sincerely,

Mary Brady-Enerson
Clean Water Action

Charlotte Jameson
Michigan Environmental Council

Liz Kirkwood
FLOW

Christy McGillivray
Sierra Club

Rebecca Meuninck
Ecology Center

Nathan Murphy
Environment Michigan

Sylvia Orduño
People's Water Board

Cyndi Roper
Natural Resources Defense Council

Maureen D. Taylor
Michigan Welfare Rights Organization

Cathy Wusterbarth
Need Our Water