

Oversight 2/7/19 HCR 7 - Sen. Irwin

C. Heidi Grether
Williamston, Michigan 48895

February 6, 2019

Governor Gretchen Whitmer
2nd Floor Romney Building
Lansing, Michigan 48909

Senate Majority Leader Mike Shirkey
S-106 Capitol Building
Lansing, MI 48909-7536

Senate Minority Leader Jim Ananich
S-105 Capitol Building
Lansing, MI 48909

Speaker of the House Lee Chatfield
164 Capitol Building
Lansing, MI 48909

Democratic Leader Christine Greig
176 Capitol Building
Lansing, MI 48909-7514

Re: Executive Order 2019-2

Dear Honorable Governor, Senators and Representatives:

I want to share with you my perspective on the recently issued Executive Order 2019-2. That perspective is shaped not only by my time as Director of the Michigan Department of Environmental Quality, but also my time as an advocate for the business community, as a legislative staff member in both Houses of the Michigan Legislature, as well as my experiences working with several other state legislatures.

I am asking that you recognize the importance of managing and protecting Michigan's environment and natural resources on behalf of all the state's citizens, while fostering a healthy, sustainable economy.

It is critical that Michigan has a business climate that provides clear and concise guidance to the business community on the steps necessary to obtain a permit from the Department of Environmental Quality. Regulatory certainty is one of the most important drivers for business investment and expansion decisions. Relatedly, the expectations and practices that will keep business in compliance with the host of state and federal environmental laws that regulate their operations are also important.

Regarding permits, the certainty that comes from receiving a permit from the department that clearly articulates the standards and practices which will be required is equally important. A business must know, up front, the specific expectations of their permit. Permit clarity is critical to their commitment of resources necessary to open a new business or add a new production line to a current facility. That certainty is only possible when the Director of the department is the final decision maker on a permit.

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DEQ has taken its permitting responsibility very seriously. As you know, under the previous administration, DEQ successfully reduced the time between receiving completed application from a business and issuance of a permit, and were applauded by industry for those efforts.

Under PA 268 of 2018, an environmental permit panel makes the final decision on a permit when requested by any party to a contested case hearing. This raises two potential problems. First, the department may believe that the permit as issued by the panel fails to comply with state or federal laws. They would then have a duty to challenge a permit which had just been issued by their own department, wasting valuable state resources and disrupt that commitment of resources in Michigan. Second, this transfer of authority may place in jeopardy delegation of authority for Michigan to implement certain federal programs such as the Clean Air Act and the Clean Water Act. Failure to have these programs implemented at the state level will impede business activities in Michigan by requiring federal permits, which can be much more time consuming and less sensitive to state-specific needs.

Under the previous administration, the department undertook a comprehensive review of environmental rules and implemented dozens of the recommendations of the Environmental Rules Advisory Council. The primary purpose of environmental rules is to provide guidance and clarity to the regulated community on how state and federal statutes will be implemented. Those rules cannot exceed the authority created through the enabling law.

Stakeholder involvement in the writing or revising of administrative rules is critical to the process. Over my career, I cannot remember one instance where the department moved forward on an administrative rule without first consulting with stakeholders. In my experience the most valuable stakeholder input are experts in the area covered by the rule package itself. Although the Environmental Rules Review Committee has an impressive level of talent included within their members, their expertise cannot replace the existing use of experts within a specific field. And, in some cases the administration has spent years in the stakeholder process trying to build consensus, a commitment of time I would not expect out of committee members on any one package.

At the end of the day, final decisions need to be made. The Director of the department is the proper official within the Executive branch of government to make those decisions. And, those decisions must be made based on the statutory and regulatory requirements under which the department is legally obligated to operate.

With the process set forth in Public Act 267 of 2018, a panel of unelected officials has the ability to stop an administrative rule from moving forward. Certain statutes require the promulgation of rules to establish standards. Without final decision-making authority to move forward with an administrative rule, the department will be unable to perform its statutory duty.

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I call on each of you, as leaders, to exercise the proper respect of each other and the critical roles each of you play in our democratic process. I call on our legislative leaders to allow our newly elected Governor to proceed with the organization of the Executive branch in the manner that she believes best serves the people of the State of Michigan. I call on Governor Whitmer to work closely with our legislative leaders to make Michigan both a great place to raise our families in a healthy and sustainable environment and attractive to business development.

Respectfully,

A handwritten signature in cursive script, appearing to read "C. Heidi Grether".

C. Heidi Grether
Director, MDEQ 2016 – 2018

cc: Liesl Clark
Director, DEQ

