



## Michigan Lame Duck Environmental Legislative Round-Up

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Michigan's "lame duck" legislative session in December, preceding the change of state governor from Republican Rick Snyder to Democrat Gretchen Whitmer, saw a number of significant enactments.

In a historic session, lawmakers voted on more than 300 bills in 13 days. Several of these legislative changes impact the environment and interactions between business and the Michigan Department of Environmental Quality (DEQ), including significant amendments of the Natural Resources and Environmental Protection Act (NREPA).

### No Stricter than Federal

Michigan agencies, including the DEQ, cannot adopt administrative rules more stringent than federal counterparts without "clear and convincing" evidence in support of a stricter regulation. ([HB 4205](#), 2018 PA 602). The "no stricter than Federal" limitation may have broad effects and is notable for [PFAS regulations](#) as those policies and criteria continue to develop.

### Narrowed Wetland Definition

Wetlands regulations were revised to facilitate development on previously regulated wetlands, limit DEQ compliance and enforcement actions, and

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enhance landowner protections. The legislation amended the 1979 Goemaere-Anderson Wetland Protection Act (now NREPA Part 303), narrowed the definition of “wetland,” and incorporated language used in the Federal Water Pollution Control Act.

When considering adverse effects on a wetland, DEQ must consider cost, existing technology and logistics. DEQ’s authority to enter property for purposes of wetland compliance and enforcement was curtailed to situations where DEQ has a search warrant or there is an imminent threat of harm to the wetland. Affected landowners may now challenge a wetland determination and can recover attorneys’ fees if they prevail against DEQ ([SB 1211](#), 2018 PA 631).

## **Environmental Cleanup Criteria**

Environmental remediations under NREPA Part 201 were clarified for environmental clean-up criteria. Criteria must be adopted by notice and comment rulemaking. DEQ is thus now prohibited from unilaterally adopting clean-up criteria, as it did in setting PFAS criteria. This change provides opportunities for stakeholder input before DEQ establishes new or modified criteria. The Part 201 legislation also enables earlier No Further Action or Closure determinations for remediation projects. ([SB 1244](#), 2018 PA 581).

## **Using Drones for Enforcement**

The [use of drones](#) for agency enforcement, including by DEQ, is now subject to statutory limitations. This law protects facility owners and operators from broad drone usage by the state.

Agencies are required to give notice to affected facilities, for instance, and state-operated drones must be distinctly marked. Roadways, airports, ports and similar critical infrastructure are exempt from the notice requirement ([2018 PA 442](#)). Drones were the subject of another legislative change that prohibits interference with “key facilities,” which includes chemical plants ([2018 PA 445](#)).

## **“Renew Michigan Fund” Replaces Landfill Tipping Fees Increase**

Former Governor Snyder supported a bill to increase landfill tipping fees and other charges to fund environmental infrastructure improvement programs like recycling and solid waste management ([SB 943](#)). That bill failed to pass, but other budget appropriations were approved to address some of those priorities.

One such budget appropriation established the “Renew Michigan Fund,” over half of which is dedicated for environmental cleanup, including PFAS; the remainder of the \$69 million fund will be used for other environmental programs. ([HB 4991](#), 2018 PA 588).

For more information on any of the above, please contact your favorite [Barnes & Thornburg environmental lawyer](#).