

Rule 336.1221 (Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval).

EPA published a proposed disapproval of the 1993, 1996, and 1996 submittals on November 9, 1999 (64 FR 61046), but never published a final disapproval. As part of that proposed disapproval, EPA conducted an evaluation of the State submittal and found that as one of the items, the State failed to rescind Michigan rule 336.1221. In that action, EPA stated, "Michigan rule 336.1221 impermissibly exempts sources that have significant net emissions increases of sulfur dioxide, particulate matter, and carbon monoxide from offset requirements. MDEQ rescinded Michigan rule 336.1221 effective November 14, 1990. However, the State never submitted the rule to USEPA for rescission. Because Michigan did not submit the rescission to the USEPA for removal of the rule from the SIP, the Michigan NSR rules are not approvable at this time."

On September 24, 2003, the State of Michigan submitted a SIP revision to EPA requesting full approval of Michigan's Clean Air Act New Source Review SIP. As part of that submittal requesting revisions to Parts 1 (General Provisions) and 2, Michigan specifically requested to rescind rule 336.1221. As part of its technical support document, Michigan stated that rule 336.1221 was rescinded from the State rules in 1990, and requests that EPA remove it from the SIP.

At the time of the 1999 proposed disapproval, the Part 2 rules also included the state's major nonattainment PTI permitting program. The major nonattainment provisions have been removed from Part 2, and are now covered by the Part 19 (New Source Review for Major Sources Impacting Nonattainment Areas) rules. The Part 19 rules were fully approved by EPA into the Michigan SIP on December 16, 2013, (78 FR 76064). The Federal nonattainment air quality permitting regulations are found in 40 CFR 51.165(a) and (b). The Federal rules found at 40 CFR 51.165(a) and (b) specify the elements necessary for approval of a State permit program for preconstruction review for nonattainment purposes under Part D of the Clean Air Act. A major source or major modification that would be located in an area designated as nonattainment and subject to the nonattainment area permitting rules must meet stringent conditions designed to ensure that the new source's emissions will be controlled to the

greatest degree possible; that more than equivalent offsetting emission reductions will be obtained from existing sources; and that there will be progress toward achieving the National Ambient Air Quality Standards. EPA has found that the rules as submitted by Michigan for inclusion into its SIP are at least as stringent as the Federal rules. By rescinding rule 221 from the Michigan SIP, the Michigan SIP is meeting the Federal statutory requirements for an approvable Part 2 and Part 19 air permitting program.

II. What action is EPA taking?

EPA is proposing to approve the rescission of Michigan rule 336.1221 from the Michigan SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: November 27, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0741; FRL-9987-73-Region 5]

Air Plan Approval; Michigan; Revisions to Part 1 General Provisions Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Michigan Department of Environmental Quality (MDEQ) on December 12, 2017, and supplemented on August 9, 2018, as a revision to Michigan's state implementation plan (SIP). The SIP submission incorporates several revisions to Michigan's Air Pollution Control Rules entitled "Part 1—General Provisions." The revisions include

administrative changes to the existing rule.

DATES: Comments must be received on or before January 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0741 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What are the State rule revisions?
- II. What is EPA’s analysis of the State’s submittal?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What are the State rule revisions?

On December 12, 2017, and August 9, 2018, MDEQ submitted a request to EPA to incorporate revisions to Michigan’s Air Pollution Control Rules entitled Part 1—General Provisions (Part 1). The submission revises the following Michigan’s Air Pollution Control rules:

R 336.1101 to 1103, R 336.1106 to 1109, R 336.1112 to 1116, and R 336.1118 to 1123. The revisions are primarily administrative changes.

In the August 9, 2018, submission, MDEQ rescinded its request to modify Part 1 for the following definitions: R336.1101(a) “Act,” R336.1101(h) “Air pollution,” R336.1101(q) “Aqueous based parts washer,” and R336.1103(aa) “Cold cleaner.”

II. What is EPA’s analysis of the State’s submittal?

Rule Revisions for Which EPA Is Proposing To Approve

Part 1 is a compilation of the definitions used in Michigan’s rules. The revisions to Part 1 include a range of administrative changes, from grammatical corrections to language updates. Examples of these revisions include changing terminology such as “which” to “that,” or “commission” to “department.”

MDEQ revised the language in several rules to be consistent with rule R 336.1902, namely, requiring all of the “Adoption by reference” for various test methods be located in R 336.1902. For example, the definitions of “Heavy liquids,” “PM-10,” “PM 2.5,” “Reid vapor pressure,” “True vapor pressure,” and “Waxy, heavy pour crude oil,” the revised rule language shows that the applicable test method adopted by reference is in R 336.1902.

In rule R 336.1122(f) MDEQ updated the definition of “Volatile organic compound” (VOC) to reflect revisions made to the Federal definition at 40 CFR 51.100(s). MDEQ amended the list of compounds excluded from the definition of VOC to add the following six compounds: (1.) HCF₂OCF₂H (HFE-134), (2.) HCF₂OCF₂OCF₂H (HFE-236cal2), (3.) HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13), (4.) HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040X or H-Galden ZT 130 (or 150 or 180)), (5.) Trans 1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)), and (6.) 2-amino-2-methyl-1-propanol (AMP). These additional compounds were determined by EPA to have negligible photochemical reactivity, and therefore, EPA does not expect them to make a significant contribution to ozone formation.¹ MDEQ also updated an existing exemption for the compound t-butyl acetate to be consistent with EPA’s removal of the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements

related to the use of t-butyl acetate as a VOC. See 81 FR 9339 (February 25, 2016).

Last, other modifications to Part 1 include the deletion and addition of several definitions. MDEQ revised Part 1 to remove definitions that are unclear, incorrect, redundant, or no longer used in Michigan’s rules. MDEQ removed “Allowed emissions,” “Federal land manager,” “Linearized multistage computer model,” “Offset ratio,” and “Very large precipitator.” In like manner, MDEQ revised Part 1 by adding the following definitions: “Adhesion prime,” “Air pollution control equipment,” “Applicant,” “Federally enforceable,” “Field gas,” “Field testing,” “Flexible coating,” and “Fog coat,” “Organic resin,” “Secondary emissions,” “Significant,” “Stencil coat,” “Styrene devolatilizer unit,” “Styrene recovery unit,” “Synthetic natural gas,” “Synthetic organic chemical and polymer manufacturing plant,” “Synthetic organic chemical and polymer manufacturing process unit,” “Used oil,” and “Wayne county permit.”

EPA finds these changes are acceptable and thus is proposing their approval into the Michigan SIP.

Rule Revision for Which EPA Is Taking No Action

R 336.1103 Definitions; C

In rule R 336.1103, MDEQ requested the removal of (pp) from the definition of “Creditable.” EPA is taking no action to remove this definition from Michigan’s SIP because EPA already removed the definition from Part 1 in a previous rulemaking. See 78 FR 76064 (December 16, 2013).

R 336.1119 Definitions; S

MDEQ amended this rule by adding (c) for the definition “Secondary risk screening level,” and (q) for the definition “State-only enforceable.” Secondary risk screening level means “the concentration of a possible, probable, or known human carcinogen in ambient air which has been calculated, for regulatory purposes, according to the risk assessment procedures in R 336.1229(1), to produce an estimated upper-bound lifetime cancer risk of 1 in 100,000.” State-only enforceable means “that the limitation or condition is derived solely from the act and the air pollution control rules and is not federally enforceable. State-only enforceable requirements include R 336.1224, R 336.1225, R 336.1901, any permit requirement established solely pursuant to R 366.1201(1)(b), or any other regulation that is enforceable

¹ See 78 FR 9823, February 12, 2013; 78 FR 53029, August 28, 2013; 79 FR 17037, March 27, 2014.

solely under the act and is not federally enforceable.” EPA is taking no action on these State-only provisions.

R 336.1120 Definitions; T

In rule 336.1120(f), “‘Toxic air contaminant’ or ‘TAC’” is defined as “any air contaminant for which there is no National Ambient Air Quality Standard (NAAQS) and which is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration.” This definition includes a list of exempt substances that are not considered TACs. MDEQ amended the list of exempt substances to add the following: “animal or plant materials, including extracts and concentrates thereof, used as ingredients in food products or dietary supplements in accordance with applicable regulations of the United States Food and Drug Administration.” EPA is taking no action on this amendment to rule R 336.1120(f).

Other Revisions to Part 1

MDEQ revised Part 1 to add the following definitions: R 336.1115(d) for “‘Oral reference dose’ or ‘RfD,’” R 336.1119(x) for “‘Sufficient evidence,’” and R 336.1123(c) for “‘Weight of evidence.’” EPA is taking no action on these definitions.

Section 110(l) Analysis of the State’s Submittal

EPA is proposing to approve the revisions to Part 1 discussed above because the revisions meet all applicable requirements under the Clean Air Act (CAA), consistent with section 110(k)(3) of the CAA. Furthermore, MDEQ has shown that the revisions to Part 1 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under Section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision would not interfere with any applicable CAA requirements based on technical analysis submitted by MDEQ. Part 1 rules are definitions and are not meant to affect any sources. The changes to the definitions in Part 1 rules will have no effect on actual or allowable emissions as they only clarify words and phrases within other rules.

MDEQ has shown there is no impact of revising Part 1 rule that would hinder Michigan’s ability to maintain and meet the NAAQS for nitrogen dioxide, ozone, lead, particulate matter, sulfur dioxide, and carbon monoxide. Therefore, these revisions to Part 1 are approvable as they are merely administrative changes. The revisions will not increase any emissions to the atmosphere because they do not impact on any source applicability or emissions.

III. What action is EPA taking?

EPA is proposing to approve revisions to Michigan’s Part 1 Rule submitted by MDEQ on December 12, 2017, and supplemented on August 9, 2018, as a revision to the Michigan SIP.

Michigan requested that EPA approve the following rules: R 336.1101 Definitions; A (except for (a) Act, (h) Air pollution, and (q) Aqueous based parts washer), R 336.1102 Definitions: B, R 336.1103 Definitions C (except for (aa) Cold cleaner), R 336.1106 Definitions; F, R 336.1107 Definitions; G, R 336.1108 Definitions; H, R 336.1109 Definitions; I, R 336.1112 Definitions; L, R 336.1113 Definitions; M, R 336.1114 Definitions; N, R 336.1115 Definitions; O (except for (d) “‘Oral reference dose’ or ‘RfD’”), R 336.1116 Definitions; P, R 336.1118 Definitions; R, R 336.1119 Definitions; S (except for (c) Secondary risk screening level, (q) State-only enforceable, and (x) Sufficient evidence), R 336.1120 Definitions; T (except for (f) “‘Toxic air contaminant’ or ‘TAC’”), R 336.1121 Definitions; U, R 336.1122 Definitions; V, R 336.1123 Definitions; W (except for (c) Weight of evidence). We are also proposing approval of a revision removing the following definitions from Part 1: “‘Allowed emissions,’” “‘Federal land manager,’” “‘Linearized multistage computer model,’” “‘Offset ratio,’” and “‘Very large precipitator.’”

EPA is not taking any action on R 336.1103(pp) “‘Creditable,’” R 336.1115(d) “‘Oral reference dose’ or ‘RfD,’” R 336.1119(c) “‘Secondary risk screening level,’” R 336.1119(q) “‘State-only enforceable,’” R 336.1119(x) “‘Sufficient evidence,’” R 336.1120(f) “‘Toxic air contaminant’ or ‘TAC,’” and R 336.1123(c) “‘Weight of evidence.’”

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan Administrative Code R 336.1101 Definitions; A (except for (a) Act, (h) Air pollution, and (q) Aqueous

based parts washer), R 336.1102 Definitions: B, R 336.1103 Definitions C (except for (aa) Cold cleaner), R 336.1106 Definitions; F, R 336.1107 Definitions; G, R 336.1108 Definitions; H, R 336.1109 Definitions I, R 336.1112 Definitions; L, R 336.1113 Definitions; M, R 336.1114 Definitions; N, R 336.1115 Definitions; O (except for (d) “‘Oral reference dose’ or ‘RfD’”), R 336.1116 Definitions; P, R 336.1118 Definitions; R, R 336.1119 Definitions; S (except for (c) Secondary risk screening level, (q) State-only enforceable, and (x) Sufficient evidence), R 336.1120 Definitions; T (except for (f) “‘Toxic air contaminant’ or ‘TAC’”), R 336.1121 Definitions; U, R 336.1122 Definitions; V, R 336.1123 Definitions; W (except for (c) Weight of evidence), effective December 20, 2016. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 27, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2018-0056; FRL-9987-61-OW]

RIN 2040-AF79

Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a federal Clean Water Act (CWA) selenium water quality criterion applicable to California that protects aquatic life and aquatic-dependent wildlife in the fresh waters of California. In 2016, the EPA published a revised recommended aquatic life selenium criterion for freshwater based on the latest scientific knowledge. The EPA is proposing to amend the California Toxics Rule to include a revised statewide chronic selenium water quality criterion for California fresh waters to protect aquatic life and aquatic-dependent wildlife which builds upon the science in the EPA's 2016 *Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater*.

DATES: *Comments date:* Comments must be received on or before February 11, 2019.

Public hearing dates: Tuesday, January 29, 2019 from 9 a.m.–11 a.m. PT, Wednesday, January 30, 2019 from 4 p.m.–6 p.m. PT.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OW-2018-0056, at <https://www.regulations.gov> (our preferred method), or the other methods identified at <https://www.epa.gov/dockets/commenting-epa-dockets>. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at two Docket Facilities. The Office of Water (“OW”) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

Public Hearings: The EPA is offering two online public hearings so that interested parties may provide oral comments on this proposed rulemaking. For more details on the public hearings and a link to register, please visit <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california>.

FOR FURTHER INFORMATION CONTACT:

Julianne McLaughlin, Office of Water, Standards and Health Protection Division (4305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-2542; email address: mclaughlin.julianne@epa.gov; or Diane E. Fleck, P.E., Esq., Water Division (WTR-2-1), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972-3527; email address: Fleck.Diane@EPA.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

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 - C. California Toxics Rule
 - D. Litigation
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