

Preparing for the PFAS Regulatory Future

Day 2

March 21, 2024

Fredrikson

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Today's Agenda



- MN's PFAS "Blueprint" and Recent Legislation
- PFAS and NPDES Permits
- TSCA PFAS Reporting and Recordkeeping Requirement
- PFAS as HAP under AERR
- EPCRA PFAS Reporting
- Midwest AFFF Survey

MN PFAS Blueprint and Legislation



PFAS in Minnesota – PFAS Blueprint

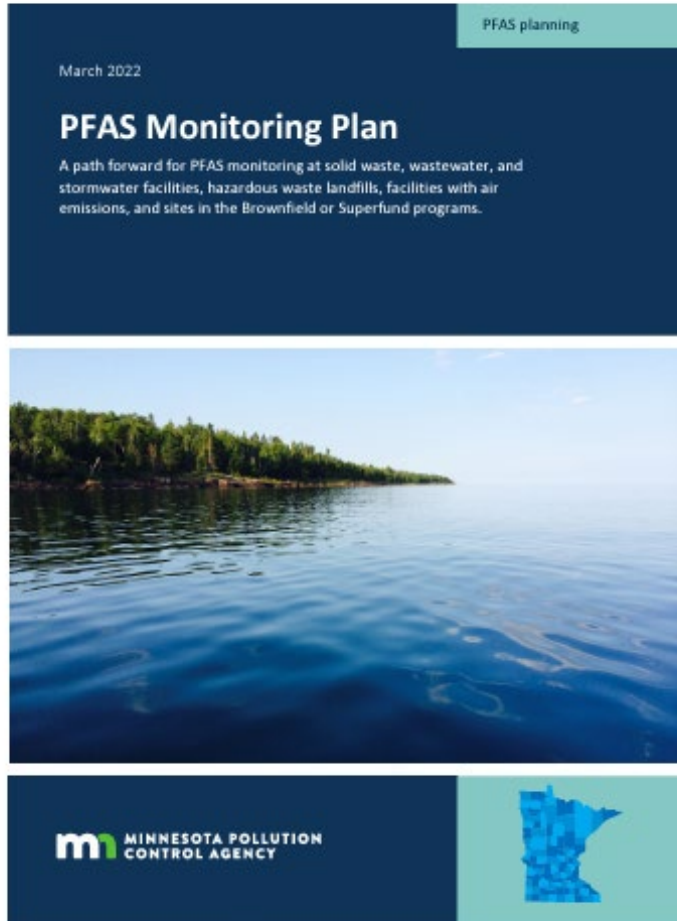


- Released February 2021
- Minnesota PFAS Strategy
 1. **Prevent** PFAS pollution wherever possible
 2. **Manage** PFAS pollution when prevention is not feasible or pollution has already occurred
 3. **Clean up** PFAS pollution at contaminated sites

PFAS in Minnesota – Pollution Prevention (P2)

- **Stated Opportunities for Action:**
 - Ban PFAS that are not providing an essential purpose (e.g., ski wax and food packaging)
 - Potential for mandatory PFAS labeling in products also discussed
- **Stated Challenges:**
 - Thousands of PFAS could exist and available analytical methods measure only a small portion of total PFAS
 - Data for many PFAS are considered “confidential business information”
 - Some PFAS uses are essential, increasing the importance of “nuanced and tailored regulatory approaches”

MPCA's PFAS Monitoring Plan



- Seeks voluntary PFAS monitoring at solid waste, wastewater, & stormwater facilities, hazardous waste landfills, facilities with air emissions, and sites in the Brownfield or Superfund programs
- Goals of the [Plan](#):
 - Gather MN-specific PFAS information to help craft future policies
 - Identify particular areas of concern that need quick action
 - Gather data that “galvanizes support” for PFAS source reduction and pollution prevention
- Targets sources of PFAS pollution and conduits of PFAS to the environment

PFAS Monitoring – Remediation

- Remediation Program Plan addressed in **Appendix E**
- Set a schedule for and convened a stakeholder advisory group to support the development of a PFAS Guidance Document
 - [Draft Guidance](#) issued August 2023
- Monitoring Plan identified highest priority sites for PFAS assessment in near term
- Discusses sampling criteria; (site usage, proximity to known releases, and proximity to dumps or landfills); to-be-sampled media; sampling frequency; and monitoring methods
- Data use: (1) compare to health-based guidance values; (2) refine remedial strategies; (3) enhance knowledge of extent and magnitude of PFAS contamination; and (4) identify PFAS sources

PFAS Bans Effective Now

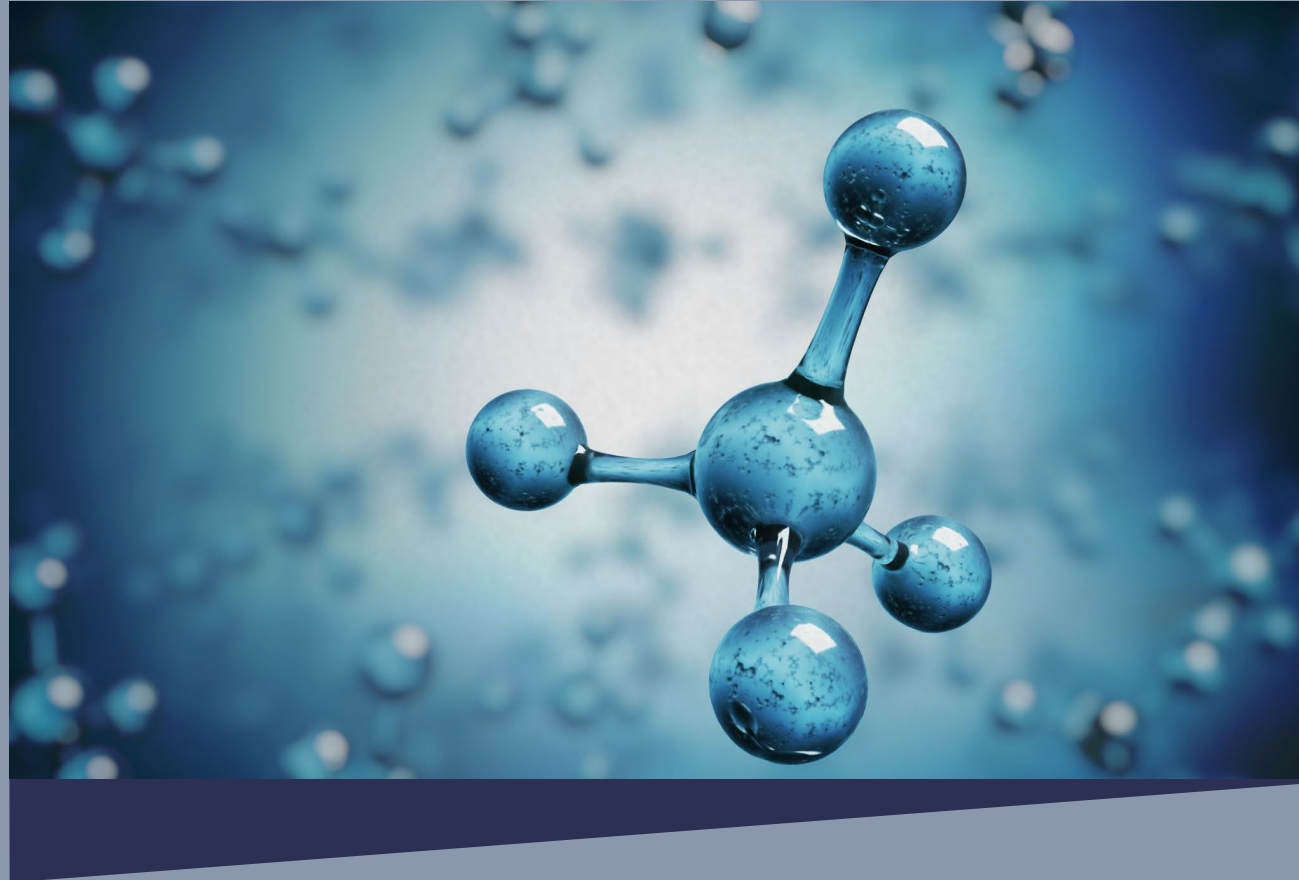


Minn. Stat. § 325F.075: PFAS Food Packaging Ban



- **January 1, 2024:** Prohibits the manufacture or knowing sale, offer for sale, distribution for sale, distribution, or offer for use in Minnesota a **food package** that contains **intentionally added PFAS**
- MPCA Commissioner can enforce under §§ 115.071 and 116.072, coordinate with Health and Commerce commissioners
 - May also require production of information relevant to showing compliance

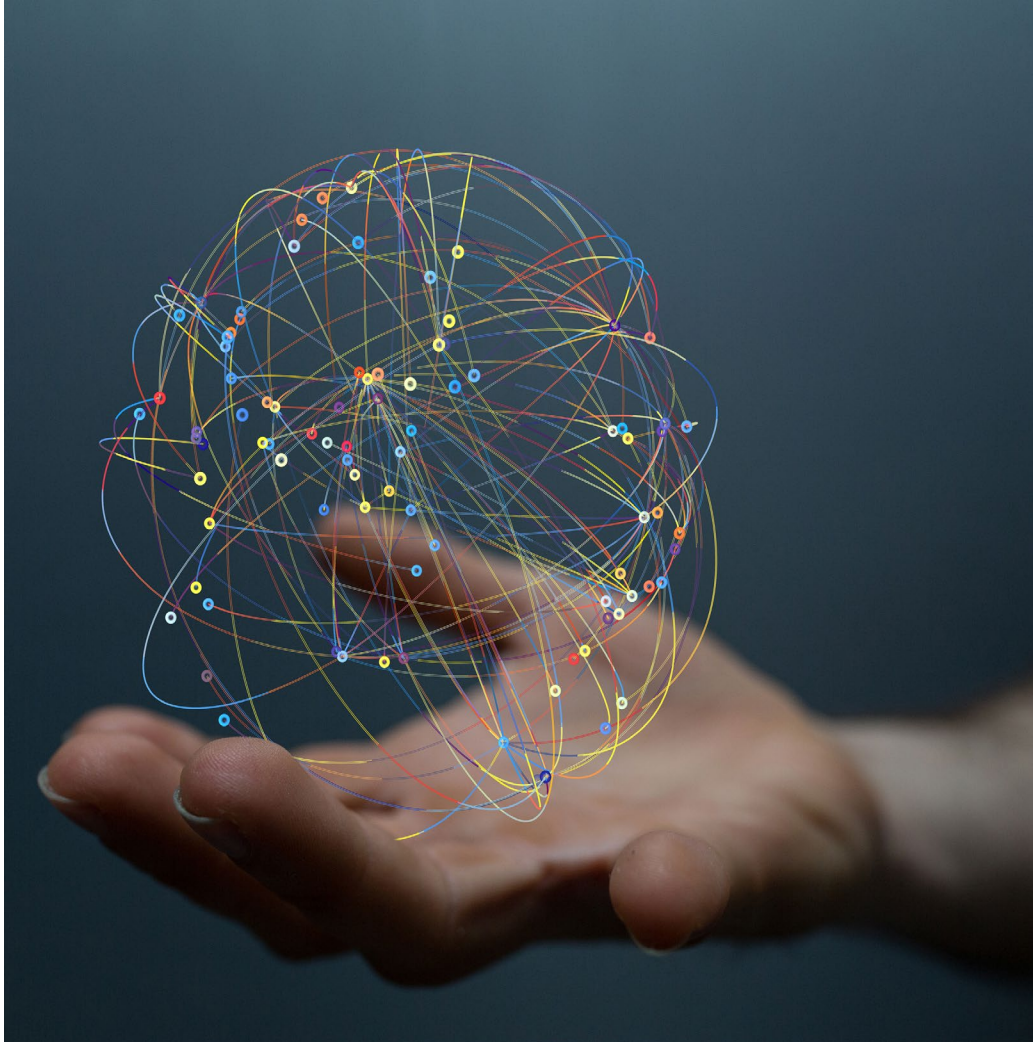
2023 PFAS Legislation



Minn. Stat. § 116.943: Product Ban

- **January 1, 2025:** Prohibits the sale and distribution of certain listed products containing intentionally added PFAS (subd. 5 (a))
 - Manufacturers must notify those who sell, offer for sale w/in MN of ban (subd. 4(d))
- MPCA Commissioner can identify additional products by category or use **between 2025 and 2032** (subd. 5(b))
- **January 1, 2032:** Prohibits the sale and distribution of ALL products containing intentionally added PFAS
 - Products may be exempted from this prohibition by rule if the commissioner determines the use of PFAS is “**currently unavoidable**” (subd. 5(c))

Minn. Stat. § 116.943: Information Gathering



- **January 1, 2026**: Manufacturers of products sold or distributed in the state with intentionally added PFAS must submit certain information to the Commissioner (subd. 2)
 - Supplement thereafter if new products or significant change
 - **No submittal, no sale** in MN (must notify sellers)
 - Waivers and extensions may be granted (subd. 3)
 - Commissioner may require testing; results must be submitted

Minn. Stat. § 116.943: Additional Provisions

- **Fees:** The Commissioner may establish a fee payable by product manufacturers to cover implementation costs (subd. 6)
- **Enforcement:** Under 115.071 and 116.072, with coordination with agriculture, commerce and health commissioners (subd. 7)
- **Rulemaking** (subd. 9): No public hearing for rules to:
 - Establish manufacturer fees
 - Identify additional categories of products that cannot be sold or distributed in the state and effective dates
 - Determine products for which the use of PFAS is currently unavoidable

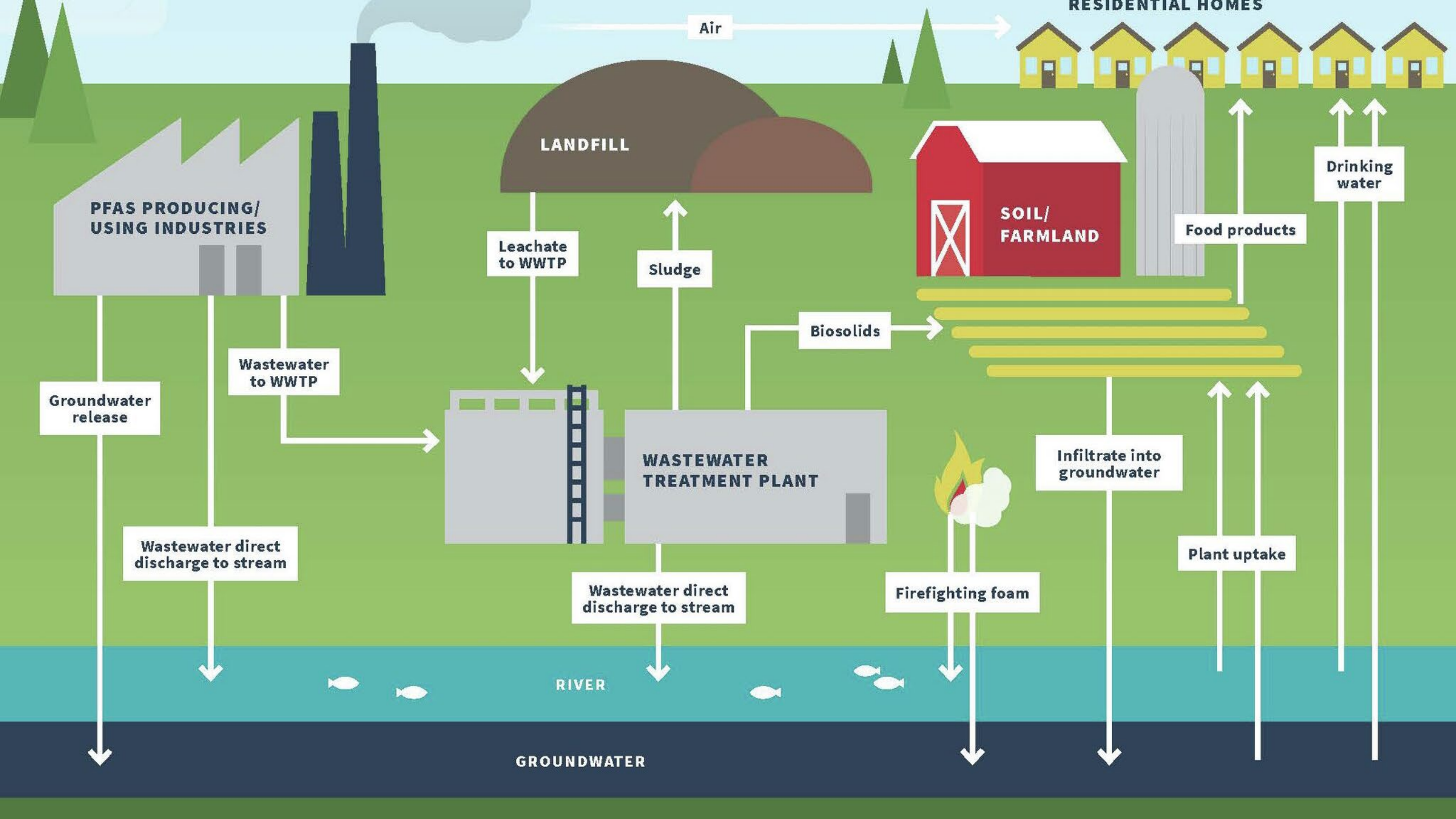
Pesticide and Fertilizer Registration and Ban: Minn. Stat. §§ 18B.26 and 18C.202



- **Pesticide (18B.26):**
 - **Subd. 7 (Notification):** Jan. 1, 2026: annual statements of IA PFAS for pesticides
 - **Subd. 8 (Ban):** Jan. 1, 2026: No cleaner with IA PFAS to be registered; Jan. 1, 2032: No pesticide w/IA registered unless CUU
- **Fertilizer (18C.202):**
 - **Subd. 1 (Notification):** Jan. 1, 2026: annual statements of IA PFAS for fertilizer
 - **Subd. 3 (Ban):** Jan. 1, 2032: No fertilizer/IA registered unless CUU

Water Discharge Permit Implications





I. EPA Efforts to Establish PFAS TBELs in Effluent Limitation Guidelines



- Key action in EPA’s [PFAS Strategic Roadmap](#):

“Restrict PFAS discharges from industrial sources through a **multi-faceted Effluent Limitations Guidelines program** to proactively establish national technology-based regulatory limits”

Background on NPDES Effluent Limitations

- National Pollutant Discharge Elimination System (NPDES) Permit: Required to add **pollutants** from a **point source** to **Waters of the U.S.** (33 U.S.C. § 1311(a))
- Two Types of Permit Effluent Limitations:
 1. **Water Quality Based Effluent Limitations** (“WQBELs”)
 - Based on state water quality standards applicable to receiving water
 2. **Federal Effluent limitations Guidelines** (“ELGs”)
 - Apply to dischargers in specific industrial categories
 - Based on best available pollution control technology in the industry
 - Do not consider quality of receiving water
 - Technology-Based Effluent Limitations (“TBELs”)

EPA's Steps Towards PFAS Restrictions in ELGs

- EPA's [Effluent Limitations Guidelines Plan 15](#) (January 2023) announced EPA will:
 1. Initiate **rulemaking** to revise the ELGs for the **Landfills Category** (40 CFR pt. 445) to address PFAS found in landfill leachate
 2. Expand an existing detailed study of the **Textile Mills Category** (40 CFR pt. 410) to gather information on the industry's use, treatment, and discharge of PFAS
 3. Initiate a nationwide study of PFAS in influent being received by **Publicly Owned Treatment Works** (POTWs)
 4. Undertake a study of PFAS in the **Concentrated Animal Feeding Operations** (CAFO) Category (40 CFR pt. 412), to help determine if the CAFO ELGs should be revised to include PFAS restrictions

II. EPA Memo On Addressing PFAS in NPDES Permits



EPA Assistant Administrator Radhika Fox

“

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs

([December 2022](#))

EPA NPDES PFAS Memo: PFAS Monitoring

- Regions and authorized states can require **monitoring of PFAS in NPDES wastewater discharges**
 - Quarterly PFAS monitoring
 - Monitor for 40 PFAS parameters detectable by [Draft Method 1633](#)
 - Report monitoring data on DMRs
 - 40 CFR § 122.21(g)(13)

EPA NPDES PFAS Memo: Wastewater BMPs

- Regions and authorized states can require **PFAS Best Management Practices (BMPs)** in NPDES permits, e.g.:
 - Eliminating or substituting PFAS-containing products
 - Good housekeeping practices to prevent accidental discharges of PFAS
 - Decontamination or replacement of equipment in which PFAS was formerly used
 - 40 CFR 122.44(k)(4)

EPA NPDES PFAS Memo: AFFF Stormwater BMPs

- Regions and authorized states can require **BMPs to control PFAS-containing firefighting foam**
 - Prohibiting the use of AFFF other than for actual firefighting
 - Eliminating PFOS and PFOA-containing firefighting foams
 - Immediate clean-up where AFFF has been used
 - 40 CFR 122.44(k)(4)(2)

EPA NPDES PFAS Memo: PFAS Effluent Limits

- Regions and authorized states can include **PFAS effluent limits** in NPDES permits:
 - Case-by-case TBELs based on best professional judgment (“BPJ”)
 - WQBELs, where states have promulgated PFAS water quality standards
 - 40 CFR 122.44(a), 125.3

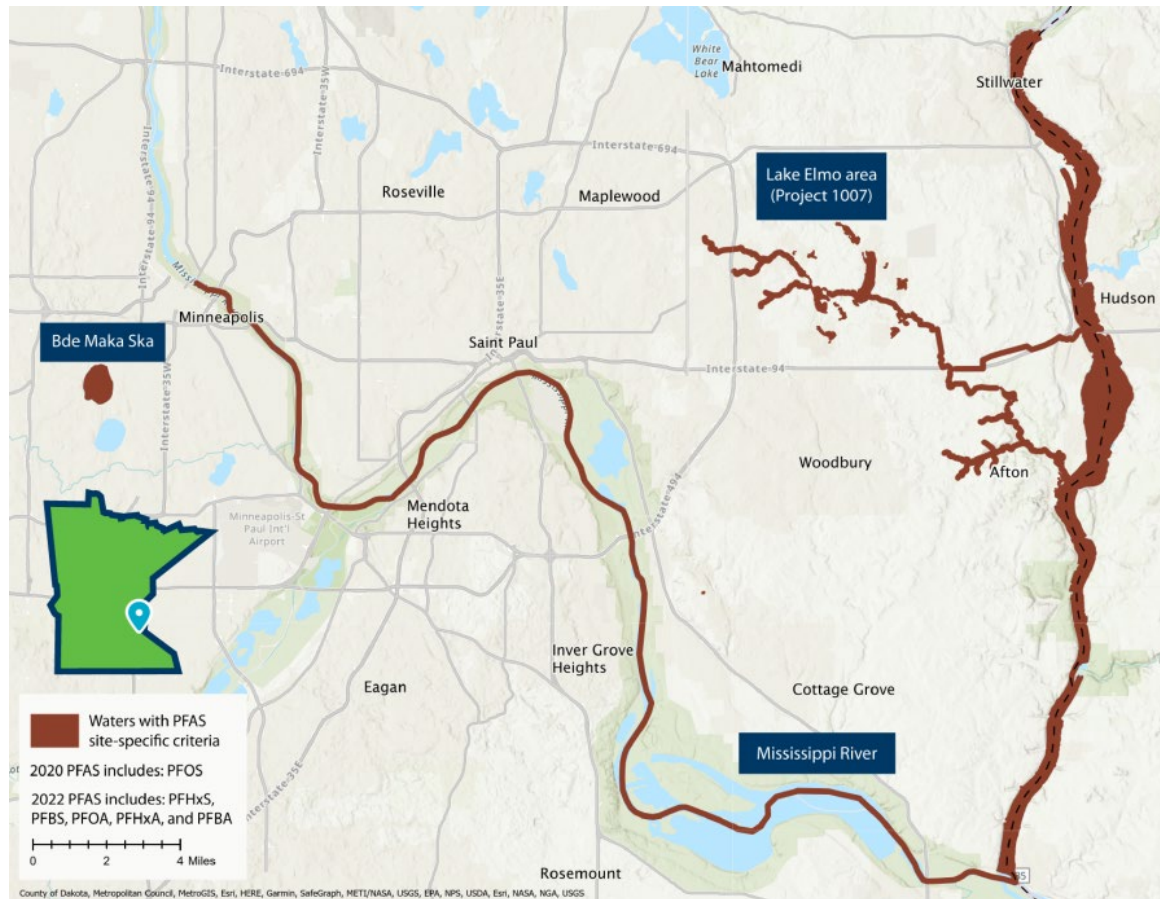
EPA NPDES PFAS Memo: Guidance for POTWs

- Steps **Publicly Operated Treatment Works** (“POTWs”) can take to regulate PFAS:
 - Quarterly monitoring of effluent, influent, and biosolids.
 - Requiring industrial users to implement PFAS-minimizing BMPs
 - Developing local limits in the form of BMPs
 - 40 CFR 403.5(c)(4)

III. Emerging State-Level Regulation of PFAS in Water Discharges

- Minnesota's **PFAS Monitoring Plan**:
 - Requested voluntary PFAS monitoring at facilities across the state
 - Quarterly monitoring of influent to wastewater treatment plants
 - Quarterly monitoring of internal process water at select industrial facilities

MPCA's Site-Specific Water Quality Criteria for PFAS



- Site-specific water quality criteria for 6 PFAS
- Only apply in certain Metro-area waters: Lake Elmo and connected waterbodies, Bde Maka Ska, and Pool 2 of the Mississippi River
- Designed to protect Class 1 and Class 2 uses

MPCA Site-Specific Water Quality Criteria for PFAS

Site-specific Water Quality Criteria: Chronic Criteria (CC)			
PFAS (Date developed) (Names and CAS No. see Table 2-1)	Class 1/2A or Class 1/2Bd– drinking water, fish consumption and recreational exposure (30-day average)	Class 2B/2D# – fish consumption and recreational exposure (30-day average)	Class 2 fish-tissue (90th percentile of 5 fish minimum per water body)
PFOS (October 2020)	0.05 ng/L (CCDFR-DEV)	0.05 ng/L (CCFR-DEV)	0.37 ng/g (CCFT-DEV)
PFBS (January 2023)	140 ng/L (CCDFR-DEV)	350 ng/L (CCFR-DEV)	not applicable
PFBA (January 2023)	5,700 ng/L (CCDFR-DEV)	10,000 ng/L (CCFR-DEV)	not applicable
PFHxS (January 2023)	20 ng/L (CCDFR-DEV)	36 ng/L (CCFR-DEV)	not applicable
PFHxA (January 2023)	220 ng/L (CCDFR-DEV)	950 ng/L (CCFR-DEV)	not applicable
PFOA (January 2023)	25 ng/L (CCDFR-DEV)	88 ng/L (CCFR-DEV)	not applicable

“To protect human health and the environment, we need safe levels of per- and polyfluoroalkyl substances (PFAS) in our waters. Safe levels means water can be used for drinking, fish are edible, swimming and boating are safe, and aquatic life is supported.”

--[MN PFAS Blueprint](#)

TSCA Recordkeeping and Reporting Requirement, 40 CFR Part 705



What is TSCA?

- Toxic Substances Control Act – gives EPA authority to require reporting, record-keeping, and testing requirements, and to impose restrictions relating to chemical substances.
- EPA released [reporting and recordkeeping requirements](#) for PFAS on October 11, 2023
- Requires reporting by:
 - Any person who has manufactured (including imported) a chemical substances or mixture containing a PFAS(including articles) at any time since January 1, 2011, is required to report to the extent the information is known or reasonably ascertainable
 - Persons who have only processed, distributed in commerce, used, and/or disposed of PFAS are *not* required to report under this rule

Articles

An article:

1. Is formed to specific shape or design during manufacture;
2. Has end use function(s) based on that shape or design during end use; and
3. Is in its final chemical composition.

What is not an article?

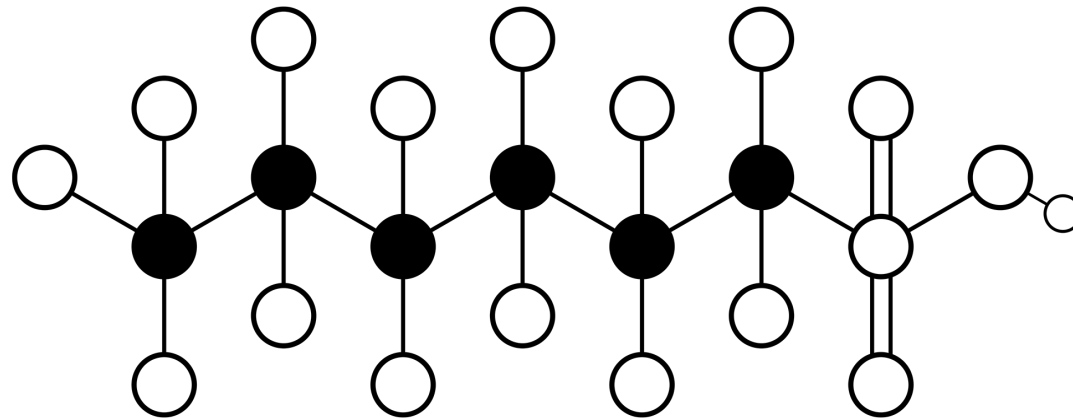
- Liquids, gases, particles

What is an article?

- Manufactured goods or finished products

PFAS Structural Definition

- PFAS is defined as follows:
 - $R-(CF_2)-CF(R')R''$, where both the CF_2 and CF moieties are saturated carbons;
 - $R-CF_2OCF_2-R'$, where R and R' can either be F , O , or saturated carbons; and
 - $CF_3C(CF_3)R'R''$, where R' and R'' can either be F or saturated carbons.
- EPA has identified at least 1,462 PFAS under this structural definition



What needs to be reported?

- Chemical or mixture identity, trade name, and molecular structure
- Categories of use
- Quantity manufactured or processed for each category of use
- Descriptions of byproducts resulting from the manufacture, processing, use, or disposal
- Existing environmental and health effects information
- Number of workers exposed and duration of exposure
- Manner or method of disposal and any change in manner or method

What needs to be reported?

Information is reported to the extent known or reasonably ascertainable by the manufacturer:

- “Known to or reasonably ascertainable by” “means all information in a person’s possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.”
- “Possession or control” “refers to the submitter, or any subsidiary, partnership in which the submitter is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the submitter in the research, development, test marketing, or commercial marketing of the chemical substance in question.”

Reporting Deadlines

- May 8, 2025 for most submitters
- November 10, 2025 for small manufacturers reporting exclusively as article importers

PFAS as AERR HAPs



Air Emissions Reporting Requirements (40 CFR 51, subp A)

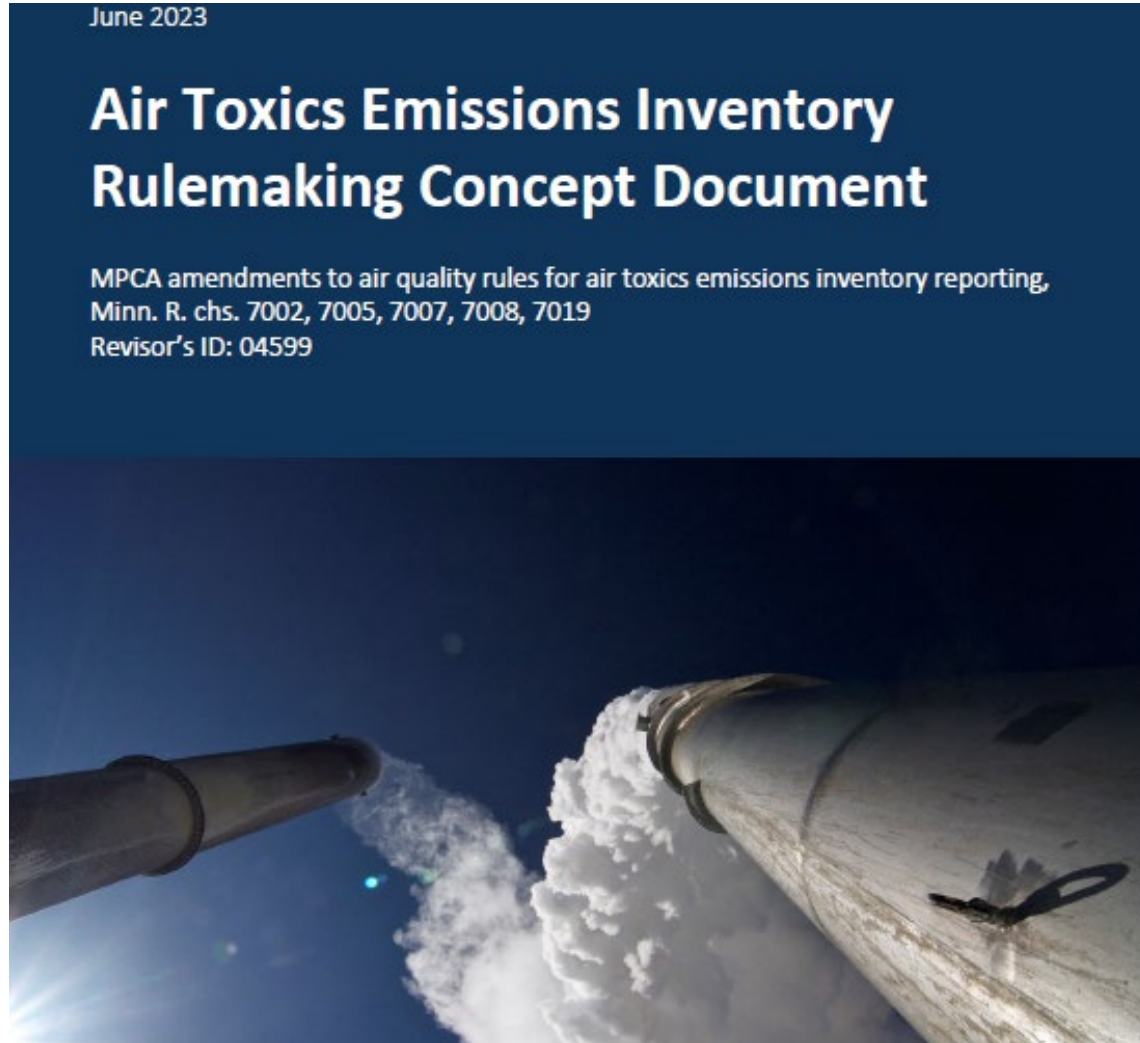


- AERR = emissions reporting vehicle for states, certain local agencies, and tribes to EPA
 - Certain NAAQS
 - Criteria air pollutants and precursors (CAPs), e.g., CO, VOCs
 - Regional Haze
 - Hazardous Air Pollutants (HAPs) (optional)
- Annual and triennial reporting requirements

AERR: Proposed change

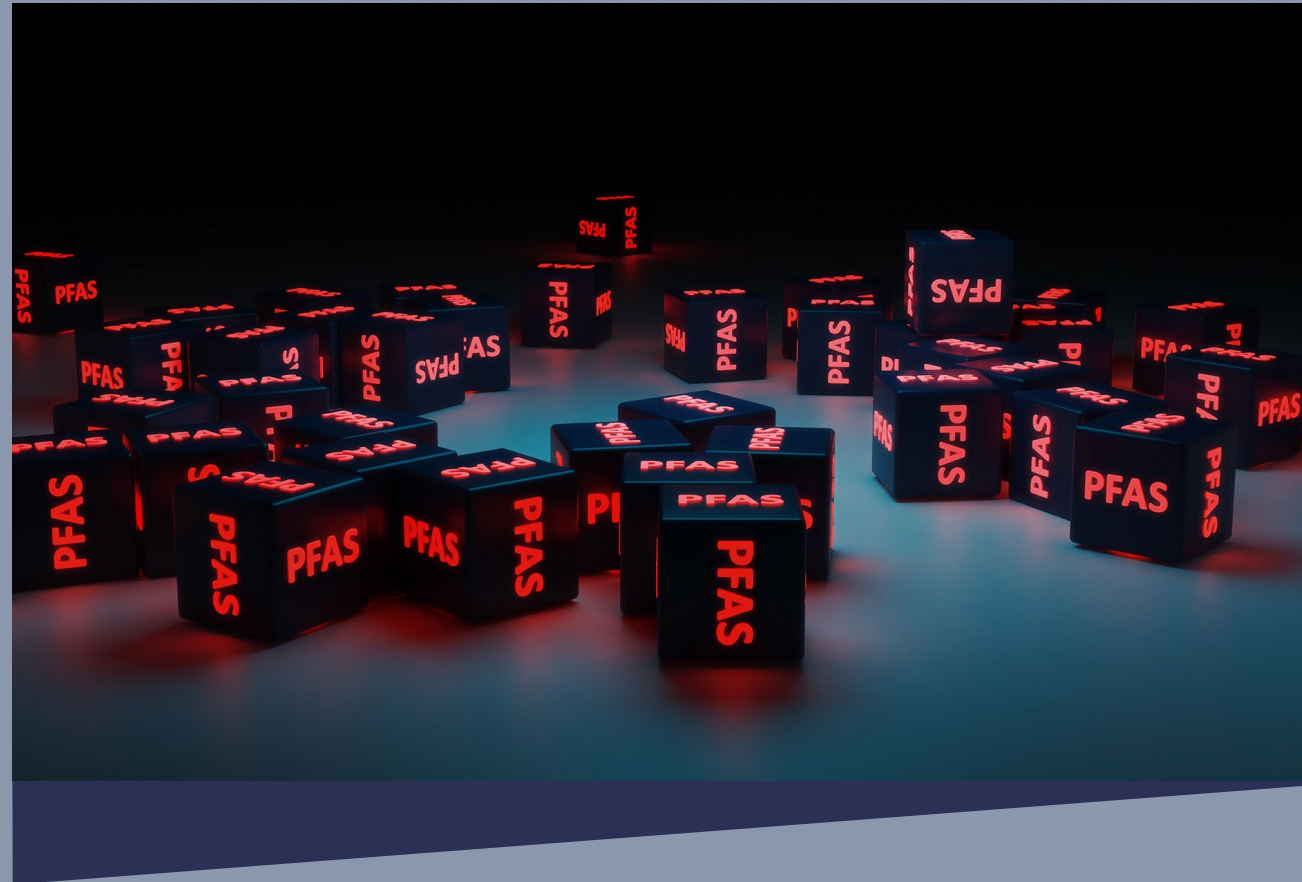
- Proposed rule: Revisions to the Air Emissions Reporting Requirement ([88 Fed Reg. 54118, Aug. 9, 2023](#))
 - Proposal: require point source O/Os to report annual actual HAP emissions directly to EPA
 - Unless EPA approves State request to assume reporting responsibility
- Requested comment on adding PFAS reporting w/HAPs
 - Mirror TRI PFAS substances and reporting levels (100 lbs/year)
- Comment period ended Oct. 18, 2023; finalize summer 2024?

MN Air Toxics Reporting Regulation



- Product of [2023 legislation](#)
- Permittees currently report HAPs to MPCA voluntarily every 3 years
- Legislation requires mandatory annual reporting by all by Option B permittees in seven county metro area
 - Would capture PFAS via TRI incorporation
- Comments until Sep. 22, 2023; goal of NOIA by Nov. 26, 2024

PFAS and EPCRA

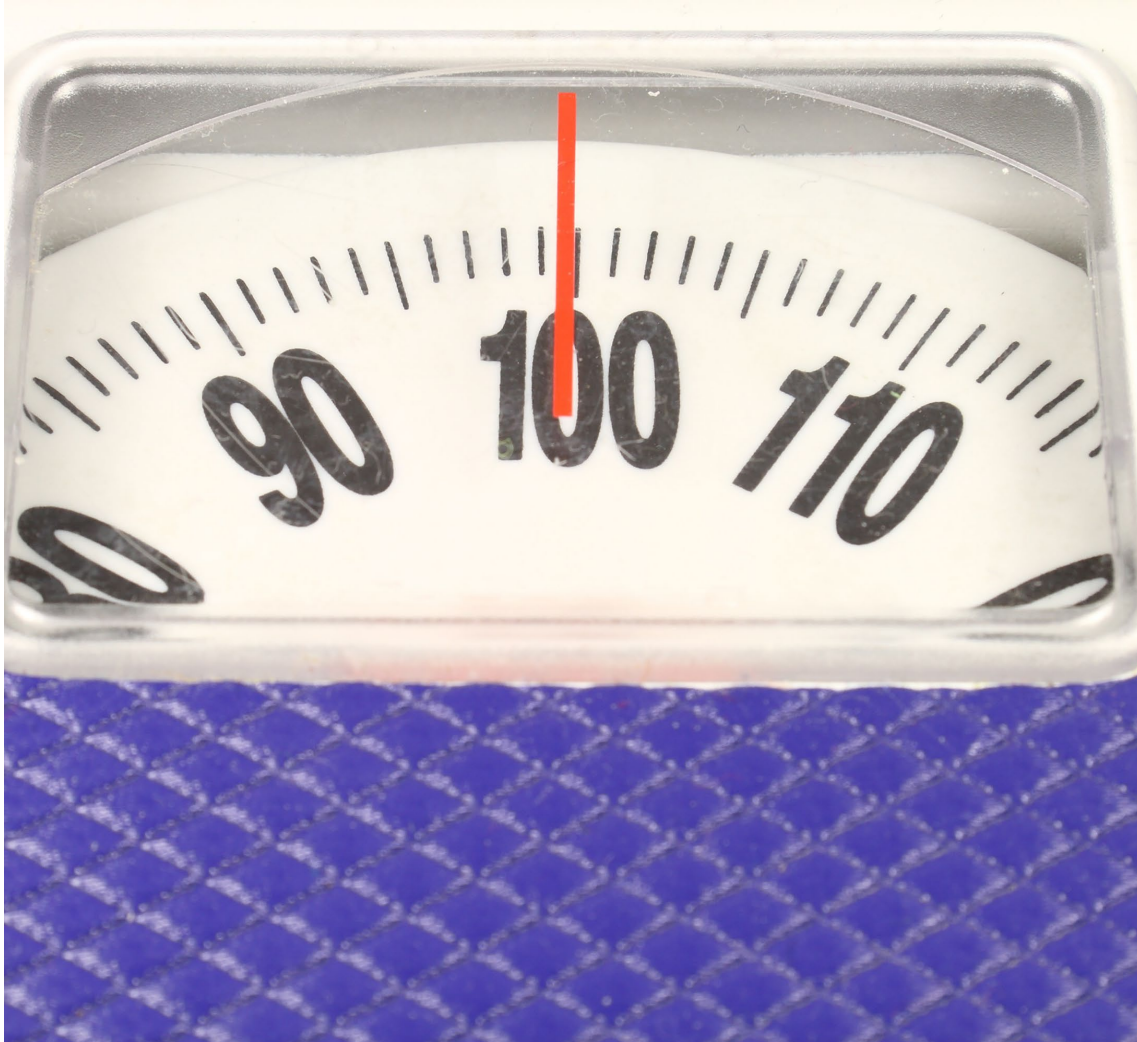


Listed PFAS for TRI Reporting

- National Defense Authorization Act directive for EPA to list PFAS
- Recent changes
 - Annual addition of PFAS to the TRI chemical list
 - Nine PFAS added for reporting year 2023.
 - Seven PFAS added for reporting year 2024.
 - 189 PFAS total for reports due July 1, 2024
 - Categorized as chemicals of special concern
 - Removal of the de minimis exception
- Automatic annual addition to TRI chemical list if EPA:
 - Finalizes a toxicity value for a PFAS;
 - Issues certain Significant New Use Rules (SNURs) under TSCA for a PFAS, or adds a PFAS to certain existing SNURs;
 - Adds a PFAS as an active chemical on the TSCA Inventory.



Toxic Chemical Release Inventory (TRI) Reporting



Two TRI reporting/notification requirements for PFAS

1. Annual reporting to EPA for covered facilities that manufacture, process, or use more than 100 pounds annually;
2. Notification to suppliers for presence in certain products

Covered Facilities

- Facility has 10 or more full-time employees (or the equivalent of 20,000 hours per year);
- Facility manufactures (including import), processes, or otherwise uses a listed toxic chemical above threshold quantities;
- Facility is in one of the following sectors:
 - Manufacturing (Standard Industrial Classification (SIC) codes 20 through 39)
 - Metal mining (SIC code 10, except for SIC codes 1011, 1081, and 1094)
 - Coal mining (SIC code 12, except for 1241 and extraction activities)
 - Electrical utilities that combust coal and/or oil for the purpose of generating electricity for distribution into commerce (SIC codes 4911, 4931, and 4939)
 - Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste treatment and disposal facilities (SIC code 4953)
 - Chemicals and allied products wholesale distributors (SIC code 5169)
 - Petroleum bulk plants and terminals (SIC code 5171)
 - Solvent recovery services (SIC code 7389 limited to facilities primarily engaged in solvent recovery services on a contract basis)

Calculating PFAS for TRI Reporting

- PFAS are listed individually, not as a chemical category
- Product testing is not required
- Storage does not constitute use
- Releases do constitute use
- Exemptions
 - Listed chemicals contained in articles
 - Janitorial or grounds maintenance use
 - Structural components of a facility
 - Personal use
 - Intake air and water



Supplier Notification under EPCRA

- Suppliers are required to notify customers that a product contains TRI-listed PFAS if:
 - The supplier is in SIC codes 20 through 39 [manufacturing]
 - The supplier manufactures (including import) or processes a TRI-listed PFAS; and
 - The supplier sells or otherwise distributes a mixture or other trade name product containing the TRI-listed PFAS to either:
 - A covered facility (see previous slide); or
 - A person that then may sell or otherwise distribute the product to a covered facility
- The de minimis exemption no longer applies for supplier notifications

Tier II Reporting under EPCRA

- Reporting required for stored hazardous chemicals that met or exceeded 10,000 pounds threshold at any one time during the calendar year.
- Any chemical with a Safety Data Sheet is considered hazardous.
- Tier II reports due March 1 for the previous calendar year.

Multistate Survey AFFF Requirements



Aqueous Film Forming Foam

- Developed in the 1960s; wide-spread use by late 1970s
- Used mainly at petroleum terminals, oil refineries, chemical plants, airports, and military facilities
- The gold-standard for containing and extinguishing hazardous fires
- Manufactured by combining hydrocarbon foaming agents with PFAS-containing fluorinated surfactants
- Class A and B; C6
- Releases occur from emergency response, training, and accidental system discharges

Federal Action on AFFF

- Legislative proposals have failed the passage process
 - National Defense Authorization Act
 - HR 4381
 - PFAS Firefighter Protection Act
- PFAS Strategic Roadmap
 - Plans for using NPDES permits to address AFFF
 - Plans for adopting BMPs to address AFFF
 - Plans for addressing AFFF in notification requirements
- EPCRA reporting
 - Use is counted for TRI reporting threshold
 - Tier II reporting for storage

Midwest States Regulation of AFFF



- Total ban on use
 - Iowa (proposed)
 - Minnesota (with exceptions)
- Ban on use for training purposes
 - Illinois
 - Indiana
 - Michigan
 - Ohio (with exception)
 - Wisconsin

Midwest States Regulation of AFFF

- Ban on use for testing purposes
 - Illinois
 - Indiana
 - Michigan (equipment calibration)
 - Ohio (with exception)
 - Wisconsin (with exceptions)
- Ban on manufacture, sale, or distribution
 - Iowa (proposed)
 - Illinois (January 1, 2025)
 - Minnesota

Midwest States Regulation of AFFF

- Notification requirements
 - Illinois
 - Minnesota
 - Wisconsin
- Disposal requirements
 - Illinois
 - Michigan
 - Wisconsin
- Cleanup requirements
 - Michigan



Midwest States Regulation of AFFF



- Storage/Containment
 - Wisconsin
- Other
 - Firefighter decontamination (WI)
 - Recordkeeping (WI)
 - Removal from state firefighting departments (IN)
- No Regulation
 - Kansas
 - Nebraska
 - North Dakota
 - South Dakota

Presenters



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