

# CLIENT ALERTS

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## Michigan Department of Environmental Quality Requires POTW's to Reduce and Eliminate PFOA/PFOS Through Industrial Pretreatment Programs

3.22.2018

Publicly Owned Treatment Works ("POTWs") with Industrial Pretreatment Programs are evaluating facilities that discharge into the POTW to determine whether companies are discharging perfluorooctanoic acid ("PFOA") or perfluorooctanesulfonic acid ("PFOS") (collectively, "PFAS") into the POTW. As part of the State of Michigan's initiative to track down and eliminate potential sources of PFAS in drinking water, The Department of Environmental Quality ("DEQ") sent notices to Michigan POTWs reminding them of the state's previously established and applicable Water Quality Standards ("WQS") for PFAS[1], warning that a POTW that passes PFAS through its treatment plant in concentrations exceeding these WQS is in violation of the POTW's NPDES permit and state law.

In its notice, the DEQ instructs POTWs that they must prohibit discharges of PFOS or PFOA that would either (1) cause the POTW's discharges to fail to meet the PFAS WQS and/or (2) restrict the management of its biosolids. In order to do so, POTWs must:

- Identify "potential significant sources" of PFAS amongst the POTWs present and past significant industrial users ("SIUs") through preliminary screening. The DEQ calls out as one such "potential source" of PFAS, "metal finishers that are using, or have used, PFAS-containing wetting agents, demisters, defoamers, or surfactants in their plating tanks (generally platers that use, or have used, hexavalent chromium).
- Once these "potential significant sources" of PFOA and PFOS have been identified, the POTW must determine which of these "potential significant sources" are "probable sources" of PFAS materials, and develop a plan to sample and monitor these sources.

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- Sample the discharge from each of the “probable sources” identified in the monitoring plan.
- If significant sources of PFAS are confirmed through the sampling, the POTW must (1) require the SIU to implement measures to reduce or illuminate the PFAS from the discharge and (2) sample its own effluent for PFAS and report exceedances of WQS to the DEQ.
- By July 29, 2018 the POTW must submit an Interim Report describing its efforts and progress to date and a Summary Report with additional data as well as actions taken to reduce and/or eliminate PFAS by October 26, 2018.

Given this aggressive schedule, some POTWs have already sent out questionnaires to SIUs. Careful thought must be given in answering these questionnaires as they are not only going to be used by the POTWs to determine which SIUs to sample and monitor, but which to impose source reduction requirements and eventually PFAS discharge limits. Information provided to the POTW will not only be provided to the DEQ, but will become public information, available to the public through the Freedom of Information Act.

So what should a company do? Plan ahead. Look at your material usage and Safety Data Sheets for PFAS content. Call your suppliers and manufacturers and ask them about PFAS content. Look at historical operations which may involve PFAS. Ask for more time if you need it. Above all, do not speculate or guess. POTWs have leeway in the timing of their responses to the DEQ. If you think you are a likely significant current or historical source of PFAS, talk to experienced technical and legal counsel to identify risks and plan your next steps.

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[Click here for a copy of the PFAS Letter to IPP WWTPs](#)

[Click here for a copy of the DEQ IPP Meeting Power Point](#)

[1] The applicable Water Quality Standard (WQS) (Michigan Rule 57 value) for PFOS is 12 ng/l (nanograms per liter or parts per trillion) for streams that are not used for drinking water and 11 ng/l for those that are used as a drinking water source. The applicable WQS for PFOA is 12,000 ng/l for lakes and streams that are not used for drinking water and 420 ng/l for those used as a drinking water source.