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EGLE to use General Administrative Consent Orders to Address PFAS in Stormwater

Client Alert

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The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has indicated that it will begin to address certain PFAS-contaminated industrial stormwater discharges through General Administrative Consent Orders (GACOs). In the past, EGLE typically relied on Administrative Consent Orders (ACOs) tailored to the specific situation. The ACOs are often negotiated and must go through an internal approval process resulting in a lengthy and more structured approach. EGLE has decided to utilize GACOs in the less complicated PFAS stormwater discharge cases. For example, a GACO may be appropriate where there are only one or two sources of PFAS or discharge points which can be reasonably controlled or eliminated. More complicated sites involving multiple discharge points or extensive PFAS contamination, for example, probably will not be eligible for the GACO.

The GACO form will be available on the EGLE website. It will provide that the company has five years to take the necessary corrective action to reduce PFAS in its stormwater and demonstrate compliance by sampling the stormwater quarterly for one year. In some cases, it may be necessary for the company to first conduct a PFAS source investigation to help determine the appropriate corrective actions. Once the corrective action is identified through the investigation, the company may be in the best position to enter into a GACO. The corrective actions required under the GACO will not be prescriptive. Instead, it will give the company flexibility to determine the best path to reduce the PFAS, allowing the company to try some easier or less expensive corrective actions first, such as cleaning tanks or lining pipes, before installing a treatment system, for example.

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As noted above, the company will need to sample for a minimum of four quarters to demonstrate that its discharge is under the PFAS limits. Once that demonstration is made, the company will be able to terminate the consent order. If the company is able to make the demonstration in less than five years, then it can request that the GACO be terminated early. If at the end of the five years the company is unable to demonstrate for four quarters that it is meeting its limits, then additional corrective action will be required. Importantly, there will be no upfront penalties associated with these orders.

EGLE has indicated that the GACO has been finalized and EGLE is currently working on a guidance document, which it hopes to have completed by mid-June. Once the guidance document is completed, we assume EGLE will conduct internal training before announcing the program and putting the GACO and guidance on the EGLE website. EGLE stated that it anticipates holding a webinar in late July to explain the program as part of the roll out. EGLE has also indicated that it anticipates notifying approximately 30 facilities initially that they are eligible to enter into a GACO and expects to identify additional facilities in the next month or so.

Butzel will keep you informed as the program develops and of course, is available to answer any of your environmental questions on PFAS or other issues.

If you would like more information, please reach out to the authors of this Client Alert or your Butzel attorney.

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