

Minnesota Announces "PFAS Blueprint" for Increased Regulation of "Forever" Chemicals

Alert

02.12.2021

By Andrew Davis and Joshua Poertner

Minnesota announced a new "PFAS blueprint" on February 10, 2021, calling for increased regulation of the so-called "forever" chemicals through a combination of legislation and agency rulemaking.

PFAS chemicals (the blanket term for a large family of per- and polyfluoroalkyl substances) are used in a variety of commercial and industrial products, from nonstick cookware and waterproof clothing to stain-resistant sprays and firefighting foam used at airports. Because PFAS are persistent in the environment, they do not break down over time and can "bioaccumulate" in living organisms, resulting in increased toxicity and the potential for adverse health effects. The blueprint notes "there are gaps in our understanding of the effects of PFAS on human and environmental health including a lack of toxicity studies available," requiring additional studies and complicating the development of regulatory approaches to PFAS management.

The PFAS blueprint would take a number of significant steps toward preventing, managing and cleaning up PFAS contamination throughout the state. The PFAS blueprint identifies 10 regulatory priorities, including understanding risks from PFAS air emissions, preventing PFAS pollution, remediating PFAS contaminated sites and managing PFAS in waste.

To achieve these goals, the PFAS blueprint calls for immediate legislative action in 2021, which would include the following:

- Designating PFAS as a "hazardous substance" under the Minnesota Environmental Response and Liability Act (MERLA)

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- Requiring companies to disclose information regarding their use of PFAS in products and processes and establishing MPCA (2-methyl-4-chlorophenoxyacetic acid) authority to request data
- Identifying sources of PFAS in the environment
- Evaluating PFAS contamination at landfills, composting facilities and wastewater treatment plants

The PFAS blueprint notes that there has been no action at the federal level on a proposed EPA rule that would designate certain PFAS chemicals as “hazardous substances” under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Designating some, or even all, PFAS chemicals as a “hazardous substance” under MERLA would grant regulatory agencies more power to recover cleanup costs from responsible parties if those parties fail to take action. It would also expand the number of sites under MPCA’s remediation authority. Minnesota would be one of the first states in the nation to designate PFAS as a hazardous substance.

The PFAS blueprint also calls for short-term and long-term legislative and agency initiatives. Short-term considerations include plans for monitoring PFAS in groundwater at active landfills and National Pollutant Discharge Elimination System (NPDES) permitted facilities, and performance testing for PFAS at permitted air sources. Long-term considerations include requiring mandatory PFAS reporting from facilities, product labelling, and a limit or ban on PFAS in “known non-essential uses.” The blueprint also proposes financial and technical assistance to businesses that switch away from PFAS-containing products.

Minnesota’s PFAS blueprint is at the forefront of a nationwide trend by states to more aggressively address PFAS contamination. The federal government has also intensified regulatory scrutiny of PFAS in Clean Water Act permits. Recent guidance issued by EPA instructs NPDES and MS4 permit writers to phase in PFAS monitoring requirements as more data is compiled and where analytical methods become available. EPA also instructs permit writers to include best management practices to control PFAS discharges where appropriate. These state and federal efforts are likely to have a significant impact on a wide range of industries, including current and legacy facilities involving cleaners, textiles, leather, papers, paints, firefighting foams and airports.

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