

# Minnesota Legislature Passes Historic Environmental Legislation

Alert

05.23.2023

By Andy Davis, Desiree McDowell, Joshua Poertner, Claire Williams and Zachary Wright

The Minnesota Legislature has passed [landmark environmental legislation](#) with far-reaching consequences for regulated industries throughout the state. The bill provides approximately \$1 billion in new spending for environmental and energy related programs, departments, and initiatives. In addition to funding, the bill includes new restrictions on per- and poly-fluoroalkyl substances, or PFAS (commonly referred to as “forever chemicals”), imposes new environmental justice standards in permitting decisions and sets forth new labeling requirements for products labeled as “biodegradable” and “compostable,” among many others. Governor Tim Walz is expected to sign the legislation in the next few weeks.

Some of the most notable environmental provisions of the new bill include the following.

## NEW PFAS RESTRICTIONS

Section 21 of the bill establishes Minnesota Statute Section 116.943, also known as “Amara’s Law,” and requires that manufacturers report to the commissioner of the Minnesota Pollution Control Agency (MPCA) certain products that contain intentionally-added PFAS intended for sale or distribution in Minnesota. “Intentionally added” means “PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product’s components to perform.”

Effective January 1, 2025, the following products containing intentionally added PFAS are prohibited from sale or distribution in Minnesota: carpets or rugs, cleaning products, cookware, cosmetics, dental floss, fabric treatments, juvenile products, menstruation products, textile furnishings, ski wax and upholstered furniture. Effective January 1, 2026, manufacturers of these products must submit information to the

# Minnesota Legislature Passes Historic Environmental Legislation

commissioner, including product descriptions, PFAS usage details and manufacturer contact information. The commissioner may request testing and certification if there is reason to believe new products intentionally contain PFAS. And manufacturers must update and revise the information whenever there is a significant change in the information or by the commissioner's request. Amara's Law does not apply to firefighting foam, food packaging, prosthetic or orthotic devices or any medical device or drug used in a medical setting or application.

Additionally, the bill allows the commissioner, with approval of the commissioner of agriculture, to waive reporting requirements for pesticide, fertilizer, agricultural liming material, plant amendment and soil amendment products if it is determined that the annual registration or approval process for these products satisfies the reporting requirements and that the information is publicly available. Exemptions, enforcement measures and rulemaking authority are also addressed. The commissioner may waive information requirements, extend submission deadlines, adopt rules, add new prohibited products and enforce the law through coordination with the commissioners of agriculture, commerce, and health. The law also includes provisions for testing and certification of compliance. The commissioner may also establish reasonable fees for manufacturers submitting information.

## STANDARDS FOR LABELING BAGS, FOOD OR BEVERAGE PRODUCTS OR PACKAGING

Section 23 of the bill amends Minnesota Statute Section 325E.046, to expand labeling requirements and restrictions for bags, food or beverage products and packaging. The law prohibits the sale or offering for sale of products labeled as "biodegradable," "degradable," "decomposable" or similar terms unless the product meets an ASTM (American Society for Testing and Materials) standard specification and is certified accordingly. The certification must be performed by a nonprofit corporation that focuses on promoting the production and appropriate end-of-life management of materials that fully biodegrade in specific environments like industrial composting.

Similarly, the sale or offering for sale of products labeled as "compostable" is restricted unless the product meets a specified ASTM standard. Alternatively, a product made solely from wood or paper without any coatings or additives may be labeled "compostable." The "compostable" label must clearly indicate if the product is intended for an industrial or commercial compost facility.

Effective January 1, 2026, products labeled as "biodegradable" or "compostable" must be certified by a qualified nonprofit entity. Violation of these labeling requirements can result in civil penalties of up to \$5,000 and may be subject to injunctions. The attorney general and the MPCA have authority to enforce this law and may request relevant information from sellers to ensure compliance.

# Minnesota Legislature Passes Historic Environmental Legislation

## WATER QUALITY STANDARDS

Section 34 of the bill requires the MPCA to set water quality standards for certain PFAS chemicals. Water quality standards are part of the regulatory framework imposed by the federal Clean Water Act (CWA), which is carried out cooperatively between the federal government and the states. The CWA authorizes states to implement the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS), and MPCA does so for Minnesota. In general, an NPDES/SDS permit from MPCA is required for any pollutant discharge from a point source in Minnesota. Such a permit includes, in relevant part, discharge limitations necessary to satisfy the state's promulgated water quality standards. The bill mandates that MPCA set water quality standards for six PFAS chemicals: perfluorooctanoic acid (PFOA); perfluorooctane sulfonic acid (PFOS); perfluorononanoic acid (PFNA); hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX chemicals); perfluorohexane sulfonic acid (PFHxS); and perfluorobutane sulfonic acid (PFBS). Doing so will allow MPCA to regulate the discharge of these chemicals via the NPDES/SDS permitting system.

Additionally, the bill also instructs MPCA to amend the health risk limit (HRL) for PFOS from 0.3 parts-per-billion (ppb) to 0.015 ppb. HRLs are developed by the Minnesota Department of Health (MDH) pursuant to Minnesota's Groundwater Protection Act. An HRL represents the level of a chemical's presence in drinking water that MDH considers safe for people, including sensitive populations. Where the HRL for a chemical is exceeded, the local authority or state agency that regulates the activity causing or potentially causing the pollution must promote the implementation of best management practices to prevent or minimize the source of pollution to the extent practicable. If those practices prove ineffective, MPCA (or the Minnesota Department of Agriculture for agricultural chemicals and practices) must adopt by rule water resource protection requirements to prevent and minimize the pollution to the extent practicable.

## AIR TOXICS REPORTING

The bill requires all facilities in the seven-county metro area that hold air permits to monitor all air toxic emissions, report them annually, and be subject to testing and monitoring. This includes facilities whose present permit does not require them to keep records of air toxics emitted. The law defines "air toxics" broadly as including federal and state statutory and administrative inventories and instructs the commissioner to publish a notice of intent to adopt rules within three years of the act.

The forthcoming rule must take the statutory definition of air toxics as the floor and impose various monitoring and recordkeeping requirements on at least those facilities that have present air permits. As with some of the other actions, the commissioner is instructed to adopt rules that reflect the relative risk a given facility poses to human health and the environment and take into account exposure to environmental justice communities.

# Minnesota Legislature Passes Historic Environmental Legislation

In sum, most facilities with an air permit will be required to keep a record of air toxics, or pass performance tests, within three years.

## ENVIRONMENTAL JUSTICE

The bill would change Minnesota Statutes Chapter 116 to require consideration of environmental justice for air permit applications, with the goal of reducing the burden on areas and populations that have historically borne environmental harm and the risks to current vulnerable populations. Environmental justice areas would be defined based on the race, income level or English language proficiency of the population and households in the area.

For air permits for facilities within a mile of an environmental justice area, the proposed legislation creates a system for assessing cumulative impacts and requires consideration of the results of that analysis in permitting decisions. For the cumulative impacts analysis, the MPCA would determine whether a cumulative impacts analysis is required and the degree of harm to the environmental justice area. Applicants must submit data on cumulative impacts of the project. Projects meeting certain benchmarks will be required to conduct a cumulative impacts analysis. MPCA also has discretion to require cumulative impacts analysis, including when there is a petition requesting such an analysis. The results of that analysis influence whether an air permit is issued or denied.

Additional information on the environmental justice provisions are detailed in a [previous alert](#).

## COMMUNITY AIR MONITORING

The bill creates a pilot grant program to fund community-based air monitoring projects in the seven-county metro. The goal of the project is to generate data about residents' daily exposures to help inform decisions about placement of agency monitoring equipment and guide future land-use decisions.

The pilot program focuses on environmental justice communities, communities with high rates of illness associated with air pollution or projects that will increase transparency and community engagement. The pilot program provides funds to nonprofits that are located in or working with the community where the monitoring will occur and are partnered with an entity that has experience with air monitoring equipment and data. The grant funds can be used for planning activities, purchase of equipment, training for those conducting the monitoring activities and developing the final report. Grant recipients are required to provide a final report of the results to MPCA.

## ODOR MANAGEMENT

The bill returns the control of odor emissions to MPCA after leaving the matter to local governments for several decades. It prohibits persons from emitting any substance or combination of substances that "produce an objectionable odor" detectable beyond the fence line of the facility. "Objectionable" is defined

# Minnesota Legislature Passes Historic Environmental Legislation

to encompass odors that are either “injurious to public health” or “unreasonably interfere[]” with property use and enjoyment. The proposed legislation exempts some categories of facilities and activities from the new requirements including, refineries, materials that are odorized for safety, on-farm agricultural operations, and temporary operations.

MPCA’s enforcement authority begins only after a facility has been the subject of at least 10 complaints to MPCA or local government officials with 48 hours. Once there have been enough odor complaints, MPCA is required to conduct an on-site investigation and determine whether the odor is objectionable. Facilities with objectionable odors must create an odor management plan that identifies control equipment and alternative operations or materials that will reduce the odor. MPCA can impose penalties under Minn. Stat. § 115.071 or revoke or modify a facility’s permit under Minn. Stat. § 116.07, subd. 4a(d) if the odor management plan does not reduce the objectionable odor.

The odor management regulations will be developed through MPCA rulemaking on standards for what qualifies as “objectionable,” the process for site investigations and evaluating odors, and guidance for odor management plans including criteria for success or failure.

[Stinson’s environmental attorneys](#) are keeping watch of these legislative developments, and we are closely following regulatory developments including any rulemakings triggered by the new legislation. Our attorneys are prepared to help you navigate the shifting regulatory landscape.

## CONTACTS

Andrew W. Davis

Joshua K. Poertner

Claire M. Williams

Zachary J. Wright

## RELATED CAPABILITIES

Environmental & Natural Resources

**STINSON**

STINSON LLP \ STINSON.COM