

Minnesota's PFAS Monitoring Plan Signals Increased Enforcement

Insight

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Following the goals outlined in the PFAS Blueprint (published in 2021), the Minnesota Pollution Control Agency (MPCA) published a plan to gather data on the presence of per- and polyfluoroalkyl substances (PFAS) in Minnesota. The [PFAS Monitoring Plan](#) (Monitoring Plan) sets forth sampling policies and procedures that will affect industries and facilities across Minnesota.

PFAS Monitoring in Minnesota

The Monitoring Plan requires certain regulated entities to sample for PFAS. While MPCA expects regulated entities to voluntarily agree to a monitoring program, it asserts that it is prepared to use existing statutory authority to require monitoring if a regulated entity declines to participate. Regulated entities are expected to fund their own sampling and analysis of PFAS. According to MPCA, sampling and analysis results that are submitted to MPCA do not qualify as “nonpublic data” and will be publicly available upon request under the Minnesota Government Data Practices Act.

The Monitoring Plan states that the purpose of the sampling is to assist MPCA with (1) developing PFAS policy, (2) reducing sources of PFAS, and (3) identifying areas of exposure or contamination. Using these three goals, each of MPCA's environmental programs (wastewater, solid and hazardous waste, industrial stormwater and remediation) has identified the location, frequency and methods for PFAS sampling. MPCA will use the sampling data to gather specific information about PFAS contamination in Minnesota, establish background levels and identify particular areas of immediate concern. MPCA will also use the data it acquires from sampling to develop future PFAS regulations.

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Not all facilities will be asked to monitor for PFAS immediately. Instead, MPCA is prioritizing facilities based on the likelihood that the facility has used or discharged PFAS. For potential sources of PFAS, MPCA will use the North American Industry Classification System (NAICS) codes to prioritize facilities more likely to have used, emitted or discharged PFAS. The NAICS codes identified in the Monitoring Plan as likely to use or discharge PFAS fall into several broad categories:

Textiles

Chemical Manufacturing

Leather & Tanning

Plastics

Paper Mills & Products

Electroplating & Semiconductors

Petroleum Refining

Airports

Commercial Printing

Waste disposal, including
landfills & incinerators

For potential conduits of PFAS, such as waste management facilities, each MPCA program has its own factors for identifying facilities where PFAS is likely present. These factors are specific to each program, but generally evaluate past uses of the site and whether the facility is near known sources of contamination or important downstream locations, such as private wells.

In addition to publishing the list of NAICS codes for facilities likely to use PFAS, MPCA has published a list of hundreds of facilities, including manufacturing facilities, airports, landfills and wastewater treatment plants, that have been chosen for the Monitoring Plan based on available information about the facility's processes.

MPCA has already started asking companies to test for PFAS and will continue to implement its monitoring program through 2024.

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PFAS Monitoring and Regulation in Other States

The Kansas Department of Health and Environment (KDHE) and the Missouri Department of Natural Resources (MDNR) are also working to address PFAS, but have not yet published any guidance requiring regulated entities sample for PFAS. KDHE has been working on the [first phase](#) of its monitoring plan that prioritizes samples from the public water system, but it has not yet expanded to other industries. MDNR has also begun sampling for [PFAS in drinking water facilities, as well as certain facilities with stormwater or wastewater permits](#), but sampling remains voluntary. MDNR has represented that it lacks statutory authority to require regulated entities to sample for PFAS and has now formed a PFAS workgroup to establish formalized policies and tools regarding the emerging contaminants.

Stinson's environmental attorneys are keeping watch of all of the developments related to the regulation of PFAS, and are prepared to help you navigate the shifting regulatory landscape for PFAS, including communicating with MPCA about sampling for PFAS.

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