

PFAS/Clean Water Act: Examples of State NPDES Permit Activities



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Several states are addressing per-polyfluoroalkyl substances (“PFAS”) in their Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permitting or related activities.

Examples include:

- Industrial Discharges
- Public Owned Treatment Works Permits (“POTWS”)
- Stormwater Permits
- Pretreatment

PFAS consist of a large group of man-made chemicals that include perfluorooctanoic acid, perfluorooctane sulfonate, and GenX chemicals. Their properties can include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation.

The compounds have been used in various industrial applications and consumer products such as:

- Fabrics for furniture
- Paper packaging for food and other materials resistant to water, grease or stains
- Firefighting airfields
- Utilization in several industrial processes

Potential human exposure to PFAS includes pathways through drinking water, air or food.

Concern has been expressed that POTWs receive discharges that may contain PFAS from some commercial and industrial sources. A further complication is the fact that conventional POTW wastewater treatment does not effectively remove PFAS that it receives. They may be passed through treatment to waterbodies or interfere with management of solids from the treatment process.

Examples of states addressing PFAS as part of their NPDES permitting program or related activities include the following:

Michigan

Michigan has added PFAS sampling to some NPDES permit compliance sampling inspections. The Michigan Department of Environment, Great Lakes, and Energy (“MEGE”) stated that the purpose is to understand the prevalence of PFAS in wastewaters discharged into the state. The agency noted in a June 30th document that 45 municipal wastewater treatment plants (“i.e., POTWs) and 28 industrial dischargers (referencing airports, landfills, paper plants, and groundwater clean-up sites) have collected 107 samples.

MEGE's PFAS initiative requires certain municipal POTWs to determine if the substances are passing through to surface waters. Other activities include identification of industrial users that are potential sources of PFAS and monitoring and compliance of confirmed sources to ensure they meet local requirements. As a result, Michigan has one of the more developed NPDES PFAS permitting strategies.

Massachusetts

The Massachusetts Department of Environmental Protection ("DEP"), Division of Watershed Management NPDES Section recently commented on the United States Environmental Protection Agency ("EPA") proposed 2020 Multi-Sector Stormwater General Permit ("MSGP"). One of their comments addresses PFAS.

DEP in its June 1st comments notes, in part:

. . . Given that many of the sectors covered under the MSGP have the potential to use products containing per- and poly-fluorinated substances (PFAS) and that there are growing concerns about the impacts of PFAS on human health and the environment, MassDEP requests that EPA add a requirement for annual PFAS monitoring of effluent for the sectors listed below. MassDEP recommends that this requirement include monitoring for PFOA and PFOS at a minimum, given these are the two compounds EPA is addressing in its drinking water advisory.

The targeted industrial sectors are listed in the comments.

California

The California State Water Resources Control Board on July 9th issued Order WQ 2020-0015-DWQ requiring that POTWs submit certain information regarding PFAS.

The Order requires the following:

1. Conduct sampling analysis for each POTW listed in Attachment 2 and submit the results of the sampling according to the requirements found in Attachment 3, Technical Sampling and Reporting Requirements
2. Complete the questionnaire in Attachment 3 (Section C.3 and D) for each of the POTWs listed in Attachment 2. . .

North Carolina

On November 7, 2019, the Southern Environmental Law Center provided a Notice of Intent to Sue ("Notice") the City of Burlington, North Carolina POTWS for alleged violations of the Clean Water Act and the Resource Conservation and Recovery Act. The Notice included an allegation that the City was in violation of the Clean Water Act because it is discharging per- and polyfluoroalkyl substances and 1,4 dioxane from point sources into the Haw River and its tributaries without an NPDES permit.

The point sources allegedly include the East and South Wastewater Treatment Plant outfalls, spray devices used to apply sludge onto fields, and ditches and drainage channels that flow from the fields into the Haw River and its tributaries.

A copy of the following documents can be downloaded below:

1. MEGE Municipal NPDES Permitting Strategy for PFOS and PFOA (click [here](#))
2. June 1, 2020, Massachusetts DEP Comments to EPA on Multi-Sector Stormwater General Permit (click [here](#))
3. California State Water Resources Control Board Order WQ 2020-0015-DWQ (click [here](#))

4. Southern Environmental Law Center November 7, 2019, Notice of Intent to Sue the City of Burlington for Violations of the Clean Water Act and the Resource Conservation and Recovery Act (click [here](#))