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Minnesota Environmental Science
and Economic Review Board

Legal and Regulatory Update

June 13, 2024

Cooper Silburn & Daniel Marx

Overview



1. 2023-2024 priorities

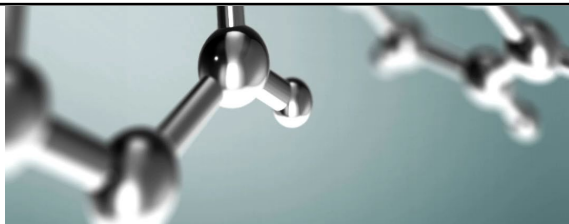
. PFAS

. Nitrogen

. Sulfate

. Upcoming Issues &
Rulemakings

6. Permitting Issues



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2023-24 priorities

- **PFAS:** source reduction, influent monitoring, and a measured, stepwise approach to future PFAS regulations.
- **Nitrogen:** collaborate to develop voluntary approaches to reduce nitrogen and nitrate
- **Sulfate:** ensure reasonable and science-based implementation of the Wild Rice Sulfate Standard.





PFAS



- Helped develop a reasonable interim biosolids strategy
- Participated in rollout of influent sampling program
- Worked on Superfund related issues as they impact POTWs at state and federal level (protection)
- Hosted PFAS communications webinar
- Reviewed and commented on Class 1 standards
- Engaged in regulatory efforts at state and federal levels.



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Nitrate



- TSD technical review of draft criteria and feedback to MPCA
- Submitted comments on TN reduction strategy
- Spent significant time reviewing final Wastewater Nitrogen Reduction Strategy





Sulfate



- Reviewed and commented on the SSS framework
- Both directly and through permit review process advocated for SSS for Mississippi river pools
- Worked with members and MPCA to get waiver for variance fee for sulfate





Ot[t/h]er

Lake Eutrophication Standards – reviewed and decided not to submit comments



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2024-25 priorities

- **PFAS**
- **Water Quality Standards**
 - Nitrogen
 - Sulfate
- **Education, Recruitment, and Public Outreach**



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MN PFAS

Regulatory Update

- Monitoring Plan Update
- MPCA Biosolids Strategy
- MPCA PFAS Remediation Guidance Implementation
- Superfund issues

PFAS Monitoring Plan Update



- Data made available in April via report
- 11 facilities flagged (not publicly) and contacted due to elevated results
 - PMPs / monitoring
- Next steps:
 - MPCA assessing data for sufficiency



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MCEA report



Forever Chemicals in our Wastewater

How Minnesota can build on the PFAS source reduction laws passed in 2023

Report Authors: Carly Griffith, MCEA Water Program Director, Jay Eidsness, MCEA Staff Attorney, Heidi Guenther, MCEA Legal Fellow

Feature Section Author: Dr. Matt Simcik, University of Minnesota, School of Public Health

Two primary paths for ongoing PFAS pollution



Direct discharge

Influent refers to the raw, untreated wastewater that flows into the wastewater treatment plants, and effluent refers to the treated water that is discharged from the wastewater treatment plants into surface waters like lakes and rivers. In Minnesota, wastewater treatment plants discharge effluent into waterbodies like the Mississippi River and Lake Superior.

TREATED WASTEWATER
DISCHARGED INTO WATERBODIES



Land application

In the wastewater treatment process, the liquids are separated from the solids. The solids are either incinerated or chemically treated to produce a nutrient-rich product known as biosolids or sewage sludge. This product is then sold to the public as garden/lawn fertilizer or farmers can apply for a land application permit to apply biosolids in bulk as a crop fertilizer. Landfills are another disposal method for sewage sludge.

BYPRODUCT OF WASTEWATER
TREATMENT SPREAD AS FERTILIZER



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Biosolids Strategy Update

- Helped develop a proposed strategy comparable to WI and MI interim strategies
- Primary issues
 - whether to use combined or independent values for PFOA and PFOS
 - Implement at once, or phased
 - Initial response actions to include a ban on land application, a ban on new sites, or neither

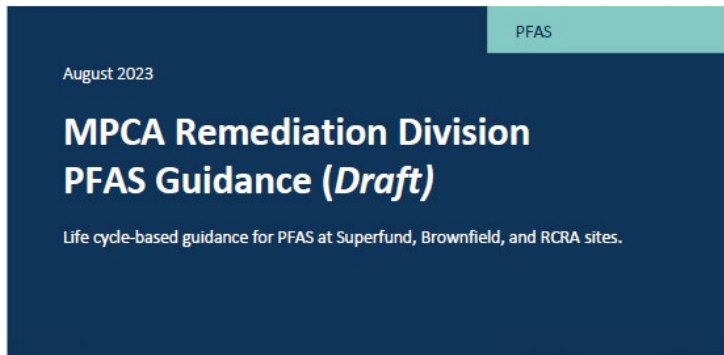


Results

- Phased: sampling starts with only high-priority facilities in 2024, all facilities in late 2025
- Individual results for PFOA or PFOS
 - At or above 125 ug/kg
 - notify MPCA
 - Create PMP
 - Arrange for alternative management of biosolids
 - For lesser tiers below 125
 - Monitor and report to MPCA
- First round sampling funded by MPCA

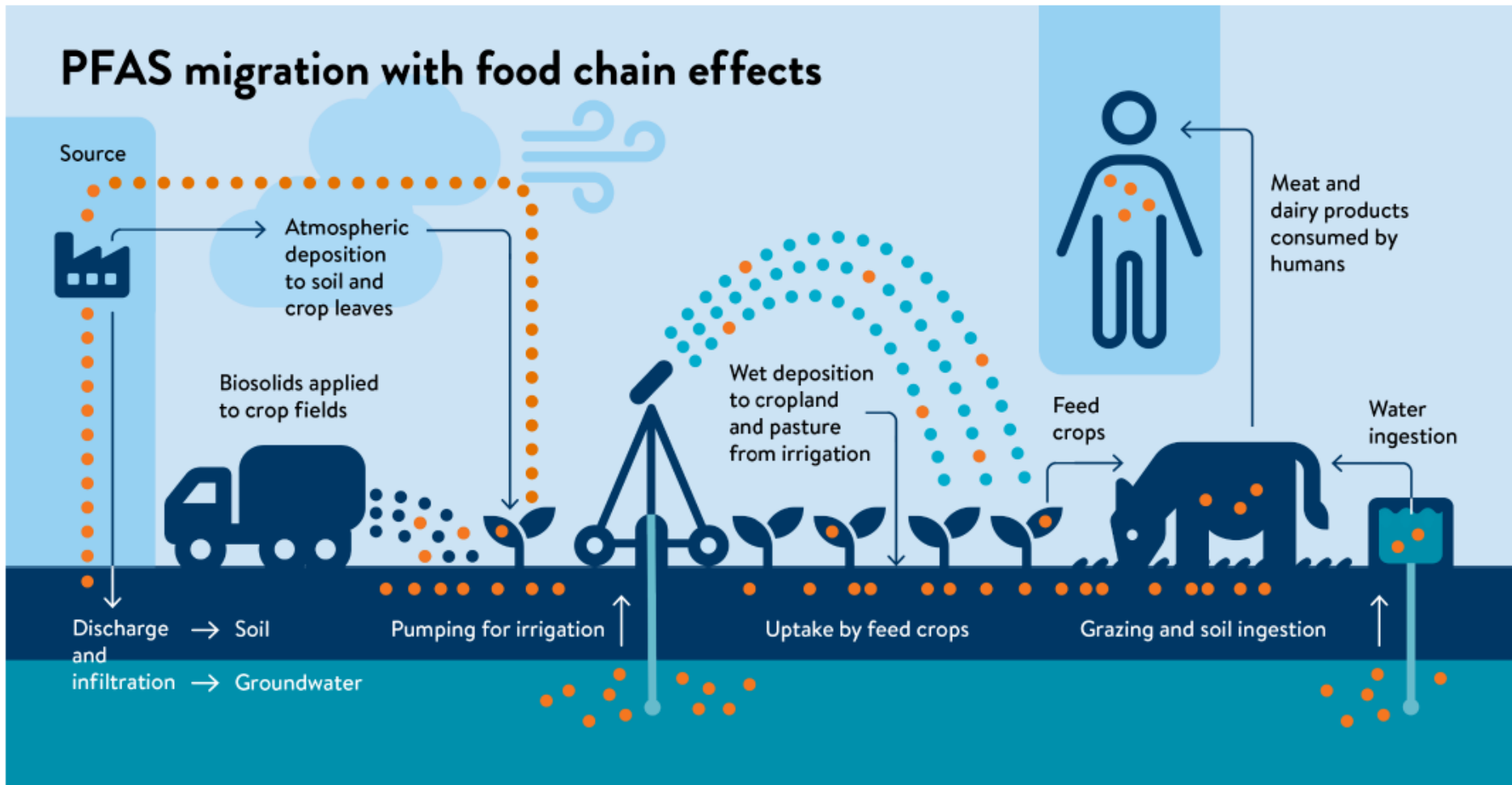


Remediation Guidance



- Categorized POTW effluent and biosolids as sources.
- Indicated that POTWs are potential priorities for enforcement.
- Appeared that permitted wastewater discharges and the application of biosolids were subject to liability... despite permit compliance.
- Contradicted “polluter pays” approach to Superfund

PFAS migration with food chain effects

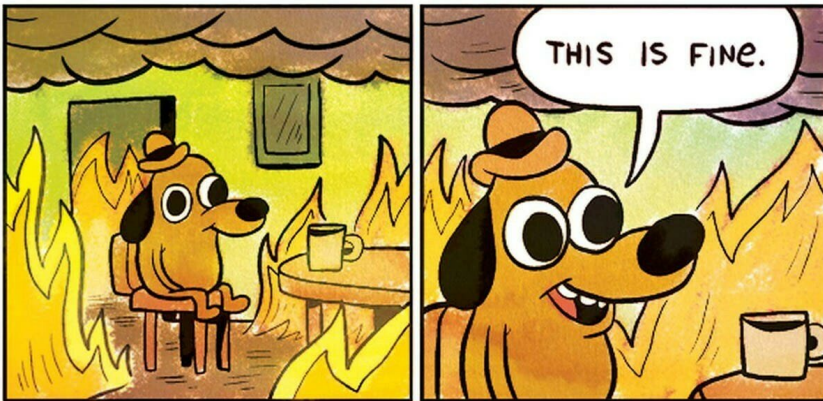


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State Superfund Issues

- Response:
 - “[t]he MPCA... does not intend to identify municipal wastewater facilities as responsible parties in Superfund based on passively receiving PFAS through the wastewater stream.”
 - MPCA developed enforcement discretion





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Federal PFAS Update

- Biosolids Risk Assessment still to be completed in 2024
- CERCLA “hazardous” designation finalized.
 - Enforcement discretion guidance included
- Federal drinking water standards finalized
- TSCA reporting rules updated
- PFAS litigation continues

EPA's CERCLA designation

- CERCLA list of hazardous substances now includes PFOA and PFOS.
- This is the first time EPA has subjected substances to CERCLA's cleanup and liability regime *without first addressing the substances under its primary air, water, waste and toxics laws.*



How does it apply to POTWs?

- Enforcement Discretion memo: EPA will not seek response actions or costs under CERCLA related to PFOA and PFOS from POTWs
- Immediate effects of the rule: starting **July 8, 2024**, facilities must report releases of any PFOA, PFOS at or above one pound or more within a 24-hour period.





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Nitrogen Update

- 10 mg/L state discharge restriction
- Toxicity-based water quality standard
- Wastewater nitrogen reduction and implementation strategy

How did we get here?

- MPCA compelled by EPA to address nitrate-contaminated water
- Stakeholder group developed strategy to reduce wastewater nitrogen loads
- Priority for MESERB: nitrogen reduction must be voluntary until standard adopted

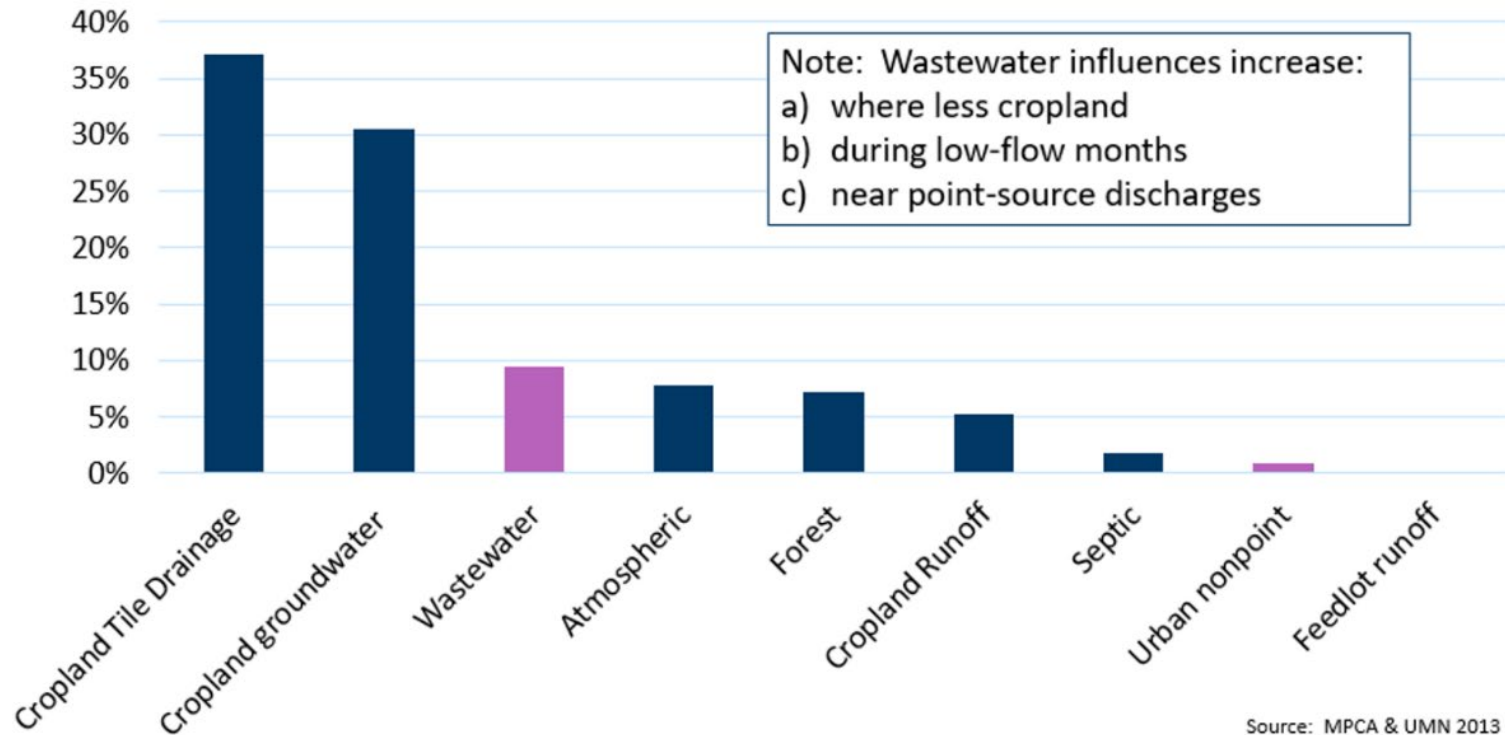


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Nitrogen in MN waters

Statewide nitrogen sources to rivers



Source: MPCA & UMN 2013



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Wastewater Nitrogen Reduction Strategy

- Implementation began April 1, 2024
- long-term, multi-phase plan
- First, affects new, expanded, and upgraded facilities
- Ultimately includes rulemakings for two standards



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Wastewater Nitrogen Reduction Strategy

- **Phase 1** (starting April 2024)
 - Guidance for new/ expanding facilities
 - All other facilities in permit renewal, include design considerations for denitrification
 - MPCA develops nitrogen effluent limits
 - 10 mg/L discharge limit
 - Toxicity-based WQS
 - Implementation steps for high-concentration facilities including NMPs
 - Optimization incentives



Wastewater Nitrogen Reduction Strategy

- **Phase 2** (first permit cycle following limits)
 - NMPs and permit limits for low concentration facilities
 - Implement adopted rules
 - 10 mg/L discharge limit
 - TN toxicity criteria
- **Phase 3** (second permit cycle following limits)
 - Limits in permits for those who optimized in phase 1





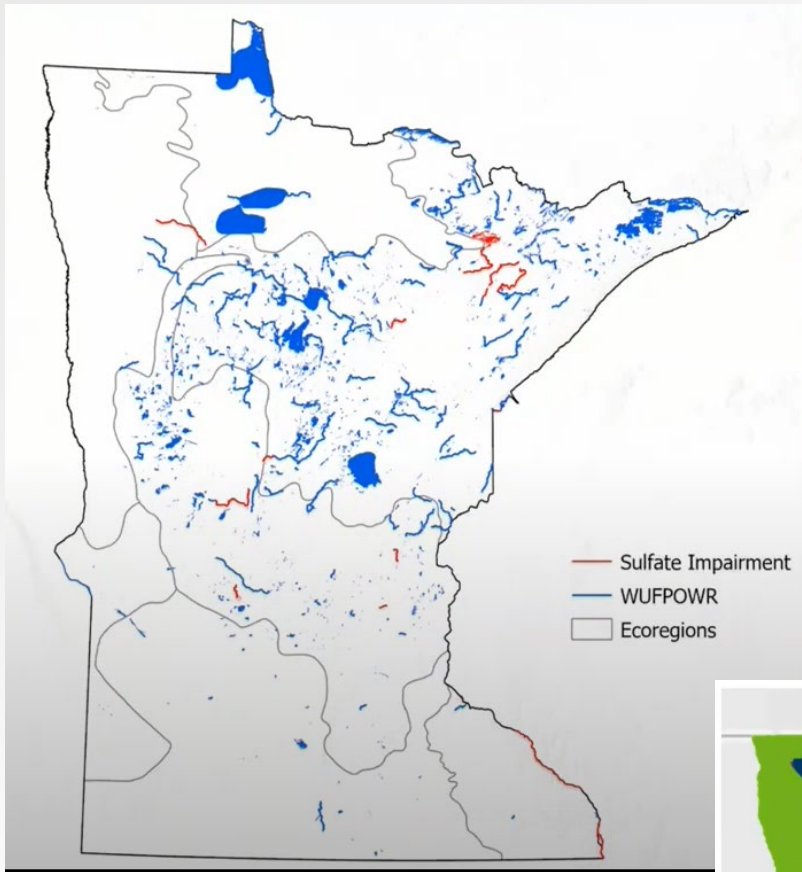
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Wild rice Sulfate Standard

- Mississippi SSS
- Compliance options

Sulfates



Drainage to Mississippi River impacts most of Minnesota

- Upstream
- Not upstream
- Partially upstream



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Sulfate Limits

- Sulfate limits aim to protect wild rice in Mississippi River Pools.
- The standard is outdated, but MPCA is legally required to implement it.
- Compliance is technologically and economically infeasible
- Potential for site-specific standard for Mississippi River Pools, but not for several years.



Options to Address New Limits

- Immediate compliance (if possible)
- Deferred compliance
 - **Variance** and/or Use Attainability Analysis
 - Extended compliance schedule
- Develop and propose Site-Specific Standard
- Right to challenge new limits via administrative and legal process



Variance

- Variances require development and implementation of pollutant minimization plans & stringent reporting requirements
- Variances must be approved by MPCA & EPA
- Process requires a public hearing and notice and comment process
- MPCA waived the fee for municipalities, but there are likely legal & engineer costs



SSS for pools 3, 4-8

- We need to develop two distinct SSS
- Data collection will take years
 - Need to know exactly who is impacted
- Coalition in the works could fund sampling and put pressure on regulators



Rulemakings



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MPCA Rulemaking Docket

Summary	Status	Timetable/ notes
Use Class 1: inclusion of PFAS criteria	2 nd RFC closed October 30 th , 2023	3 rd RFC TBD
Use Class 2 Ammonia	RFC closed	TBD: Amendments no longer include nitrate standard
Fee Rulemaking (gone but not forgotten)	Drafting rule language and SONAR	TBD
Lakes WQS	RFC published September 2023	TBD , 2024-2025 comment period and adoption
Cumulative Impacts	Initial RFC Closed	Notice of Intent to Adopt by May 26, 2026.

Federal Rulemaking Docket

Summary	Status	Timetable/ notes
Proposed Designation of (PFOA) and (PFOS) as CERCLA Hazardous Substances	Final rule published	Effective start of July 2024
PFAS National Primary Drinking Water Regulation	Final rule published	Effective end of June 2024

Permitting



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MESERB Permit Reviews

- MESERB provides expert permit review service for all members.
- Request service after receiving effluent limit notification letter or pre-public draft permit.
- Issue and trend spotting for members & often leads to cost-savings.



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Issues to Watch

- PFAS remediation guidance implementation
- Pfas Biosolids strategy
- Sulfate rulemakings
- Nitrogen strategy implementation
- Upset & Bypass Defense interpretation
- EPA evaluating new criteria for sulfate and chloride



Questions?



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Thank you!

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