



REPORT TO THE
LEGISLATURE

FEBRUARY 2024

Fee collection options for PFAS manufacturers in Minnesota

An overview of current reporting requirements covering PFAS manufacture, existing environmental fee structures, and potential future fee collection options reviewed by the PFAS Manufacturers Fee Work Group.

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Legislative charge

2023 Session Law, Chapter 60, Article 3, Section 30

PFAS MANUFACTURERS FEE WORK GROUP

The commissioner of the Pollution Control Agency, in cooperation with the commissioners of revenue and management and budget, must establish a work group to review options for collecting a fee from manufacturers of PFAS in the state. By February 15, 2024, the commissioner must submit a report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over environment and natural resources with recommendations.

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Foreword

Per- and polyfluoroalkyl substances (PFAS) are a class of human-made chemicals that have been widely used in commerce since the 1950s. PFAS are characterized by carbon-fluorine bonds, which are one of the strongest bonds known in organic chemistry, and consequently do not break down in the environment. PFAS are highly mobile and are therefore capable of long-range atmospheric transport and long migration distances in groundwater compared to many conventional pollutants. Due to their persistence, mobility, and numerous applications in industrial processes and consumer products, PFAS are now virtually ubiquitous in the environment. They have been discovered in water, soil, air, fish, wildlife, snow, and ice around the globe, including in remote regions with little or no industrial activity.

Many PFAS have been associated with adverse human health effects at relatively low concentrations compared to other types of pollutants. The Minnesota Department of Health has conducted risk assessments and developed health-based guidance values for six PFAS compounds in water and air. Observed health impacts include immune suppression, changes in liver function, lower birth weight, and certain cancers.

Minnesota has been addressing PFAS contamination since 2002, when perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) were discovered in groundwater resulting from historical disposal sites of industrial PFAS waste. In the last two decades, further investigation has revealed concerning levels of PFAS in water, soil, air, fish, and wildlife across the state. In 2021, the State of Minnesota released Minnesota's PFAS Blueprint, a strategic approach to prevent, manage, and clean up PFAS pollution. Efforts to implement projects and concepts introduced in the PFAS Blueprint are ongoing.

Contents

Foreword	ii
Contents	iii
Background	1
Identifying PFAS manufacturers using existing and planned PFAS reporting requirements	2
PFAS manufacture	2
PFAS use	3
PFAS release	4
Environmental fee structures currently in use	6
Flat fees	6
Emission and discharge fees	6
Complexity fees	7
Product distribution fees.....	7
Existing and planned fees for PFAS manufacture	8
Hazardous materials incident response fees	8
Pollution prevention fees	9
Amara’s Law reporting fees	9
Potential fee collection options for manufacturers of PFAS in Minnesota	9
PFAS manufacture	10
PFAS use	12
PFAS release	12
Themes from Work Group meetings and written comments	13
Consistent use of definitions and concepts across regulatory frameworks	13
Estimated fee revenue	13
Intended use of collected fees	14
Next steps.....	14
Attachments	16

Background

Despite being manufactured, used, and released by a myriad of industries for decades, our understanding of the sources and amounts of PFAS entering the environment, and their effects on the environment and human health, are limited. Some state and federal laws and regulations require reporting on PFAS pollution at certain types of facilities and/or in certain amounts, but there is no regulatory or programmatic structure in place to intentionally collect and redistribute fees associated with the manufacture, use, or release of PFAS in Minnesota.

As required by 2023 Session Law, the Minnesota Pollution Control Agency (MPCA), Minnesota Management and Budget (MMB), and the Minnesota Department of Revenue (DOR) formed and convened a PFAS Manufacturers Fee Work Group (Work Group) to review options for collecting fees related to PFAS manufacture in the state of Minnesota. Stakeholders invited to participate in the Work Group included environmental, health, and community advocacy groups; PFAS manufacturers and/or facilities that use PFAS in their operations; and organizations representing PFAS pollution conduits (facilities that do not use but receive, and subsequently discharge, PFAS-laden wastes). The state agencies drafted the legislative report with potential fee collection options, developed materials, and presented this information to the Work Group members.

The Work Group met twice, on December 4th, 2023, and on January 3rd, 2024. In each meeting there was a presentation by the state agencies, followed by facilitated conversation and opportunities for stakeholder comment. Final written comments from the Work Group members were requested by January 5th, 2024. Two organizations provided written comments in response to the Work Group proposals, which generally reflected the conversations held during each of the two Work Group meetings. Overall themes of Work Group members' discussion and comments from the meetings are included in this report. Written comments received from Work Group members are attached.

The remainder of this report explores information shared with the Work Group regarding existing and planned PFAS reporting requirements, both at the state and federal levels; existing environmental fee program structures used by the state of Minnesota; existing and planned PFAS manufacture fees, both state and federal; and potential future fee collection options, including associated potential reporting mechanisms. The fee collection options carried forward into this report were presented by the state agencies and generally considered to be reasonable alternatives by the Work Group members.

The definition and context of the terms “manufacturer”, “manufactured”, and “manufacture” are dependent on the state or federal rule in question. Though this report refers to “PFAS manufacturers” broadly, with the intent of capturing all meanings, the term is specifically defined in each section of this report as applicable under the relevant state or federal regulation or law.

Following with the outcomes of the Work Group meetings and written comments, this report does not recommend any fee collection option over any others and is intended only to present the options to the Legislature for their review and consideration in their decision making.

Identifying PFAS manufacturers using existing and planned PFAS reporting requirements

The known universe of businesses and facilities that manufacture PFAS compounds or use PFAS in the manufacturing process in Minnesota is currently limited. The regulatory programs and reporting requirements described in this section are those that currently exist at the state and federal level. Tracking the outcomes of these reports will facilitate the identification of PFAS manufacturers in Minnesota. These programs collectively require contemporary data reporting and/or have been promulgated with future reporting dates, but there are still many data and information gaps related to the manufacturing of PFAS and PFAS-containing products.

PFAS manufacture

The Chemical Data Reporting rule (CDR) under the Toxic Substances Control Act (TSCA) requires that facilities report on the manufacture, processing, or use of chemical substances in commerce exceeding 25,000 pounds per year. Data collection under the CDR occurs approximately every four years. The most recent data reporting year was 2020. Reporting requirements change to some degree for each data collection cycle. Note that reporting under the CDR includes facilities producing or manufacturing PFAS within Minnesota or importing PFAS into the country; interstate importation is not covered by this reporting requirement.¹ There is only one Minnesota business that has reported either the manufacture or use of PFAS under the CDR between 1998 and 2020.²

A new TSCA rule promulgated in October 2023, under TSCA Section 8(a)(7), will require onetime retroactive reporting for PFAS manufacture for commercial purposes, in any amount, from 2011 through December 2022. The Section 8(a)(7) rule definition for “manufacture” includes importation, production, or manufacture of PFAS for commercial purposes. “Manufacture for commercial purposes” further clarifies applicable reporting requirements for PFAS produced coincidentally while manufacturing, processing, using, or disposing of another chemical substance or mixture. Facilities that are importers of PFAS as a chemical substance, chemical mixture, and/or articles containing or that may contain PFAS are also subject to reporting requirements under this rule.³

The new reporting requirement under Section 8(a)(7) will capture data from facilities that may manufacture or have historically manufactured quantities of PFAS less than the 25,000-ton minimum threshold for CDR reporting and have therefore not reported thus far. Further, unlike the CDR, the new TSCA rule does not have any small manufacturer exemptions, nor are importers of articles containing or potentially containing PFAS exempt from reporting.

¹ U.S. EPA. Basic Information about Chemical Data Reporting. <https://www.epa.gov/chemical-data-reporting/basic-information-about-chemical-data-reporting>. Accessed 01/25/2024.

² U.S. EPA. 2020 CDR Data (up-to-date as of April 2022). <https://www.epa.gov/chemical-data-reporting/access-cdr-data#2020>. Accessed 01/25/2024.

³ U.S. EPA. TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances. <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping>. Accessed 01/25/2025.

Facilities that are required to report under the new Section 8(a)(7) rule belong to a variety of industrial categories, which may include the following (listed in numerical order by North American Industry Classification System, or NAICS, codes):

- Construction (NAICS code 23);
- Manufacturing (NAICS codes 31 through 33);
- Wholesale trade (NAICS codes 44, 45); and
- Waste management and remediation services (NAICS code 562).

Reporting under the new Section 8(a)(7) rule is due in 2025. As under the CDR, considerations for Confidential Business Information (CBI) will apply, so it is likely that many reporters under the new Section 8(a)(7) rule will claim confidentiality, making access to data more difficult.

PFAS use

Businesses not only manufacturing PFAS chemicals, but using them in operations, account for the largest proportion of PFAS manufacturers. As described above, the use of PFAS is reported periodically under the CDR, but the high minimum threshold makes it impractical for capturing most uses of PFAS in industrial and commercial operations. The new TSCA Section 8(a)(7) rule will provide additional onetime information about historical PFAS use, but the reporting requirement is not ongoing.

Some states have promulgated rules to address gaps in the understanding of PFAS use. For example, the Massachusetts Department of Environmental Protection (MassDEP) specifically requires reporting on PFAS use under the Toxics Use Reduction Act (TURA), which could serve as a model for other states.⁴ MassDEP's reporting requirements are based on TRI-reportable PFAS compounds and thresholds, so limitations remain for facilities using less than 100 pounds of PFAS per year.

In 2023, the Minnesota State Legislature passed Amara's Law, which will prohibit the sale or distribution of products that contain intentionally-added PFAS in Minnesota.⁵ Under Amara's Law, the definition of "manufacturer" applies to the entity responsible for the creation, production, branding, importation, or distribution of a product, under certain conditions.⁶ Unlike the Massachusetts TURA, which focuses on how much PFAS a manufacturer (as defined by TURA) uses, Amara's Law will require that manufacturers report information on the final amount of intentionally-added PFAS in products and product components. Reporting on PFAS intentionally added to products and product components is due on or before January 1, 2026, and subsequent reporting is required in events where a new product containing intentionally added PFAS is sold or distributed, or where there is a significant change in information

⁴ State of Massachusetts Office of Technical Assistance and Technology. PFAS Tracking and Reporting Updates. <https://www.mass.gov/news/pfas-tracking-and-reporting-updates>. Accessed 01/25/2024.

⁵ Minnesota Pollution Control Agency. PFAS ban. <https://www.pca.state.mn.us/get-engaged/pfas-ban>. Accessed 01/25/2024.

⁶ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes 116.943, Products containing PFAS. <https://www.revisor.mn.gov/statutes/cite/116.943>. Accessed 02/08/2024.

previously reported, unless waivers are provided.⁷ This reporting event may be associated with its own fee, and the scope will capture manufacturers within as well as outside of Minnesota.⁸

PFAS that are not intentionally added to final products are not covered by reporting under Amara's Law. An example of this kind of use may be the addition of PFAS-based fume/mist suppressants to chrome plating tanks, where the PFAS use is part of an intermediate process but the PFAS are not intentionally incorporated into the final chrome plate. A facility performing these types of intermediary operations would not report on PFAS use through Amara's Law, although in this instance the fume/mist suppressant manufacturer would report information about the fume/mist suppression product.

PFAS release

Reporting of PFAS releases has been required under the Emergency Planning and Community Right to Know Act (EPCRA) via the TRI since 2020. The TRI program requires certain facilities to report information about the *release* of listed chemicals if the facility has *manufactured, processed, or used* a given chemical exceeding the minimum threshold. Facilities required to report under the TRI are industrial manufacturers that fall under 28 different Standard Industry Classification (SIC) codes.⁹ "Manufacture", per the TRI, includes the production, preparation, importation, or compounding of a toxic chemical, but requirements more broadly apply to processes or uses of PFAS as part of the manufacturing process.¹⁰ TRI reporting requirements cover any kind of environmental release, and do not differentiate between accidental releases or permitted emissions or discharges.¹¹

TRI reporting is done annually and is ongoing, with data available for review the fall following the July 1st reporting deadline. For example, data from reporting year 2023 (January 1st through December 31st) are due to EPA by July 1st, 2024; preliminary data will be available for review as early as August 2024, with quality assured data typically available by October 2024. For reporting year 2023, 189 PFAS compounds were subject to TRI reporting requirements, with a minimum reporting threshold of 100 pounds used per year.¹²

Although lower than most TRI chemical reporting thresholds, 100 pounds per year is still high for PFAS, which are often used at 100-1000 parts per million (under a tenth of a percent by component weight). For instance, use of one PFAS (PFOS) as a fume/mist suppressant by a Minnesota chrome plating facility

⁷ Minnesota Pollution Control Agency Resource Management and Assistance Division. Request for Comments: Planned New Rules Governing Reporting by Manufacturers Upon Submission of required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828. <https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-01.pdf>. Accessed 01/25/2024.

⁸ Minnesota Pollution Control Agency. PFAS in products: Fees. <https://www.pca.state.mn.us/get-engaged/pfas-in-products-fees>. Accessed 01/25/2024.

⁹ U.S. EPA Toxics Release Inventory Program. What is the Toxics Release Inventory? <https://www.epa.gov/toxics-release-inventory-tri-program/what-toxics-release-inventory>. Accessed 01/26/2024.

¹⁰ 40 CFR 372.3, "Manufacture". [https://www.ecfr.gov/current/title-40/part-372#p-372.3\(Manufacture\)](https://www.ecfr.gov/current/title-40/part-372#p-372.3(Manufacture)). Accessed 02/08/2024.

¹¹ U.S. EPA Toxics Release Inventory (TRI) Program. Common TRI Terms. <https://www.epa.gov/toxics-release-inventory-tri-program/common-tri-terms>. Accessed 01/26/2024.

¹² U.S. EPA Toxics Release Inventory Program. Addition of Certain PFAS to the TRI by the National Defense Authorization Act: Background. <https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act#Background>. Accessed 01/25/2024.

resulted in estimated emissions of 0.85 to 2.39 pounds of PFOS in 2017.¹³ An MPCA sampling study later found that the emitted PFOS contaminated surface water surrounding the facility via snowmelt and stormwater runoff. The facility has since switched to an alternative fume/mist suppressant, 6:2 FTS, another PFAS commonly used to replace PFOS in metal plating and finishing. 6:2 FTS is considered to be less toxic than PFOS, though it is still persistent in the environment and may lead to other concerns.¹⁴

Only one facility in Minnesota reported releases of PFAS to the TRI for reporting year 2022. The reported release was limited to less than 10 pounds of one chemical (PFBS) released onsite. In 2020 and 2021, PFAS release reporting was limited to the same single facility, and included onsite releases, onsite disposal and/or treatment, and offsite disposal. In total, the facility reported 11,000 pounds of PFAS waste managed in Minnesota between 2020-2022.¹⁵

As of November 29, 2023, TRI reporting was only required for mixtures with at least 1% PFAS by concentration (“*de minimis* exemption”). Effective November 30, 2023, TRI-reportable PFAS were added to the list of Lower Thresholds for Chemicals of Special Concern, which eliminates use of the *de minimis* exemption. Seven additional PFAS will also be added to the TRI list for reporting year 2024, as well, bringing the total number of reportable PFAS to 196.¹⁶ Preliminary data from the most recent TRI dataset available, from reporting year 2022, included 120 PFAS reporting forms regarding 46 discrete PFAS from 44 facilities (compared to 92 reporting forms on 46 discrete PFAS from 45 facilities in reporting year 2021).^{17,18} An economic analysis of the rulemaking associated with this action estimated somewhere between 605-1,997 new facilities and reporting forms will be submitted to EPA due to the listing of PFAS as Chemicals of Special Concern and subsequent elimination of the *de minimis* exemption.¹⁹ Data for reporting year 2024 are due July 1, 2025, and will be available for review by fall 2025.

¹³ These values were estimated by MPCA staff based on reported emissions (reporting year 2017) from metal plating and finishing facilities under NAICS 332813. PFOS values for comparison were taken from a publication of the Danish Ministry of the Environment – Environmental Protection Agency (2011), “Substitution of PFOS for use in nondecorative hard chrome plating”. <https://www2.mst.dk/udgiv/publications/2011/06/978-87-92779-10-6.pdf>. Accessed 02/07/2024.

¹⁴ MPCA. PFAS in the metal plating and finishing industry (gp3-05). December 2022. <https://www.pca.state.mn.us/sites/default/files/gp3-05.pdf>. Accessed 02/07/2024.

¹⁵ U.S. EPA. PFAS Analytic Tools. https://awsedap.epa.gov/public/extensions/PFAS_Tools/PFAS_Tools.html. Accessed 01/25/2024.

¹⁶ U.S. GPO. Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substance and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting. 88 FR 74360, October 31, 2023. <https://www.govinfo.gov/content/pkg/FR-2023-10-31/pdf/2023-23413.pdf#page=1>. Accessed 01/25/2024.

¹⁷ U.S. EPA. Chemicals under the Toxic Substances Control Act (TSCA). EPA Releases Preliminary Data for 2021 Toxics Release Inventory Reporting. <https://www.epa.gov/chemicals-under-tsca/epa-releases-preliminary-data-2021-toxics-release-inventory-reporting>. Accessed 02/07/2024.

¹⁸ U.S. EPA. EPA Releases Preliminary Data for 2022 Toxics Release Inventory Reporting. <https://www.epa.gov/newsreleases/epa-releases-preliminary-data-2022-toxics-release-inventory-reporting-year>. Accessed 02/07/2024.

¹⁹ Abt Associates for U.S. EPA. Economic Analysis for the Proposed Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications Requirements for Chemicals of Special Concern Community Right-to-Know Toxic Chemical Release Reporting. November 4, 2022. Available for download at https://downloads.regulations.gov/EPA-HQ-TRI-2022-0270-0038/attachment_1.pdf. Accessed 02/12/2024.

Importantly, and as stated previously, facilities are only required to report to the TRI (and pay any fees associated with reporting or toxics release) if they have manufactured, processed, or otherwise used one or more TRI-listed chemicals in quantities above the minimum reporting threshold of 100 pounds per year. Furthermore, a facility must fall under one of the EPCRA's covered industry sectors.²⁰ Publicly owned treatment works (POTWs) do not report to the TRI. Solid waste and hazardous waste management are covered industry sectors, but only report to the TRI in the event of use of a listed chemical over the minimum reporting threshold.

Environmental fee structures currently in use

There are four predominant fee structures commonly used by state agencies for environmental fee collection. Some programs use a combination of these fees. These fee systems serve as starting points for how potential fees may be assessed from PFAS manufacturers.

Flat fees

The most basic fee structure used by Minnesota Pollution Control Agency (MPCA) programs is a flat fee, like those assessed for permit applications or annual operations. Under a flat fee structure, fee amounts are constant regardless of operation scale or waste produced, although there may be minimum thresholds that trigger a fee requirement. For example, flat annual fees are assessed from feedlot permit holders, where only those exceeding the minimum threshold of animal units require an operating permit.²¹ Flat permit application fees also apply. Feedlot permits are reissued every five or ten years, depending on the permit type.

Similarly, in the industrial, municipal, and construction stormwater programs, as well as industrial and municipal wastewater programs, flat fees are assessed with new permit applications. Industrial stormwater permit holders are also charged a flat annual fee.²² Subsurface sewage treatment system (SSTS) installers, by contrast, are charged a flat fee annually for each existing tank.²³

Emission and discharge fees

Another fee assessment structure is a scaled amount based on the quantity of pollutants emitted. For example, air emissions permit holders pay a per-ton fee rate based on emissions of billable pollutants reported in the annual emissions inventory. Criteria pollutants subject to billing are defined in rule. The total dollar amount of targeted fee revenue is set by the Legislature, and the billing rate per ton emitted is determined by dividing the fee target by the total tons of billable pollutants reported that year for all facilities. There is no cap on the fee amount owed by any individual facility, meaning the fee rate is

²⁰ U.S. EPA. Toxics Release Inventory (TRI) Program. Reporting for TRI Facilities: Is Your Facility Required to Report to the TRI Program? <https://www.epa.gov/toxics-release-inventory-tri-program/reporting-tri-facilities#q1>. Accessed 01/25/2024.

²¹ MPCA. Feedlot permits. <https://www.pca.state.mn.us/business-with-us/feedlot-permits>. Accessed 01/25/2024.

²² MPCA. Stormwater permits. <https://www.pca.state.mn.us/business-with-us/stormwater-permits>. Accessed 01/25/2024.

²³ MPCA. SSTS installation. <https://www.pca.state.mn.us/business-with-us/ssts-installation>. Accessed 01/25/2024.

directly proportional to the billable criteria pollutants emitted. Facilities who report zero emissions are not assessed a fee. The exception to this fee assessment structure is that facilities emitting less than one ton of billable criteria pollutants in a year pay a relatively small flat fee.

Pollution prevention (P2) fees are assessed in a similar way, although there is no target revenue set as with the air program. P2 fees are assessed from facilities reporting toxic chemical releases to the TRI. If less than 25,000 pounds are released in a year, the facility pays a flat fee, which is defined in rule. Facilities releasing more than 25,000 pounds per year pay a fee scaling with the pounds of toxics released, with no maximum limit for individual facilities. Note that the P2 program also assesses a flat fee for each distinct chemical reported by a facility.

The wastewater program also charges annual fees based on discharge; however, fees are not directly proportional to specific pollutants. Instead, fees for major and nonmajor industrial and municipal permits are tiered based on volume of total wastewater discharged per day.²⁴ The exception is for cooling and mine pit dewatering industrial wastewater facilities, for which a flat annual fee is assessed for any volume of discharge. However, facilities holding a general wastewater permit, which is a permit covering multiple entities with similar operations and types of discharge, are charged a flat annual fee.

Complexity fees

Wastewater permitting also utilizes a fee structure based on actions or operations proposed in a permit or permit modification application. These point-based fees reflect the level of effort required to process the application and develop the permit, with more complex permitting actions requiring higher total fee costs.¹⁸ Hazardous waste generator fees reflect a similar method for assessing fees based on complexity of activities at a facility. Permit application and annual facility fees are based on how waste is stored, disposed of, and treated.²⁵

Product distribution fees

The State of Minnesota assesses fees from distributors of certain products to make funding available for cleanup activities required by the MPCA. The Minnesota Department of Revenue assesses fees from distributors of drycleaning solvents based on the type of solvent and the number of gallons sold. The distributors are responsible for collecting the fees from businesses using the solvent products, and the revenue partially funds the Dry Cleaner Environmental Response and Reimbursement Account (Dry Cleaner Account).^{26, 27} The Dry Cleaner Account is also supported by drycleaning facility annual registration fees, which are tiered based on number of full-time employees at the facility. Fee amounts

²⁴ MPCA. Wastewater permit fees. <https://www.pca.state.mn.us/business-with-us/wastewater-permit-fees>. Accessed 01/25/2024.

²⁵ Minnesota Legislature Office of the Revisor of Statutes. Minnesota Administrative Rules Chapter 7046.0020, Hazardous waste facility fees. <https://www.revisor.mn.gov/rules/7046.0020/>. Accessed 01/25/2024.

²⁶ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes Chapter 115B.49, Dry cleaner environmental response and reimbursement account. <https://www.revisor.mn.gov/statutes/cite/115B.49>. Accessed 01/25/2024.

²⁷ MPCA. Funding for contaminated sites. <https://www.pca.state.mn.us/business-with-us/funding-for-contaminated-sites>. Accessed 01/25/2024.

for both solvent distribution and facility registration must be adjusted each year so that the total revenue amounts to a fixed amount defined in statute.

The Petroleum Tank Release Cleanup Fund (Petrofund), administered by the Minnesota Department of Commerce, is another example of a similar program. The program derives revenue from a fee assessed from first licensed distributors of petroleum products in Minnesota, two cents per the number of gallons sold (in thousands).²⁸ The fee is only assessed when the total amount in the Petrofund falls below a certain threshold, and each fee assessment period is time limited.²⁹

Existing and planned fees for PFAS manufacture

There are a small number of existing and planned fee programs relating to PFAS manufacture in Minnesota. These fees are limited and collected primarily through the TRI inventory data collection process or are planned under Amara's Law.

Hazardous materials incident response fees

Facilities releasing hazardous chemicals covered by the TRI program are subject to reporting requirements and associated fees. Facilities using greater than 100 pounds of any of the TRI-listed PFAS are subject to tiered annual reporting fees dependent on the total weight of chemicals (PFAS or otherwise) released or transferred. In addition to reporting to the U.S. Environmental Protection Agency (EPA), facilities report and pay reporting-related fees directly to the state agency or department managing the TRI data. As of 2023, MPCA handles reporting and collects these fees in Minnesota 2023 (previously, this was the responsibility of the Department of Public Safety).

The tiered annual fee amounts, as defined in statute, are:

- \$200 for zero releases or transfers;
- \$400 for releases and transfers not exceeding 25,000 pounds; and
- \$800 for releases and transfers exceeding 25,000 pounds.

These hazardous materials fees are deposited into the general fund and are collected in addition to other fees defined in Minnesota Statute 115D.12.³⁰

For reporting year 2022, a total of 444 facilities were assessed fees at approximately \$242,000. The number of reporting facilities and fees collected are relatively consistent year over year. Only one facility reported PFAS release through the TRI for reporting year 2022.

²⁸ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes Chapter 115C.08, Petroleum Tank Fund. <https://www.revisor.mn.gov/statutes/cite/115C.08>. Accessed 01/25/2024.

²⁹ Minnesota Management and Budget. Commerce: Petroleum Tank Release Cleanup Fund (Petrofund). https://www.mn.gov/mmb-stat/documents/budget/initial13/commerce/4_E+-+Budget+Books_Commerce_HTML+docs_B1304_Petrofund.htm. Accessed 01/25/2024.

³⁰ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes Chapter 299K.095, Hazardous materials incident response fees. <https://www.revisor.mn.gov/statutes/cite/299K.095>. Accessed 01/25/2024.

Pollution prevention fees

The MPCA assesses fees for pollution prevention (P2) on a basis of two cents per pound of TRI-listed chemicals released by a facility each year, if greater than 25,000 pounds total, or at a flat rate of \$500 if less than 25,000 pounds are released in total. Facilities also pay a \$150 flat fee per chemical released. Since the reporting thresholds under the TRI differ for PFAS, facilities using more than 100 pounds of TRI-reportable PFAS and releasing any amount must pay either a flat or emissions-based fee.

For reporting year 2022, a total of 381 TRI-reporting facilities will be assessed for fees at approximately \$1.5 million. The number of reporting facilities and fees collected are relatively consistent year over year. Only one facility reported PFAS release through the TRI for reporting year 2022.

Amara's Law reporting fees

Amara's Law, passed by the Minnesota State Legislature in 2023, broadly prohibits the intentional inclusion of PFAS in products for sale or distribution in Minnesota.^{31,32} Additionally, the law requires reporting of information on PFAS intentionally added in products, due by January 1, 2026, for current products, and thereafter for future products containing intentionally added PFAS and in cases of significant changes to information previously reported. MPCA plans to promulgate a rule establishing fees to cover the operating costs of implementing Amara's Law. A request for comments on this rulemaking was open September through November 2023.³³

Potential fee collection options for manufacturers of PFAS in Minnesota

Based on existing environmental regulatory fee structures and PFAS reporting in the state of Minnesota and at the federal level, multiple options are available to assess fees associated with PFAS manufacture. The presented options may be selected on their own as a standalone fee structure or may be implemented in combination with others. Options are presented for manufacturers that are producing or importing PFAS and for manufacturers that are using PFAS in business operations. Other factors, including the total estimated revenue and how the revenue may be used, should be considered in selecting the option(s) (see the section titled "Emergent themes from Work Group meetings and written comments", below).

³¹ Minnesota Legislature Office of the Revisor of Statutes. 2023 Session Law, Chapter 60, Sec. 21, Subd. 6. <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/60/#laws.3.21.6>. Accessed 01/25/2024.

³² Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes 116.943, Products containing PFAS. <https://www.revisor.mn.gov/statutes/cite/116.943>. Accessed 01/25/2024.

³³ Minnesota Pollution Control Agency Resource Management and Assistance Division. Request for Comments: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827. <https://www.pca.state.mn.us/sites/default/files/c-pfas-rule2-01.pdf>. Accessed 01/25/2024.

PFAS manufacture

Develop a fee structure based on annual PFAS manufacture reported under the CDR

As of the time of this report, only one business in Minnesota has reported PFAS production or importation into the United States under the CDR. A fee tied to CDR reporting could be based on the quantity of reported PFAS, or a flat fee could be assessed per facility. A target revenue or minimum target revenue could be established to account for fluctuations in the amount of PFAS reported or number of facilities reporting. If changes were to occur which result in additional facilities reporting PFAS manufacture, there would be more potential fee payers.

Additional information

Quantities of PFAS manufactured are currently reported as “confidential business information” (CBI) under TSCA. To assess fees based on these quantities, the agency responsible for fee collection would need to work with the EPA to share and securely house this information. CBI-sharing agreements with the EPA have not previously been established by the MPCA or other state or tribal agencies, and for Minnesota, would likely require filling significant policy, resources, and infrastructure gaps.

Further, the single business currently reporting under the CDR may no longer report PFAS under the CDR, TRI, or TSCA PFAS reporting requirement after 2025. There have been conflicting reports that the business will end its production of PFAS in 2025 or continue some PFAS production for select customers and/or uses. It is unclear how many, if any, Minnesota facilities will fall under CDR reporting requirements into the future.

Assess a onetime fee based on PFAS manufacture reported under the new TSCA Section 8(a)(7) reporting rule

Under this rule, several categories of industrial PFAS manufacturers (including international importers of PFAS chemicals, chemical mixtures, or articles that include or may include PFAS) will report information for years 2011-2022 on a onetime basis. A fee could be assessed from reporting manufacturers in Minnesota based on the quantity (per unit mass or based on tiers) of PFAS manufacture in the most recent reporting year, the total quantity of PFAS manufacture over the reporting period, the types of PFAS reported, and/or the number and type of articles imported. Alternatively, a flat fee could be assessed from each facility reporting PFAS manufacture either during the most recent year or at any time during the reporting period. Flat fees could also be assessed for each PFAS chemical reported.

Additional information

EPA’s definition of PFAS subject to the onetime TSCA reporting requirements is narrower than Minnesota’s statutory definition: chemicals containing “at least one fully fluorinated carbon atom.”^{34, 35} The Minnesota definition of “manufacture”, as it relates to PFAS, is also broader. The onetime TSCA

³⁴ U.S. GPO. Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances. 88 FR 70516, October 11, 2023. <https://www.govinfo.gov/content/pkg/FR-2023-10-11/pdf/2023-22094.pdf>. Accessed 01/25/2024.

³⁵ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes 116.943, Products containing PFAS. <https://www.revisor.mn.gov/statutes/cite/116.943>. Accessed 01/25/2024.

reporting event may therefore not cover all instances of PFAS manufacture per Minnesota’s definitions. Furthermore, fees are typically not assessed retroactively based on historical activities. This reporting event will not provide information about PFAS manufacture in subsequent years without another TSCA rulemaking. It is unclear what information reported under this rule may be designated as CBI, so similar considerations as for the CDR reporting option may apply.

Create a new, Minnesota-specific PFAS manufacture reporting program and associated fee structure

To evaluate PFAS manufacture in Minnesota on an ongoing annual basis and without minimum thresholds, a new reporting program would need to be developed. This program could be modeled on the 2023 TSCA Section 8(a)(7) rule and serve as an expansion on EPA’s required onetime reporting.

A state-specific reporting requirement could also potentially adapt the TSCA definition of “manufacture” to include imports of PFAS into Minnesota. In at least one other Minnesota statute, imports into the state are included under the definition of “distributor,” which also includes manufacture and production.³⁶ A fee structure attached to this reporting program could reflect the quantities of PFAS produced or imported.

Structuring fee tiers based on PFAS type, and/or assessing flat fees based on the number of chemicals reported, are also options.

Additional information

A fee structure that scales with the quantity of PFAS manufacture may provide an equitable way to collect revenue from PFAS manufacturers and could incentivize reductions in PFAS manufacture over time.³⁷ Not including a minimum reporting threshold would ensure that any PFAS manufacturing activities are reported and assessed. Including importers of PFAS into the country (TSCA) or state (adapted from TSCA model or scoping in existing definitions of “distributor”) would account for all PFAS that ultimately enters Minnesota, regardless of its production origin. While there is currently just one reporting PFAS manufacturer in Minnesota, there are 150 CDR-reporting facilities producing or importing PFAS into the United States.³⁸ Therefore, interstate imports could potentially be significant.

Despite allowing for maximum flexibility in program design and implementation, standing up a new reporting system would require significant resources at the state level. The scope of potential reporting manufacturers in Minnesota, whether producers or importers, is currently unclear. This information may also be subject to CBI claims, as certain CDR data are, which would need to be handled using the expanded application of existing state policies, resources, and infrastructure. Onetime reporting under TSCA Section 8(a)(7) is due in 2025.

³⁶ Minnesota Legislature Office of the Revisor of Statutes. 2023 Minnesota Statutes 296A.01, Definitions. <https://www.revisor.mn.gov/statutes/cite/296A.01>. Accessed 01/25/2024.

³⁷ MPCA. Water Fees Rule Concept Document, wq-rule4-19f. January 2020. <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf>. Accessed 01/25/2024.

³⁸ U.S. EPA. PFAS Analytic Tools. https://awsedap.epa.gov/public/extensions/PFAS_Tools/PFAS_Tools.html. Accessed 01/25/2024.

PFAS use

Create a new, Minnesota-specific PFAS use reporting program and associated fee structure

Currently, there are no state or federal programs in place or planned that would require Minnesota facilities to report on all PFAS use. To assess a fee from all manufacturers that use PFAS, a new reporting system would need to be developed. Given the range of possible PFAS applications across commercial and industrial sectors, a fee based on the quantity of PFAS used could be appropriate. Development of a Minnesota-specific reporting program, on an ongoing, periodic basis, would present the opportunity to define the scope of reportable PFAS chemicals, an appropriate minimum reporting threshold for businesses in the state, and the range of PFAS use types subject to reporting and fees.

Alternatively, Massachusetts' reporting requirements under the Toxics Use Reduction Act could be used as a model. TURA requires reporting on use of TRI-reportable PFAS and adopts the TRI minimum reporting threshold of 100 pounds per year. A new or significantly expanded reporting system may still be required with this model, given the scale of new information that would be provided.

Additional information

As Minnesota businesses shift away from PFAS use to comply with Amara's Law (prohibiting all nonessential PFAS uses by 2032), it can be reasonably anticipated that some reported PFAS use will decrease each year. This kind of fee structure, used by the Dry Cleaner Account and Air Permitting programs, could further incentivize reductions in PFAS use over time. If a consistent revenue amount is needed, then a target total revenue could be determined to calculate the per-pound fee rate each year.

Given the wide range of possible PFAS uses across industries and individual facilities, as well as the range in quantities of PFAS used for different purposes, parameters would need to be set to define the group of fee rate payers under a PFAS use reporting system. These include defining "PFAS use", establishing minimum reporting thresholds, establishing the scope of reportable PFAS compounds, and determining the frequency of information and fee collection. As described previously, the state resources required to establish a new reporting system should be considered.

PFAS release

Assess a fee based on PFAS release reported under the TRI

Toxic chemical release data for Minnesota are reported to and managed by MPCA. Release quantities of the 189 TRI-reportable PFAS compounds (196 beginning in 2024) could be used to assess a per-pound fee based on amount of PFAS released by facilities, as with the existing P2 fee structure; a tiered fee based on different types of PFAS reported, as is done for dry cleaning solvent fees; and/or a flat fee per PFAS compound reported.

Additional information

The list of TRI-reportable PFAS is considerably smaller than the universe of PFAS scoped into Minnesota's statutory definition, which includes all compounds containing "at least one fully fluorinated

carbon atom.”³⁹ As additional PFAS are evaluated by EPA and added to the TRI Chemicals of Special Concern list, sliding scale fee amounts or fees tied to number of types of PFAS compounds may increase. Additionally, facilities using less than 100 pounds of PFAS per year are excluded from current TRI reporting requirements. As noted, a lower reporting threshold would be required to capture additional sources of PFAS with significant environmental and health impacts.⁴⁰ The elimination of the *de minimis* exemption (concentrations of PFAS <1%) for TRI reporting will, however, potentially expand the number of facilities in Minnesota who would report under this kind of structure. The number of new PFAS reporters under TRI won’t be understood until 2025, when facilities submit data from reporting year 2024 (the first reporting year after removal of the *de minimis* threshold). Only one facility reported PFAS release through the TRI for reporting year 2022.

Themes from Work Group meetings and written comments

The Work Group identified several other important considerations for assessing fees from PFAS manufacturers throughout the two meetings and in written comments. This section summarizes a few high-level themes from Work Group feedback, as well as the state agencies’ responses. Attachments B and C (written comments) include additional topics not addressed here.

Consistent use of definitions and concepts across regulatory frameworks

The definitions and concepts used to identify PFAS compounds, the manufacture of PFAS, and products that are manufactured with PFAS vary between state and federal laws and regulations. Work group members recommend that the definitions used in any potential fee collection legislation are clear and consistent with existing state and/or federal definitions to avoid confusion during program implementation.

State agency response

The MPCA and DOR support the Work Group’s recommendations to clearly define the universe of PFAS compounds and PFAS manufacturers that will apply to potential fee collection legislation.

Estimated fee revenue

Work Group members identified interest in understanding the magnitude of potential fee revenue that may result from each of the proposed fee collection options, noting that the anticipated amount

³⁹ Minnesota Legislature Office of the Revisor of Statutes. HF 2310, 4th Engrossment – 93rd Legislature (2023 - 2034) Posted on 05/25/2023 01:16pm. https://www.revisor.mn.gov/bills/text.php?number=HF2310&session_year=2023&session_number=0&version=lat est. Accessed 01/25/2024.

⁴⁰ Regulations.gov. Docket/Document EPA-HQ-TRI-2022-0270-0001, Comment submitted by Minnesota Pollution Control Agency. <https://www.regulations.gov/comment/EPA-HQ-TRI-2022-0270-0044>. Accessed 01/25/2024.

collected may drive decisions about supporting or recommending alternative fee collection options. Some Work Group members also noted that the longevity of fee collection and subsequent revenue streams will play an important role in how any fee collection program is implemented.

State agency response

At this time, the MPCA, MMB, and DOR do not have enough information to make any informed estimates as to actual revenue that will be collected by promulgated or hypothetical future fee collection efforts, either in terms of amount or duration. Once PFAS reporting data are collected under promulgated laws and regulations, such as the TSCA and TRI updates over the course of calendar years 2024-2026, state agencies will have an improved understanding of what the universe of PFAS manufacture, use, and release is in the state, and may be able to better characterize theoretical revenue amounts and/or anticipated duration of revenue streams that could be generated by facilities covered by these reporting requirements. To date, only one facility has reported PFAS manufacture via the CDR, and only one facility has reported PFAS release through the TRI. The state agencies agree with Work Group members that understanding an estimated or desired revenue stream could better inform the review of fee collection options.

Intended use of collected fees

Work Group members indicated that any final recommendation of a specific fee structure alternative is difficult without understanding the intended use of the collected fees. Some indicated that identifying the intended use (or uses) of the collected fees and working backwards to determine the fee structure may be more appropriate. Many Work Group members also agreed that understanding the combination of estimated fee revenue and the use of the fees collected would impact any final decisions to support or recommend alternative fee collection options. For example, organizations representing municipal members made it clear that, even under a maximized fee collection scenario, the revenue stream would not be sufficient in magnitude or duration to cover all expected costs related to PFAS mitigation, treatment, or remediation at publicly owned treatment facilities.

State agency response

The MPCA, MMB, and DOR do not have any information regarding the intended use of the fees collected through any future legislation and indicated this to the Work Group members. The agencies do agree that understanding the intended use of fees collected could better inform final decisions around fee collection options.

Next steps

Timelines for data reporting

Although there are existing reporting rules and some data available related to PFAS manufacturers at this time, additional promulgated reporting information will not be available until fall 2024, fall 2025 (updated TRI with eliminated *de minimis* exemption), or sometime in 2026 [new retroactive TSCA rule, PFAS uses under Amara's Law (reporting due by January 1, 2026)]. Additionally, the resources needed to develop and implement new fee collection programs are significant. Any such program could be years in the making. Due consideration should be given to the timing of fee collection legislation, associated program implementation, existing and planned (and possible new) reporting requirements, and any intended uses of generated revenue.

Work Group and state agency coordination

There are no identified or planned next steps for the Work Group or state agencies beyond this legislative report. Future work on fee collection options for PFAS manufacturers will be directed by the Legislature.

Attachments

- A. List of invited stakeholder organizations
- B. Written comments from the Coalition of Greater Minnesota Cities
- C. Written comments from Clean Water Action

Attachment A: List of invited stakeholder organizations

This list does not include participants from state agencies.

Environmental, health, and community advocates:

- Clean Water Action
- Minnesota Center for Environmental Advocacy (MCEA)

Manufacturers and/or users of PFAS

- Minnesota Chamber of Commerce
- 3M
- Minnesota Technical Assistance Program (MnTAP)

PFAS conduits

- League of Minnesota Cities
- Coalition of Greater Minnesota Cities
- Association of Minnesota Counties/Solid Waste Administrators
- National Waste and Recycling Association

Attachment B: Written comments from the Coalition of Greater Minnesota Cities



DEDICATED TO A STRONG GREATER MINNESOTA

January 4, 2024

VIA EMAIL

Paul Pestano
Minnesota Pollution Control Agency

Re: PFAS Manufacturers Fee Options

Dear Mr. Pestano,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to comment on the proposed report to the legislature on fee collection options for PFAS manufacturers. The CGMC is a group of more than 100 cities from across Minnesota dedicated to developing viable progressive communities for families and businesses through good local government and strong economic growth. Our cities play an essential role in protecting Minnesota's waters through their wastewater and stormwater systems.

The presence of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in Minnesota's waters is a serious health concern that must be addressed. However, our cities' ability to mitigate PFAS, especially at wastewater facilities, is limited by technology and other factors. Our cities and their wastewater systems have not created this problem; wastewater treatment facilities do not produce or use PFAS in the course of treating wastewater. Instead, they receive these chemicals through the waste stream due to their widespread use. Because there is no effective method for removing PFAS from the wastewater stream, the only way to address this problem currently is to stop these chemicals at the source and target entities directly responsible for the presence of these chemicals in our waters.

With that background, we make the following comments:

- PFAS source identification, reduction, and elimination should continue to be a top priority for the MPCA's PFAS regulatory efforts. We support charging fees to PFAS manufacturers that create an incentive to diminish or eliminate the wide-spread and non-essential use of PFAS in industrial, manufacturing, and other processes.
- We do not have a preference about the type of fee structure, but we believe the MPCA should clarify that it does not anticipate that a PFAS fee program would provide sufficient revenue to address costs necessary to upgrade municipal drinking water and wastewater infrastructure to address PFAS contamination caused by generators and manufacturers of PFAS. At best, a fee program would likely provide supplemental resources to support state-wide investigation and remediation efforts as well as funding for source investigation and reduction efforts.
- The MPCA should clarify the definition of "manufacturers" so that it does not include public drinking water and wastewater facilities.
- The report should provide as much specificity as possible as to the amount of fees the MPCA reasonably anticipates would or could be generated by its various fee structure proposals.

- Finally, we believe it would be helpful if the MPCA clearly identifies the existing information gaps about PFAS manufacture, importation, and use in Minnesota presently.

Thank you for the opportunity to participate in the stakeholder group and to comment on the report. We appreciate the willingness of the MPCA to work with our communities on these important issues. If you have any questions, please let me know.

Best regards,

A handwritten signature in black ink that reads "Elizabeth Wefel". The signature is written in a cursive, flowing style.

Elizabeth Wefel, Flaherty & Hood, P.A.
On behalf of the Coalition of Greater Minnesota Cities

Attachment C: Written comments from Clean Water Action

From: [Avonna Starck](#)
To: [Pestano, Paul \(MPCA\)](#)
Subject: PFAS fee work group comments
Date: Friday, January 5, 2024 4:22:54 PM

You don't often get email from astarck@cleanwater.org. [Learn why this is important](#)

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Dear Paul,

Thank you for inviting Clean Water Action to sit on the PFAS fee work group. We appreciate the consideration and the opportunity to address the requirement set by the legislature for the MPCA to establish a work group to review options for collecting a fee from manufactures of PFAS in Minnesota. The position of Clean Water Action Minnesota is:

- We support a strong fee structure related to the manufacturing, release/dumping, and use of PFAS in Minnesota because of the irrevocable damage PFAS has done to Minnesota's environment and its residents.
- All PFAS that have been tested have been linked to negative human health impacts including immune suppression, developmental delays, and cancer. It's dishonest for opponents of PFAS related fees to claim that not all PFAS are harmful. We must view all PFAS as a class of chemicals to effectively combat the danger they pose.
- Fees should be used as both a carrot and a stick. We think it's appropriate that fees act as a deterrent when it comes to the manufacturing, release/dumping, and use of PFAS. It's our hope that a strong fee structure will inspire innovation away from the production and use of PFAS and towards safer, more sustainable options. As the manufacturing, release/dumping, and use of PFAS is reduced by a business, fees should be reduced.
- Because of the prevalence of PFAS in our drinking water, fish, biosolids/sludge, breast milk/cord blood, and the products we use every day, there is a high cost of PFAS remediation the state must plan for. While the legislature did not direct the PFAS fee work group to offer commentary on the use of the fees once they are collected, at Clean Water Action, we feel it is vital that the fees collected be used to assist in covering the cost of PFAS remediation. The businesses and industries responsible for the destructive spread of PFAS must be responsible for the damage done to our residents and our economy.
- We must also note that it's difficult to determine the best fee structure for Minnesota without fulling understanding the intent of the legislature with regards to what the fees will be used for and if there's a corresponding amount the legislature is seeking to receive from these fees.

Our overall view is that fees should be related to the amount of PFAS being manufactured, released/dumped, and/or used by a business. These fees should also be ongoing for as long as the business in question is manufacturing, releasing/dumping, or using PFAS. We would also like to note that there will be a high cost to infrastructure upgrades that are needed to tackle the PFAS crisis in water. We support a consistent and dependable revenue source to accomplish these upgrades.

Thank you again. Clean Water Action is grateful for a strong partnership with the MPCA and we look forward to further collaboration.

Sincerely,

Avonna Starck
Minnesota State Director
Clean Water Action
and Clean Water Fund
301 S 4th Ave Suite 365N
Minneapolis, MN 55415

612.423.6939 (cell)
AStarck@cleanwater.org

pronouns: she/hers