



October 5, 2023

The Minnesota Chamber of Commerce (Chamber) submits these comments in response to the Minnesota Pollution Control Agency's (MPCA or Agency) request for comments on the Agency's draft Remediation Division PFAS Guidance (draft Guidance). The Chamber represents members that the draft Guidance will, or will potentially, impact.

Overview

We appreciate the opportunity to provide comments on the draft Guidance. In the draft Guidance, MPCA appropriately recognizes that the science of PFAS is rapidly evolving and will continue to do so. However, under the draft Guidance as currently drafted, industries in Minnesota will face numerous challenges when dealing with PFAS throughout the remediation process. Accordingly, this letter presents several issues that require further consideration by MPCA.

The Chamber recognizes that the draft Guidance, in conjunction with associated rules, poses the possibility of a significant impact on the economic vitality of the members subject to it. We believe that the MPCA also recognizes this concern. As such, while the Chamber appreciates that a dedicated stakeholder advisory group was formed and provided input into the draft Guidance, the Chamber urges MPCA to expand and diversify the current limited stakeholder advisory group to include broader industrial representation, to ensure participation by businesses that may potentially become enrolled in Remediation programs addressing PFAS. The Agency has recognized the benefit of considering industry's perspective by citing numerous times in the draft Guidance to information from the International Technology and Regulatory Council (ITRC). The Chamber appreciates this acknowledgement that industry information is relevant to the consideration of how PFAS remediation should be addressed. Consistent with this recognition, the Agency should engage a broader stakeholder advisory group that includes significant representation from industry sectors such as those listed in Milestone1, Action 1 of the Desktop Review which will potentially be subject to the draft Guidance proposed. Such a process would help drive consensus around key issues and help the MPCA avoid or narrow the scope of potential future challenges in implementing the draft Guidance.

Desktop Review

Beginning with the initial screening in **Milestone 1, Action 1**, the list of industries and potential sources of PFAS, given its ubiquity, is lengthy. However, the draft Guidance also describes industrial, commercial, and even domestic uses of PFAS. In light of this, it appears more challenging to screen out a single facility, or any piece of property, including residential, for past use of PFAS. This essentially will lead to the conclusion that all properties are potential PFAS sites, which will overwhelm the current regulatory systems in place. Thus, some discretion will be required by environmental professionals and MPCA staff. We request that MPCA provide more clarity on how environmental professionals and MPCA will be expected to exercise this discretion.

Ambient Conditions

The draft Guidance acknowledges throughout that PFAS are ubiquitous but are not a natural substance, and thus that background concentrations represent “ambient” conditions. **Site Investigation Goal 2, Milestone 1** calls for defining the full extent and magnitude of contamination. Given the many potential sources and likely prevalence of PFAS in industrial areas, defining full nature and extent associated with any one source will be an extremely difficult and, in many cases, unrealistic expectation. For an established facility in an industrial area, there will likely be difficulties delineating a groundwater plume, differentiating other sources, determining variability, etc. The draft Guidance does not provide a set protocol or process for determining ambient background; thus, it appears the process for establishing ambient background will be at the discretion of MPCA staff. The Chamber encourages MPCA to collaborate with a broad sector of industry partners to establish a clear, well-laid out process for ambient determination, as this will be a challenging and impactful endeavor.

Importantly, MPCA’s recently-completed white paper PFAS ambient background concentrations [May 2023] indicates the ambient background conditions of PFAS in soil, groundwater, and other media in areas that were studied. The data presented by MPCA, and other studies, are generally conducted outside of urban or industrial areas. Thus, as the draft Guidance is written, it appears that any industrial facility may bear the responsibility to determine ambient background in its area. For example, we feel confident that shallow groundwater throughout the Twin Cities metropolitan area is impacted by PFAS beyond what is described in the white paper.

Page 43 of the draft Guidance states that ambient background concentrations in soil are not expected to be present at concentrations that pose a risk to receptors. However, the health-based value (HBV) for PFOS is set at such a low level that any PFOS in soil, even if below detection limits, would be likely to infiltrate to groundwater and migrate to a surface water at a concentration exceeding the HBV of 0.05 ppt. This further highlights the issue of the risk-based (RBV) set for PFOS. Is this value supported by peer-reviewed literature and appropriate scientific review? This extremely low level is more than an order of magnitude below current commercially available laboratory method detection limits and reporting limits. The Chamber urges MPCA to provide more information on this issue.

Risk Assessment

The concept of a risk assessment is raised several times within the draft Guidance. Remediation projects often do not progress to a risk assessment, as established screening values are utilized. However, using established screening values is not currently possible for PFAS, as screening values are rapidly changing. In general, the draft Guidance understates the complexity and magnitude of trying to complete a PFAS risk assessment at the current time. The toxicology of PFAS is not settled, with much uncertainty for individual PFAS compounds, and for PFAS as a whole.

Page 18 of the draft Guidance states that “technical support/guidance documents available for each set of values should be reviewed prior to using the values during risk assessments.” This appears to put the onus on

the interested parties to determine if the technical risk basis used in setting the RBVs is appropriate. Also, as previously stated, the toxicology of PFAS is an evolving science. Will MPCA staff be allowed to deviate from RBVs to develop site-specific targets?

Page 24 describes a process for evaluating individual and cumulative risk. With the RBVs being set at extreme low levels (e.g., PFOS at 0.05 ppt), how does MPCA intend to address non-detect sample results? Comparison to the MDL or even ½ the MDL will indicate an excessive risk for this scenario.

The draft Guidance states that RBVs should not be interpreted as default cleanup values; however, in the absence of a better definition, we are concerned this will become the standard and expectation of MPCA staff. Clearly, the draft Guidance should provide more detail and definition of how cleanup values will be determined.

As initially stated, the risk assessment process for PFAS will be immensely challenging, and the draft Guidance appears to put an unrealistic burden on industry and MPCA technical staff. The Chamber urges the Agency to work with a broad coalition that includes greater industry representation to consider these issues and to expand the draft Guidance to address these important questions.

Specific Comments

- Figure 1, Page 17. The use and disposal of consumer goods should also be listed as a source of PFAS.

Summary

The Chamber appreciates the opportunity to provide comments on this draft Guidance. Overall, PFAS presents unique remediation challenges. A higher level of clarity throughout this draft Guidance, as well as MPCA's willingness to work with a broader industry sectors, will yield the best solutions regarding PFAS remediation. The Chamber and its members are available for further consultation on this issue. Given that industries in Minnesota will face numerous challenges when dealing with PFAS throughout the remediation process, this consultative process will most likely lead to a successful approach.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tony Kwilas". The signature is fluid and cursive, with a long horizontal stroke at the end.

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