



ISRI

New England

What Scrap Recyclers Need to Know About PFAS

Monitoring and enforcement efforts targeting per- and polyfluoroalkyl substances (“PFAS”) have been mounting in New England at the state level over the past few years, but the regulatory landscape is about to get super-charged at the federal level. The U.S. EPA is on the verge of listing the two most prominent PFAS compounds – PFOS and PFOA – as hazardous substances under the Superfund law in 2023. This action is just one prong of EPA’s “PFAS Strategic Roadmap” – a comprehensive multi-year agenda to roll out PFAS regulations across federal environmental programs.

Even though commercial production of PFOS and PFOA has been banned in the U.S. since 2006, scrap recyclers still need to be vigilant for legacy materials or foreign products that are brought to their yards. In addition, PFAS are a broad class of compounds, and chemical manufacturers have been rolling out similar synthetic compounds that can mirror the water-resistant properties that made PFOS and PFOA so useful in a broad array of consumer products and technical applications. Many states regulate more PFAS compounds than just PFOS and PFOA, and the U.S. EPA is forecasting it may do the same.

Some items of concern for scrap recyclers include:

- **Fire Protection and Fire Suppression Equipment.** Scrap operators may have on-site safety equipment, including aqueous film-forming foams (“AFFF”). These products are excellent for smothering fires by denying them oxygen, but they likely contain PFOS or a related compound. The residual foams can cause a release of PFAS to the yard that could cause long-term detections, as these “forever” chemicals have a very long half-life. Massachusetts recently conducted a buyback program with municipal fire departments to get their stocks of PFOS-containing AFFF out of active use. However, some scrap operators may still have older fire extinguishers that contain PFOS.
- **Office Materials and Maintenance Products.** A host of other common materials present in a scrap metal yard or accompanying building office could contain PFAS. Those materials include fabrics treated with stain-repellent material, furniture, carpeting, paints, polishes, and cleaning products. Facility owners should take great care in handling and disposing of these items because of the risk of their containing PFAS.

- **Stormwater Management and Industrial Discharges.**
While PFAS are not officially regulated by the EPA's NPDES and Multi-Sector General Permit program (yet), EPA is using its regulatory authority to advance PFAS monitoring and testing requirements. Thus, even though no official regulatory limits have been established, we can see a day when EPA may try to impose benchmark standards for PFAS.
- **General Real Estate and Corporate Concerns.**
Environmental compliance issues are often central components of any merger activity, property sales, or acquisitions. Like other businesses, scrap recyclers need to stay aware of the evolving PFAS regulatory landscape in the New England states and nationally, as it could impact potential targets or real estate investments. Concerns could also include a target's historic environmental practices and ties to any legacy sites, including any disposal sites, that might now be re-evaluated for PFAS contamination.

Stormwater Update

Living with the New Multi-Sector General Permit

We are now over a year into the operation of the new Multi-Sector General Permit, which went into effect in mid-2021. Scrap recyclers, no doubt, are in the process of adjusting to some of the new requirements for managing their stormwater discharges. The new MSGP contains more robust requirements for the Storm Water Pollution Prevention Plan and new contaminant benchmarks and sampling requirements. The Permit also contains more detailed and escalating requirements when benchmarks are exceeded, known as Additional Improvement Measures. One of the major improvements for scrap recyclers is that iron is no longer a benchmark contaminant.

It is important for New England scrap recyclers to understand that after a slowdown in enforcement activity (presumably to allow permittees to adjust to the new permit), the regulators are back scrutinizing compliance. In Massachusetts, the Attorney General's office recently initiated several new enforcement cases against scrap recyclers and other industries. The AG's office has many

tools to monitor compliance, perhaps more sophisticated than citizen groups who tended to be the leading stormwater enforcement advocates under the old permit. Remember that the EPA's MSGP database, which collects the monitoring results self-reported by permit holders, is available to the government and the public. So, here's an important head's up: Compliance is as important as ever, and the regulators and the advocacy groups are watching.

Update

Catalytic Converter Theft legislation

In our last newsletter, we reported on recent efforts in Connecticut (successful) and Massachusetts (unsuccessful) to pass catalytic converter theft bills. Public and industry concern over catalytic converter theft continues to intensify, fueled by many dramatic and high-profile theft cases. In response to over 100 converter thefts this year in Watertown, MA, the Watertown Police Department initiated a program of stenciling "Property of Watertown Police" on any resident's converter in an attempt to defer theft. The Boston media widely covered this program last month. While the efforts to pass legislation in the last legislative session in Massachusetts were not successful, we expect new bills to be introduced in the next session starting in January or possibly even this month before the start of the formal session. It is unclear whether any legislation will focus on catalytic converters or be part of a broader bill addressing metal theft more generally. Massachusetts is one of the few states that does not have a metal theft law. The ISRI New England Board will be watching developments closely and will engage with the legislature and inform the Chapter membership if any bill starts to move forward.

Special thanks to guest authors of "What You Need to Know About PFAS"

Peter Durning

Partner | Environmental
pdurning@burnslev.com | 617.345.3269

Peter Vetere

Associate | Environmental
pvetere@burnslev.com | 617.345.3296



David P. Rosenblatt

Co-Managing Partner | Real Estate, Environmental
drosenblatt@burnslev.com | 617.345.3684