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Wastewater Administrators Conference (WWAdCon)

Pollutant Reductions Plans: A Useful Tool To Deal With PFAS

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Pollutant Reduction Plan Basics

A POTW may require a user to develop, submit for approval, and implement a Pollutant Reduction Plan (“PRP”) for any pollutant that may cause interference or pass through; adversely impact the POTW, its processes or beneficial use of biosolids; cause noncompliance with applicable federal or state laws or regulations; cause the POTW to violate its NPDES permit, etc.

The PRP may be imposed as a user permit condition or through an order or consent agreement.

The PRP should state the desired goal (e.g., maintain the amount of a pollutant at or below the applicable discharge limits or levels).

The PRP should include any requirements and conditions to ensure that the user’s pollutant reduction efforts will be effective in achieving the goal: E.g., user source identification; best management practices; schedules of compliance; monitoring, sampling and analysis; reporting; treatment for removal of the pollutant from discharges; written procedures for disposal of contaminated wastes/wastewater; employee training requirements regarding pollutant related issues; and elimination of purchased materials containing the pollutant.

The PRP should describe the control strategy designed to proceed toward achievement of the specified goal, including: (1) Periodic monitoring for the pollutant in the user’s discharge and of the potential sources of the pollutant in the discharge. (2) The user’s commitment to implement reasonable control measures and/or best management practices if sources of the pollutant are discovered. Factors to be considered by POTW include: significance of sources; economic considerations (though cost-effectiveness should not control); technical and treatability considerations; etc. (3) An annual status report including following minimum information: all RP monitoring results for previous year; a list of all potential sources of the pollutant in the user’s discharge; and a summary of all actions taken by the user to reduce or eliminate the identified sources of the pollutant or substance.

An approved PRP may be modified by POTW at any time; failure to submit an approvable PRP within the specified deadlines or to fully and timely comply with any condition or requirement of an approved PRP is a violation of the SUO subject to enforcement.

Holding enforcement action in abeyance: Even if user’s discharge continues to exceed applicable limits, appropriately drafted PRP provisions can authorize the POTW in its sole discretion to nevertheless allow that discharge to continue and to hold any enforcement action regarding the prohibited discharge in abeyance, provided: The user is in full compliance with all of the requirements and conditions for the PRP; and the user’s discharge does not cause interference or pass through; adversely impact the POTW, its processes, or beneficial use of biosolids; cause noncompliance with applicable federal or state laws or regulations; cause the POTW to violate its NPDES permit, or otherwise fail to meet the purposes and objectives of the SUO.

PRP provisions should expressly state that POTW has the unconditional authority to prohibit and terminate any non-compliant discharge at any time and without prior notice, and to take any enforcement action in response thereto, including any enforcement action that had previously been held in abeyance.

POTW should seek advance MDEQ approval of PRP provisions regarding holding enforcement in abeyance.

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GEORGE DAVIS

George is a partner at Davis & Davis Law Offices PLC in Grand Rapids, Michigan. For the past 30 years, he has specialized in municipal and environmental law matters on behalf of public clients throughout the State, with particular emphasis on Clean Water Act, NPDES, POTW and industrial pretreatment program (IPP) issues. He also has significant experience involving zoning, land use, and municipal civil infractions. Prior to joining Davis & Davis, George was a partner with Varnum, Riddering, Schmidt & Howlett LLP where he practiced municipal and environmental law.

George's statewide recognized expertise includes the review and custom drafting of local ordinances (including sewer use and storm water ordinances, IPP regulations, and municipal civil infraction provisions, as well as other types of regulatory ordinances and zoning regulations), drafting and negotiating interjurisdictional wastewater treatment service agreements, and assisting with IPP administration and enforcement. He often serves as special legal counsel to local governments for those types of projects, coordinating his efforts with a municipality's existing legal counsel as-needed.

George received his B.A. from the University of Michigan, his J.D. from McGeorge School of Law, University of the Pacific; an LL.M. in Land Use and Environmental Law, *summa cum laude*, from The National Law Center, George Washington University; a Masters degree in Urban Planning from the University of Michigan; and he studied in the Ph.D. Program in Urban Technological, and Environmental Planning at the University of Michigan. He is a member of the State Bars of Michigan and California.

George is currently serving as Secretary of the MWEA Board of Directors. He is a past chair of the MWEA IPP Committee, serves as Board liaison to the IPP and Government Affairs Committee. George also has written the "Clean Water Law Alert," for the Michigan Water Environment Association's "Matters" newsletter.

In 1994, George was awarded the Michigan Municipal League's Distinguished Achievement Award for his work regarding municipal civil infractions. In 2000, he was awarded the MWEA Year 2000 Excellence in Service Award for his work in the areas of local, state and federal clean water laws and regulations. In 2001, he was inducted into the 5S. Other MWEA awards include William B. Shephard Award (2016) and Honorary Member (2017).

George served on the Civil Infractions Committee of the Public Corporation Law Section of the State Bar of Michigan and helped draft the original bills leading to enactment of the state legislation authorizing enforcement of local ordinance violations as municipal civil infractions. He has served as chairperson of the Publications Committee of the Public Corporation Law Section, and prior to that was chairperson of the Zoning and Land Use Committee, also of the Public Corporation Law Section.

Mr. Davis has written and published extensively on the topic of drafting, enacting and maintaining local ordinances, including, most recently, a chapter in the annually updated desk book entitled "Michigan Municipal Law" (2012) published by the Institute of Continuing Legal Education (ICLE) (State Bar of Michigan).

George served as a member of the MDEQ Phase II Storm Water Advisory Team formed to assist the State in its approach to permitting municipalities under the State's Phase II Water Program. He also served as a member of the MDEQ's Water Quality Trading Workgroup established by the Surface Water Quality Division to provide MDEQ with recommendations and draft rules for a voluntary effluent trading program.