Southeastern Region Update

November 11, 2016
REGULATORY PROGRAM
RULES & REGULATIONS

November 10, 2016
Michigan Metalfinishing Association

GLWA
Great Lakes Water Authority
Creation of the GLWA, has sent us on a journey……..

The OLD DWSD was separated into a Wholesale entity (Great Lakes Water Authority) and a Retail entity (DWSD).

The NPDES Permit MI0022802 was modified to include both entities to share responsibilities.

The NPDES Permit is scheduled for renewal on October 1, 2017.
The Journey: Become an Independent Control Authority

Legal Authority to carry out NPDES Permit requirements for an Industrial Pretreatment Program (IPP)

Opportunity to revisit former tools, i.e., Ordinance, Surcharge Rules, Hauled Waste Rules, Groundwater Program, and create something new.

Purpose: Create and obtain approval for a GLWA – Industrial Pretreatment Program from the Michigan DEQ
Why is a GLWA – IWC Program Needed?
### Who are Today’s Users?

<table>
<thead>
<tr>
<th>Program</th>
<th>Total</th>
<th>Category</th>
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<tbody>
<tr>
<td>Industrial Pretreatment Program</td>
<td></td>
<td></td>
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<tr>
<td>Federal Categorical Users</td>
<td>155</td>
<td>108 MetalFinishing/Electroplating</td>
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<tr>
<td>Local Users</td>
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<td>Sub-Total =</td>
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<td>Surcharge Program</td>
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<td>Septage Waste Haulers</td>
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<tr>
<td>Groundwater/Special Discharge</td>
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<td></td>
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<tr>
<td>Sub-Total =</td>
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<tr>
<td>Minor Users</td>
<td>14,622</td>
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RULES OVERVIEW
Chapter I: Definitions

Create a Base Document for all definitions used in all Regulatory Programs and:

1. Have one place where terms and definitions can be found;
2. Remove terms no longer in use, or whose meanings have evolved;
3. Standardize the use of terms for all rules;
4. Minimize duplication;
5. Add new terms
Chapter II: Industrial Pretreatment Program

Article I: Control Authority Responsibilities
• Place program responsibilities on Industrial Waste Control Manager

Article II: General Sewer Use Requirements
• Distinguish between lawful and unlawful discharges
• General Pollutant Prohibitions
  – Addition of Lower Explosive Limit
  – Addition of Oxygen demanding releases causing interference
• Specific Pollutant Discharge Limitations
  – Adoption of re-evaluated Pollutants (Compatibles, Metals, Organic)
Chapter II: Industrial Pretreatment Program

Article III: Pretreatment of Wastewater

- Duty to provide treatment facilities to meet Pretreatment Standards and requirements;
- Pretreatment Protection requirements
  - Flammable & Combustible Substances (Gas monitoring)
  - pH Monitoring

Article IV: Classification of Wastewater Sources

- Identification of Source Classes (facilitate permit process)
- Grease, Oil and Solid Interceptors
- General Permit Authority
Chapter II: Industrial Pretreatment Program

Article V: Reporting and Notification Requirements
  • Hazardous Waste Notification (403.12p)
  • Centralized Waste Treatment Facilities – Validation of Treatment Processes

Article VI: Inspection & Monitoring Requirements
  • Sampling Plan Requirement
  • Flow-proportional Sampling
  • Duty to keep sampling facilities clean

Article VII: Wastewater Discharge Permits & Control Mechanisms
  • Duty to apply (BMR or Permit or Authorization generally)
  • Permit Modifications, Re-application Requirements
Chapter II: Industrial Pretreatment Program

Article VIII: Significant Industrial User Requests

• Sampling Waivers
• Reporting Frequency
• Electronic reporting

Article IX: Public Information & Confidential Information

• Updated to meet current state law

Article X: Enforcement

• Enforcement Response Guide & Good Faith Test
• Citations & Fee Table
• Criminal Actions – Updated
• Supplemental Enforcement Actions
Chapter II: Industrial Pretreatment Program

Article XI: Affirmative Defenses
Article XII: Publication – Significant Noncompliance
Article XIII: Fees & Charges

Article XIV: Appeal Procedures
  • Reconsideration
  • Appeal to Board (Using ALJ)
Chapter III: Surcharge Program

Streamlined previous program rules.

All Commercial and Industrial Users assigned (i) existing Surcharge Strength or (ii) Domestic Strength.

Methods for Establishing Surcharge Strength:

1. Historical Data (12-month period);
2. Actual Testing – Sampling Period;
3. Table of Assigned Averages based on SIC, NAICS or Description;
4. GLWA Test Data – Sampling Period;
5. User may challenge forgoing by performing Actual Testing (Step #2)
Chapter IV: Septage and Hauled Wastes

Streamlined previous program rules.

Authorizations granted for:
  1. Septage Waste Haulers
  2. Recreational Vehicles and Portable Toilets

Prohibition of following waste sources:
  1. Grease Trap Wastes
  2. Industrial and Commercial Wastes
  3. Municipal Sludge
  4. Collection System Solids and Cleanings
Chapter V: Revenues Supporting Regulatory Programs

Authorizes GLWA Board to meet costs of Regulatory Program Operational costs through fees and charges

Industrial Waste Control Charges

Pollutant Surcharges

Other Fees
Chapter VI: Regulatory Flow-Metering

GLWA-IWC Requires Reliable and Accurate Flow Information to:
• Process Wastewater Discharge Permits for Users
• Determine Pollutant Loading
• Perform Flow-Proportional Sampling

Retail Billing is Local Issue for Each GLWA member community

Generally, GLWA will recognize Flow-Measurement methods Accepted by a GLWA Member Community if Based on Calibrated/Validated Measurement Methods
• No-preclusion to sub-metering
• Meets Specific Requirements for Flow-proportional Sampling
Chapter VII: Environmental Remediation, Groundwater, Occasional and Special Wastes

Defined prior mix of rules and procedures authorized by law.

Prohibition against wastes outside of jurisdictional area of GLWA

Recognize ability to create special limits, use permits, and enforce consistent with IPP Authority
Chapter VIII: Administrative Appeal Procedures

Two-step appeal process available for administratively appealing decision, action, determination, etc. of GLWA-IWC:

1. Reconsideration: Appeal to GLWA-IWC Manager for written response to issue or adverse decision;
2. Appeal to Board (w/ALJ hearing
Process & Schedule

Public Comment process opened on October 26, 2016, and all written public comments must be received on or before 11:59 pm, November 23, 2016.

Email: iwc@glwater.org

US Mail: 303 S. Livernois, Detroit, MI 48209
The Journey’s End?
QUESTIONS?
Update on Air Issues Effecting Southeast Michigan and Surface Finishers

Jeff Korniski | DEQ Assistant District Supervisor, Air Quality Division
Tools Available for Companies to Grow

Michael Forsyth | Director of Small Business | Detroit Economic Growth Corporation
Overview

• City of Detroit – Income Tax
• Appeals Process
• Surface Finishing as a Service
CITY OF DETROIT – INCOME TAX
Income Tax

- City Income Tax Act
  - Municipalities have the authority to assess income taxes
  - MCL 141.501 et seq.
  - City is only permitted to impose an excise tax levied on or measured by income by adopting the Uniform City Income Tax Ordinance.
City of Detroit

• Detroit has adopted the Uniform City Income Tax Ordinance
  – Along with 21 other Michigan cities

• Detroit has a flat rate income tax levied on both corporations and individuals.
  – 2.4% resident individuals
  – 1.2% non-resident individuals
  – 2.0% businesses
Audits and Assessments

• Audits
  – City of Detroit has recently begun conducting income tax audits on businesses located in Detroit
  – Bolstered the audit department

Assessments
  – May be issued as a result of an audit
APPEALS PROCESS – CITY OF DETROIT
General Overview

• Final Assessment
  – Income Tax Board of Review
  – Michigan Tax Tribunal
  – Michigan Court of Appeal
  – Michigan Supreme Court
  • Application for leave to appeal must be granted
Income Tax Board of Review

• Appeal must be filed within 30 days of city actions.

• City actions:
  – Final Assessments
  – Denials of Claim for Refund (in whole or in part)
  – Decisions, orders or special rulings by the city’s tax administrator

• Board of Review must grant the taxpayer hearing

• Board of Review may affirm, reverse or modify the action that was appealed.
Income Tax Board of Review

• How do we get there?
  – Detroit ordinance only calls for an appeal to the board of review, Michigan Tax Tribunal and Michigan Court of Appeals
Income Tax Board of Review

• How do we get there?
  – In practice:
    • Intent to Assess
    • Contact Auditor re: assessment
    • Talk to Audit Supervisor
    • Informal hearing with Income Tax Administrator
      – Must file within 30 days after receipt of Notice of Proposed Assessment
    • Final Assessment
Income Tax Board of Review

- Appeal must be filed within 30 days of city actions.
- Board of Review is comprised of 3 individuals:
  - City residents who are not city officials or employees.
  - No requirement that they have any tax expertise or knowledge.
- Hearing
- Issue Decision
Michigan Tax Tribunal

• Appeal from Income Tax Board of Review.

• Appeal to the MTT must be filed within 35 days of the BOR’s decision.

• Follows the MTT rules and MCR.
Michigan Court of Appeals

• May appeal the MTT’s decision to the Michigan Court of Appeals
  – Appeals must be made within 21 days of the MTT decision.
  – Automatic right to appeal.
  – Follows MCR and is based on the record created at the MTT.
Michigan Supreme Court

• May appeal the Michigan Court of Appeals’ decision to the Michigan Supreme Court
  – Appeals must be made within 42 days of the Court of Appeals’ decision.
  – You must be granted leave to appeal by the Michigan Supreme Court.
SURFACE FINISHING AS A SERVICE
Surface Finishing as a Service

• How do you view your business?
  – Sale of tangible personal property
  – Sale of a service

• City of Detroit
  – Sale of a service
    • Example
Surface Finishing as a Service

• Issues with argument:
  – No Michigan authority related to income tax cases for sale of service v. TPP
    • Utilize sales tax case law.

• Removes this from the “manufacturing process”
Surface Finishing as a Service

• Detroit City Income Tax - Apportionment
  – 3 factors
    • Property
    • Payroll
    • Sales
Surface Finishing as a Service

• Example:
  – 3 factors
    • Property – 100% in Detroit
    • Payroll – 100% in Detroit
    • Sales
      – As Reported – sale of TPP apportioned based on ship to address
      – As Assessed – sale of service performed 100% within Detroit – no apportionment

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Surface Finishing as a Service

• Example cont.
  – Sales
    • As Reported – sale of TPP apportioned based on ship to address
    • As Assessed – sale of service performed 100% within Detroit – no apportionment
    • Argument – if sale of service, then apportioned based on where the benefit was received (i.e., where the customer is located).
Questions

• Questions...
Death by Theft: How to Protect Your Company from Sabotage and Unfair Competition

Bernie Fuhs  313.225.7044  fuhs@butzel.com
Presentation Highlights

- Update on proposed legislation to ban non-competes (Michigan and National legislation)
- Update on new Federal legislation pertaining to Trade Secrets
- How to save $$ and protect your business
- How to prevent theft of YOUR ideas and relationships
  - Using restrictive agreements (non-compete, non-solicit, non-disclosure)
- Action plan to keep the genie in the bottle
- Hiring the competition – Do’s and Don’ts
Freaky Fast, Freaky Greedy?

“Forget the contract, we promise not to enforce them”
Proposed National Legislation to Ban Non-Competes for Low-Wage Workers

- Mobility and Opportunity for Vulnerable Employees (MOVE) Act – June 3, 2015
- Seeks to ban non-competes for employees making less than $15 an hour, or the minimum wage in the employee's municipality
- Require employers to disclose non-competes to prospective employees
- Would be first federal law related to non-competes
Passed Legislation
Proposed State Legislation
Proposed State Legislation

- Connecticut (vetoed in 2013)
- Maryland
- Massachusetts
- Michigan  (Butzel helped stop)
- Minnesota
- Missouri
- New York
- Ohio
- Rhode Island
- Washington
- West Virginia
HOW TO PROTECT YOUR IDEAS AND RELATIONSHIPS
“It has become appallingly obvious that our technology has exceeded our humanity.”
~Albert Einstein

- 8 GB thumb drive = 10 CD-roms or 160,000 Word documents
- Today, they cost $2.99
- Nearly $300 billion in annual losses due to trade secret misappropriation each year, which is comparable to all U.S. exports to Asia annually.
- 80-90% - someone you know!
STEP ONE
Identify What You Have to Protect
Examples

• Customer lists and information
• Engineering designs, processes, techniques, and methods
• Price lists, costs, margins, mark-ups, metrics
• Internal weaknesses and R&D
• Marketing and strategic plans
The Relationships = The Key to Success

• Customer
• Client
• Vendor
• Supplier
• Employee
• Consultant/contractor
Life is great now...
...but prepare for the worst
STEP TWO
Protective Measures Available
Restrictive Covenants – Don’t Be A Hulk

• Non-Competition
  – Most effective protection
  – Subject to most scrutiny

• Non-Solicitation
  – Typically easier to enforce than non-compete
  – More geared towards protecting relationships

• Confidentiality/Non-Disclosure
  – Generally easily enforceable
  – Less effective with trade-secret protection
Save $$$$ - Think LONG TERM

• “Money is tight, let’s just wait…”

• $1-2k < LOSS OF ENTIRE BUSINESS

• Deterrent Effect

• Foundation for future legal success (with significant financial savings)
Practical Issues in Today’s Job Market

• Job hopping is the “New Normal”
  – The average worker stays for only 2-4 years

• More competition and lower barriers to entry for new competitors

• Increased leverage for potential employees

• Electronics make data extremely easy to steal

• Jimmy John’s sets a bad example.
Strategies to Deal with Practical Issues

- The “All for One, and One for All” approach
  - “We all sign them,” including management
  - Putting “the team” first

- Narrowly tailor the agreements
  - Duration
  - Geography (limited to customers and/or areas that person is responsible for and/or exposed)
  - Scope of activity (limited to type of duties, areas of responsibility, etc.)

- Communicate openly and honestly while the relationship is good

- Additional consideration or incentives
Trade Secrets

• Most every state has already adopted the Uniform Trade Secrets Act ("UTSA")

• But every state adopted its own versions with its own quirks, and every state’s courts had interpreted their separate acts in different ways

• Purely state court issues
The Defend Trade Secrets Act of 2016

- Nearly Unanimously Passed

- The Sense of Congress:
  “Trade secret theft occurs domestically and around the world, and that it is harmful to United States companies that own and depend on trade secrets.”
If It’s Not Kept Confidential, Then It’s Not Confidential!

• Company brochures, product guides, and websites should not disclose trade secrets!

• What information do you convey to your customers?

• Severance agreements can sever your restrictive covenants

• Enforcement should be consistent and uniform

• Resolution of prior non-compete/non-disclosure litigation

• How many employees sign/do not sign similar agreements
What Can You Recover?

• Remedies:
  – Damages for “actual loss”
  – “Any unjust enrichment” that the misappropriating party benefited
  – In “exceptional circumstances” where injunctive relief would be “inequitable,” a court may order a reasonable royalty to be paid to the plaintiff
Going Federal

• Federal Cause of Action
  – Access to Federal Courts
  – Easier prosecution and enforcement nationwide
  – Uniform case law throughout the country (eventually!)
What is New With the Defend Trade Secrets Act of 2016?

- Ex Parte Siezure

  - “Extraordinary Circumstances”
  - Where an Injunction is not likely to be followed
  - Believed to only be granted in extremely rare circumstances
What You Need To Do Immediately!

• Whistleblower Protection

• Companies wishing to utilize all of the protections of the DTSA should update their confidentiality agreements with employees conducting work in the U.S. immediately!
Step Three
Immediate Actions/Remedies When Your Assets Are Threatened

The Clock is Ticking
Your Assets Have Been Taken or Are at Risk – Now What?

- Move quickly and aggressively (where appropriate)
- Get your experts involved immediately
- Preserve the evidence (electronic evidence is crucial – get it in the hands of the pros, not your IT department)
Hiring the Competition – Be Careful!!

• Defending a lawsuit - $25,000 - $500,000

• Adverse effect on day-to-day operations

• Adverse effect on reputation and relationships with customers/vendors
Hiring Do’s

• Interview – ASK if he or she has a restrictive agreement with previous employer

• Have your attorney review/analyze restrictive agreement

• Analyze litigious nature of previous employer
Hiring Do’s

• Balance risks (e.g. defending a lawsuit) vs. rewards (how much value does this person bring?)

• “White hat” language in YOUR employment agreement