



Pennsylvania's Environmental Quality Board Proposes Drinking Water Regulations for Certain PFAS and Opens Public Comment Period

On February 26, 2022, the Environmental Quality Board (EQB) published a proposed rule to amend 25 Pa. Code Ch. 109 (Safe Drinking Water) to regulate certain per- and polyfluoroalkyl substances (PFAS). [52 Pa. B. 1245](#). Specifically, the rule proposes setting a maximum contaminant level goal (MCLG) and maximum contaminant level (MCL) for both perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). PFOA and PFOS are two of the most common PFAS, a “family” of thousands of synthetic chemicals that have been used in consumer, commercial, and industrial applications since the 1940s. PFAS have been used to manufacture water-, stain-, and heat-resistant products and have been a common component in some aqueous film forming foams (AFFF) routinely used for firefighting. PFAS have been found in various environmental media like groundwater (including drinking water), plants, animals, and in humans. Because PFAS do not break down naturally in the environment, they have been called “forever chemicals.” Evidence suggests that PFAS exposure can lead to adverse health effects.

The proposed rule sets MCLGs of 8 parts per trillion (ppt) for PFOA and 14 ppt for PFOS and MCLs of 14 ppt for PFOA and 18 ppt for PFOS. The MCLGs are nonenforceable levels developed solely from health effects data and act as the starting point for determining the MCLs. To develop the enforceable MCLs, the Pennsylvania Department of Environmental Protection (PADEP) considered factors beyond health effects data, including technical limitations and costs that may affect the feasibility of achieving the MCLGs. As part of the rulemaking process, PADEP also considered PFAS other than PFOA and PFOS (i.e., PFNA, PFHxS, PFHpA, PFBS, and HFPO-DA), but proposed not establishing MCLs for these substances at this time, primarily due to a lack of occurrence data and incomplete cost/benefit data and analysis. If finalized, the PFOA and PFOS MCLs will apply to all 3,117 community, nontransient, noncommunity, bottled, vended, retail and bulk water systems in the Commonwealth and may affect other programs (e.g., if they are adopted as Act 2 groundwater cleanup standards).

The proposed rule represents a first for the Commonwealth. PADEP has never before developed and promulgated a state-level MCL for any contaminant, instead relying on federal standards and/or guidance. On PFAS, the federal government has moved relatively slowly. Although the U.S. Environmental Protection Agency (EPA) is currently developing drinking water regulations for PFOA and PFOS, the agency's only current drinking water guidance is its 2016 Health Advisory Level (HAL) of 70 ppt for PFOA and PFOS combined, which critics have said is outdated, too high to be protective, and should be revised. EPA's HAL is intended to identify the concentration of PFOA/PFOS in drinking water at or below which adverse health effects are not expected to occur over a lifetime of exposure but is not an enforceable standard or regulation. In Pennsylvania, however, public water systems that detect exceedances of the HAL are required to take certain actions depending on the circumstances, e.g., monitoring, notifying consumers, and installing treatment technologies.

In the absence of federal action, many states over the last few years – Pennsylvania

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among them – have moved on their own to investigate PFAS and develop their own regulations. In 2018, Governor Tom Wolf signed Executive Order 2018-08 creating the PFAS Action Team, a multi-agency group tasked with developing a comprehensive strategy to identify, research, and eliminate sources of PFAS contamination. In July 2019, PADEP began a sampling effort targeted at public drinking water systems within a half mile of potential PFAS sources like manufacturing, fire training, and military facilities. That effort concluded in March 2021 and the final results were posted to [PADEP's PFAS webpage](#) in June 2021. PADEP's sampling effort, among other things, informed the proposed rulemaking. Other states have already established MCLs for one or more PFAS, including Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Vermont. Pennsylvania's proposed rule's MCLs for PFOA and PFOS fall within the same range as their counterparts established in other states (which are all significantly lower than EPA's HAI).

At the federal level, EPA's current effort to develop drinking water regulations for PFOA and PFOS is one of multiple goals and strategies summarized in EPA's "PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024" (Roadmap), released on October 18, 2021. The Roadmap highlights EPA's "whole-of-agency" approach to addressing PFAS over the next few years, focused through three central directives: (1) Research; (2) Restrict; and (3) Remediate. Through these, EPA intends to address the lifecycle of PFAS. Besides establishing PFOA and PFOS drinking water regulations (which EPA expects to propose in fall 2022, with a final rule in fall 2023), EPA intends to designate PFOA and PFOS as hazardous substances under CERCLA and build the technical foundation to address PFAS in air emissions. The Roadmap and related materials are available on EPA's website [here](#). Babst Calland reviewed the Roadmap and highlighted many of EPA's goals in an October 2021 Environmental Alert available [here](#).

Despite EPA's recent actions and current goals, Pennsylvania's move to regulate PFOA and PFOS in drinking water makes it one of a handful of states outpacing the federal government's efforts. The public comment period for Pennsylvania's proposed rule is currently open and interested parties may submit comments through April 27, 2022 using any of the methods listed in PADEP's [announcement](#) of the proposed rule. The EQB will also be holding five virtual public hearings from March 21-25, 2022 to accept public comments on the proposed rule. More information about how to participate in these meetings is posted on PADEP's website [here](#).

Babst Calland attorneys will continue to track PFAS developments in Pennsylvania and are available to assist you with PFAS-related matters (including preparing and submitting comments to Pennsylvania's proposed rule). For more information on this development and other remediation matters, please contact Matthew C. Wood at (412) 394-6583 or mwood@babstcalland.com, Mackenzie M. Moyer at (412) 394-6578 or mmoyer@babstcalland.com, or any of our other [environmental attorneys](#).

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