EPA RELEASES PROPOSED PFAS DRINKING WATER STANDARDS AND EXPANDS LIST OF REGULATED SUBSTANCES

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On Tuesday, 14 March 2023, the U.S. Environmental Protection Agency (EPA) announced its new proposed National Primary Drinking Water Regulations (NPDWR) for perfluoroalkyl and polyfluoroalkyl substances (PFAS). If adopted, this rule would have far-reaching impacts for states and public water utilities, with the potential for broader industry impacts in the future. Some groups have expressed apprehension regarding the cost of complying with the standards, even suggesting costs will quickly exceed the EPA's current estimate of US$772 million annually.[1]

PFAS are a class of fluorinated chemicals used in various consumer products and are commonly known as “forever chemicals” due to their high resistance to degradation. The EPA has prioritized providing a national drinking water standard for PFAS since the release of its “PFAS Strategic Roadmap” in October 2021. In November 2022, the EPA published a “Year of Progress” update on the development of the roadmap, listing the proposal for a PFAS drinking water standard as a top priority for 2023.

Over the last several years, the EPA has been gathering data to determine risks associated with PFAS exposure. In November 2021, the EPA submitted draft scientific documents to the Science Advisory Board, identifying negative health effects at lower levels than previously understood from two types of PFAS: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).[2] A finding that these contaminants may have an adverse impact on human health triggered the Safe Drinking Water Act requirement for the EPA to publish a NPDWR.[3]

The newly proposed NPDWR is consistent with the EPA's Fourth Regulatory Determination, issued on 3 March 2021, requiring the EPA to regulate PFOA and PFOS in drinking water.[4] However, the proposal issued this week goes beyond those substances and encompasses four additional PFAS: perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX Chemicals), perfluorohexane sulfonic acid (PFHxS), and perfluorobutane sulfonic acid (PFBS).[5] The American Chemistry Council issued a statement critiquing this expansion, noting that the EPA has not yet properly evaluated two of these compounds.[6]

The proposed standards impose a “maximum contaminant level goal” (MCLG) that sets a contaminant threshold level with no known health risk and a “maximum contaminant level” (MCL) that sets a more workable standard that water utilities may not exceed. In selecting a standard, the EPA must consider at what levels the contaminants can accurately be detected using current technology. This consideration is especially important for PFAS because the current EPA health advisory limit for PFOA is set at an undetectable limit (0.004 parts per trillion).

The newly proposed MCLGs for PFOA and PFOS are set at zero, meaning there is no safe level of the contaminant in drinking water. In the past, when there is no safe level of the contaminant or no feasible way to detect a safe level, the EPA has imposed a treatment technique to filter the water instead of setting a MCLG and MCL level. Treatment techniques can be costly and become obsolete as new contaminants are discovered; however, setting a workable MCLG and MCL comes with its own difficulties. A level set under the detectable limit would be unworkable because water utilities cannot feasibly test for the contaminant at the required level. At the same time, setting a MCLG or MCL at a detectable level for PFOA would exceed what the EPA has already determined poses a health risk.

The EPA set the required MCL for PFOA and PFOS at 4.0 parts per trillion. For PFOA, this limit is 1,000 times higher than the EPA's current health advisory. However, it is set at a detectable limit and thus water utilities will be able to monitor for it. The EPA is regulating the other four PFAS using a hazard index. A hazard index attempts to account for various combinations of PFAS contamination. Using this index, water utilities will monitor for all four PFAS and perform a calculation to determine if such a combination poses a health threat. This is the first time the EPA has used a hazard index to monitor drinking water.

The EPA will be holding a hearing on 4 May 2023 for members of the public to provide verbal comments on the rule proposal. Written comments on the proposed standards will be open for 60 days following publication in the Federal Register. The final proposal is set to be issued on 3 September 2024; however, that timing could be subject to change.

FOOTNOTES

[1] https://subscriber.politicopro.com/article/2023/03/what-you-need-to-know-about-epas-new-pfas-proposal-00086965?source=email

[2] https://www.epa.gov/newsreleases/epa-advances-science-protect-public-pfoa-and-pfos-drinking-water#:~:text=EPA%20has%20transmitted%20to%20the%20Science%20Advisory%20Board,understood%20and%20that%20PFOA%20is%20a%20likely%20carcinogen.

[3] 42 U.S.C. § 300g–1(b)(1)(A).

[4] https://www.epa.gov/ccl/regulatory-determination-4

[5] https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas

[6] https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2023/acc-comments-on-mcl-proposal

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