

LEGAL UPDATES

EPA to Set Enforceable Drinking Water Standards for PFOA and PFOS

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The United States Environmental Protection Agency (EPA) recently issued a final regulatory determination for two of the most prevalent per- and polyfluoroalkyl substances (PFAS), PFOA and PFOS, meaning the Agency will now begin the months long process to develop and propose formal enforceable drinking water standards. Additionally, EPA is proposing to sample for 29 different PFAS during the nationwide sampling event conducted as part of the fifth Unregulated Contaminant Monitoring Rule (UCMR) assessment, which could lead to future drinking water standards for other PFAS.

EPA Finalizes Drinking Water Standards for PFOA and PFOS Chemicals

On February 22, 2021, the EPA finalized its decision to regulate levels of PFOS and PFOA in drinking water under the Safe Drinking Water Act (SDWA). The SDWA authorizes EPA to establish enforceable drinking water quality standards, known as Maximum Contaminant Levels or MCLs, for contaminants that EPA finds may present a risk to public health. EPA presently regulates and requires monitoring for over 90 drinking water contaminants under the SDWA.

PFAS are a broad group of man-made chemicals estimated to include over 5,000 different variations. PFAS have been dubbed the forever chemicals because they are resistant to heat, oils, stains, grease and water, which make them long-lasting in the environment. To date, EPA has only issued non-enforceable health advisory levels of 70 parts per trillion for PFOA and PFOS, which are guidance values intended to provide technical information to state agencies and other public health officials on health effects, analytical methodologies and treatment technologies associated with drinking water contamination. Certain states, such as New Jersey, Minnesota and Michigan have already developed much more stringent enforceable standards given the delay in federal action.

As a result of its determination, EPA will initiate the scientific review process to propose MCLs and Maximum Contaminant Level Goals (MCLGs) for PFOA and PFOS within two years, which are then subject to a notice and comment process before they can be adopted. MCLGs are non-enforceable public health goals, which consider only public health and not the limits of detection and treatment

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technology effectiveness. The MCL is set as close to the MCLG as feasible, however the MCL must take into consideration cost and feasibility of treatment.

Monitoring Under the Fifth Unregulated Contaminant Monitoring Rule

With its announcement to develop drinking water standards for PFOA and PFOS, EPA also released its proposed list of contaminants pursuant to the UCMR 5. As currently proposed, UCMR 5 would sample and analyze for 29 different PFAS, as well as lithium, between 2023 and 2025. The UCMR is an important feature of the SDWA because it generates the occurrence data EPA considers in determining whether to regulate a certain chemical in drinking water systems. Every five years, EPA must issue a list of unregulated contaminants that are to be monitored by public water systems. The data is then used to determine whether drinking water standards should be developed for those contaminants.

A total of six different PFAS were first sampled during the UCMR 3 testing conducted between 2013 and 2015, which led to the development of standards for PFOA and PFOS. Results of the UCMR 3 testing revealed 1.3% of subject water systems reported at least one sample with PFOA and/or PFOS (separately or combined) concentrations exceeding EPA's health advisory level of 70 ppt. It is anticipated that the data derived from the UCMR 5 testing will lead to future drinking water standards or advisories, as well as additional sampling. Regulated utilities should be aware that the data is made publicly available, and interested parties such as citizen interest groups will be closely following the results. Additionally, businesses that have used PFAS may consider tracking the data to determine whether their local utility identifies elevated levels of PFAS.

Lathrop GPM's experienced attorneys are well versed in a wide range of PFAS related issues. You can read more about the firm's PFAS capabilities [here](#) or contact a Lathrop GPM attorney for more information.