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LEGAL UPDATES

Minnesota Calls for Stronger State Regulation of PFAS Chemicals

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Minnesota's Statewide PFAS Strategy

Last week, Minnesota state officials announced a statewide strategy to address PFAS chemicals present within the state. PFAS are a class of man-made compounds that do not easily break down and can accumulate over time in the environment. They are used to create fluoropolymer coatings which make products resistant to heat, oil, stains, grease and water.

In its ten-point plan, Minnesota aims to designate the entire class, estimated to include over 5,000 different chemicals, a "hazardous substance" under Minnesota state law. The new law will make it easier for the state to hold companies liable for cleanup of PFAS contamination.

In addition to hazardous substance designation, the plan will require companies to disclose information on the use of PFAS chemicals when monitoring shows the presence of the chemicals in the environment. Currently in Minnesota, there are no labeling requirements for PFAS use in commercial products and the uses of many PFAS chemicals are considered proprietary information. The state seeks to close the gap on which industries and products use PFAS and for what purpose.

The strategy also includes \$3 million in funding over the next two years to research PFAS contamination and solutions. It allocates \$700,000 to identify sources of PFAS in the environment; \$500,000 to evaluate PFAS going to landfills, compost sites and wastewater treatment plants; \$400,000 to sample fish and water for PFAS to prevent consumption of fish with elevated PFAS levels; and \$1.4 million to study the impacts of PFAS in wastewater biosolids, compost contact water and landfill leachate as well as evaluate potential drinking water treatment options.

Currently, fewer than one percent of PFAS chemicals have been tested for toxicity. Minnesota Pollution Control Agency Commissioner Laura Bishop says more research is needed to understand the effects of PFAS on human health and the environment. PFAS are often called "forever chemicals" because they do not break down and tend to accumulate in the environment, humans and other animals.

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What is included?

There are currently a handful of PFAS measures in the state legislature, including a proposal to ban PFAS in food packaging. However, the diverse class of chemicals are used in a wide range of products including pacemakers, solar panels, fabric stain protectors, MRI machines, cookware, waterproof clothing, firefighting foam, cars and cosmetics. Because of the broad use of PFAS chemicals and the number of different chemicals within the class, the proposal has drawn opposition from manufacturers and businesses who claim that the designation is overly broad.

Minnesota's new plan follows a long line of increased scrutiny of PFAS within the state. Regulators have been investigating PFAS for the past two decades. In 2018, the state settled a lawsuit against 3M after the company agreed to pay \$850 million for PFOA and PFOS found in drinking water in the Twin Cities metro in the early 2000s. 3M will invest about \$1 billion over the next 20 years in its environmental goals, including improving water quality and working toward carbon neutrality. PFOA and PFOS chemicals are no longer produced in the United States, but many other PFAS chemicals are and the Minnesota plan includes the entire class of chemicals.

While the U.S. Environmental Protection Agency intends to regulate two types of PFAS, PFOA and PFOS, under the Safe Drinking Water Act, the agency has only set unenforceable guidance levels. Additionally, it has not yet taken steps to designate any PFAS chemicals as hazardous but is seeking comment on whether PFOA and PFOS should be regulated as hazardous substances or waste under federal law. Designating PFAS chemicals as a hazardous substance is something the Biden administration has called for in its plan on environmental justice.

If enacted, Minnesota will join Michigan and Delaware in strongly regulating PFAS under state law. Michigan has set enforceable drinking water standards while Minnesota relies on nonbinding recommended health-based values. Delaware has designated the entire class of PFAS chemicals as hazardous substances, as Minnesota aims to do.

Other Impacts of the Plan

In addition to funding research and classifying PFAS chemicals as a hazardous substance, the law would also set pretreatment standards for industrial waste water discharges and require that companies remove PFAS from wastewater before discharging to a publicly owned wastewater treatment plant. Cities are concerned that they could be liable for PFAS entering their wastewater treatment plants.

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