

Wis. PFAS Proposals Present Challenges For Businesses

By **George Marek and Lauren Harpke** (November 13, 2019, 5:35 PM EST)

The U.S. Environmental Protection Agency, as well as a number of state environmental agencies, including the Wisconsin Department of Natural Resources, have undertaken significant activity to address per- and polyfluoroalkyl substances, or PFAS. This article briefly discusses the ongoing work at the federal and Wisconsin level.

Of particular note to businesses and property owners with a presence in Wisconsin, the WDNR is seeking public comment. The department held a preliminary public hearing on Nov. 12, via video conference and audio at three different DNR locations, in Madison, Green Bay and Eau Claire, relating to its recent work to develop PFAS surface water quality criteria, groundwater standards and drinking water maximum contaminant levels, or MCLs.

Background

PFAS are a large group (estimated at more than 5,000) of highly fluorinated synthetic chemicals with diverse properties that have been utilized by a wide range of industries since the 1940s. Certain uses of PFAS have been prohibited in the United States, but PFAS are or have been present in fire-fighting foams, wire insulation, cleaners, textiles, apparel, carpet, leather, paper, paints and in the packaging for numerous consumer products, including health and beauty items and food products.

The chemical bond between the carbon and fluorine atoms in PFAS is extremely strong and stable, making PFAS resistant to typical environmental degradation processes. For this reason, they are frequently referred to as "forever chemicals." The wide use and stability of PFAS provides many opportunities for human exposure to, and bioaccumulation of, these chemicals.

Exposure to PFAS may have adverse impacts on human health. Perfluorooctanoic acid, or PFOA, and perfluorooctanesulfonic acid, or PFOS, are the two most researched PFAS. Classified as "emerging contaminants" or "contaminants of emerging concern" by the EPA, these chemicals have been found to cause cancer or affect the liver, immune system, cholesterol levels and thyroid.

Additional research is necessary to determine the full scope of PFAS impacts. But the EPA and numerous



George Marek



Lauren Harpke

state counterpart agencies have already begun the process of regulating them.

Recent Government Action

On the federal level, in late September, the EPA sent two actions to the federal Office of Management and Budget for interagency review to address PFAS. This is part of the EPA's action plan for the regulation of PFAS constituents.

One action was to provide advance notice of proposed rulemaking, which would allow public feedback on adding PFAS to the Toxics Release Inventory list of toxic chemicals. The second action was a proposal to ensure that certain long-chain PFAS chemicals cannot be imported into the United States without notification and review by the EPA pursuant to the Toxic Substances Control Act.

On the state level, Wisconsin Gov. Tony Evers has directed the WDNR to pursue rulemaking to create enforceable standards regarding PFAS, to help protect public health for drinking water, groundwater and surface waters in Wisconsin. The WDNR created a PFAS Technical Advisory Group, and has been holding meetings regarding the proposed administrative rules. The technical group is open to any interested parties, and meetings are open to the public.

Most recently, on Oct. 29, the WDNR indicated that it is seeking public comment and will hold a preliminary public hearing on its statements of scope for PFAS surface water quality criteria, groundwater standards and drinking water MCLs.

Statement of Scope 089-19 addresses potential revisions to Chapter NR 809, Wisconsin Administrative Code, related to the promulgation of new drinking water MCLs for PFAS, including PFOS and PFOA.

Statement of Scope 090-19 discusses proposed revisions to Chapter NR 140, Wisconsin Administrative Code, to revise or set numerical standards for a variety of pollutants, including certain PFAS compounds, with the goal of minimizing the concentration of polluting substances in groundwater. Currently, the Wisconsin Department of Health Services has recommended a combined groundwater enforcement standard of 20 parts per trillion, or 20 ppt, for PFOA and PFOS, and a preventive action limit of 2 ppt for each of those constituents.

These are extremely low concentrations. Although certain chemicals can be detected at such low concentrations, it is new for government agencies to seek to regulate hazardous substances at these levels. These proposed low regulatory levels are troubling for a number of reasons.

First, PFAS are ubiquitous, and as such testing for potential PFAS in the environment is difficult and requires specialized testing protocols in order to mitigate the potential for false positives. Additionally, very little is currently known about effective treatment options to remediate PFAS contamination, particularly if the regulations would set cleanup standards in the parts per trillion.

Finally, Statement of Scope 081-19 discusses proposed revisions to Chapters NR 105, 106 and 219 of the Wisconsin Administrative Code, relating to adding surface water quality criteria and analytical methods for PFOS, PFOA and any other PFAS. The Statement of Scope also considers revisions to the procedures in the Wisconsin Pollutant Discharge Elimination System permitting program, to implement any such new water quality criteria.

Importantly, the public comment period for these statements of scope is brief — through Nov. 19. But

this is just the start of the Wisconsin rulemaking process. Additional hearings will be held over at least the next two years to consider the new draft standards and rules.

For example, the proposed changes to NR 809 are currently expected to result in a number of public hearings in August 2021. For the NR 140 changes, the WDNR anticipates public hearings in November 2020. Finally, for the proposed surface water quality rules, public hearings are anticipated in August 2021. Businesses operating in Wisconsin are advised to stay aware of anticipated regulatory changes at both the federal and state level for PFAS.

George J. Marek is a partner and Lauren R. Harpke is senior counsel at Quarles & Brady LLP.

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