



Environmental Update

March 2023

EPA Announces Historic PFAS Drinking Water Regulation

On March 14 the U.S. Environmental Protection Agency (EPA) took another significant step in implementing its [2021 PFAS Strategic Roadmap](#) by announcing its plan to issue a [proposed rule](#) to establish a National Primary Drinking Water Regulation (NPDWR) for six per- and polyfluoroalkyl substances (PFAS), including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). If finalized, the NPDWR, also commonly referred to as drinking water maximum contaminant levels (MCLs), would affect a wide range of industries, municipalities, remediation sites, corporate and real estate transactions, and more. The proposed PFAS NPDWR follows EPA's 2022 proposed rule to list PFOS and PFOA as CERCLA "hazardous substances," which is currently under review following the close of the public comment period.

The proposed PFAS NPDWR would set MCLs for both PFOA and PFOS at 4 parts per trillion. For the other four PFAS – perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA, or "GenX" Chemicals), perfluorohexane sulfonic acid (PFHxS) and perfluorobutane sulfonic acid (PFBS) – EPA proposes to set what is known as a "Hazard Index" at 1.0 that is based on an equation set forth in the NPDWR. EPA is using a Hazard Index approach here to account for a potential increased risk from mixtures of these PFAS compounds. While EPA has determined that PFOA and PFOS are "likely carcinogens," and therefore that there is no level of these compounds that does not pose risks of adverse health effects, it has not made a similar determination for the remaining four PFAS compounds listed in the proposed rule. EPA is therefore using the Hazard Index process, which it has used historically for other contaminant mixtures.

The proposed PFAS NPDWR follows EPA's announcement in June 2022 that decreased the interim non-binding "Health Advisory Levels" (HALs) for PFOS and PFOA in drinking water that it first set in 2016. While EPA updated the HALs in 2022 for PFOA and PFOS to 4 parts per **quadrillion** and 20 parts per **quadrillion**, respectively, the levels proposed in the PFAS NPDWR of 4 parts per trillion are higher, likely because EPA states that 4 ppt is the Practical Quantification Level (PQL) for these chemicals. The PQL is the lowest concentration of a contaminant that can reliably be measured by most laboratories based on specified limits of precision and accuracy; in other words, the extremely low 2022 HALs for PFOA and PFOS were well below what most labs can detect. Most importantly, HALs are non-binding levels, while the MCLs, if finalized, would be binding and legally enforceable.

If promulgated, the PFAS NPDWR likely will have significant and widespread impacts, not just with EPA, but also with states and municipalities. For example, many states have been more proactive than EPA in recent years by establishing their own enforceable MCLs for certain PFAS compounds, but if those state levels are higher than EPA's proposed MCLs, states would need to establish standards that are at least as stringent as the federal levels. The rule would also require all community water systems and non-transient, non-community water systems to conduct initial monitoring for the applicable PFAS chemicals within three years after the rule is finalized. Along with the PFOA/PFOS hazardous substance listing, the PFAS MCLs will also have a significant impact on federal and state contaminated site investigations and remediations.

EPA continues to implement its PFAS Strategic Roadmap in other ways, including additional actions related to drinking water. The 2021 Bipartisan Infrastructure Law provided \$9 billion for communities to invest in drinking water infrastructure impacted by PFAS and other emerging contaminants, including \$4 billion to EPA's Drinking Water State Revolving Fund and \$5 billion to its Emerging Contaminants in Small or Disadvantaged Communities grant program, under which EPA issued dozens of grants to states in February 2022. Many states each received around \$19 million, but some received significantly more, including Colorado (\$86 million), New York (\$85 million) and Pennsylvania (\$75 million).

EPA stated that it aims to finalize the PFAS NPDWR by the end of 2023. In the meantime, it will conduct a variety of public engagement activities, including accepting public comment on the proposed regulation through the docket on the [Federal Register website](#) (Docket ID: EPA-HQ-OW-2022-0114); hosting informational webinars on March 16 and March 29; and holding a public hearing on May 4, during which it will accept verbal comments that it must address in the final rule.

FOR MORE INFORMATION

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