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EPA Proposes Regulatory Limits for PFAS in Drinking Water

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The U.S. Environmental Protection Agency (EPA) recently issued a proposal and request for public comment regarding the Agency's plans to establish regulatory limits for PFAS compounds in drinking water (see *Federal Register*, 88 FR 18638, 3/29/23).

The proposed EPA rule includes regulatory limits for six PFAS compounds, most notably, the compounds perfluorooctanoic acid (PFOA) and perflourooctane sulfonic acid (PFOS), which are two of the most common PFAS chemicals that have been historically used in numerous manufactured products. Specifically, the rule proposes a "Maximum Contaminant Level" (MCL) for PFOA and PFOS of 4 parts per trillion (ppt). (Note: these proposed limits are less stringent than EPA's Drinking Water Health Advisory levels, which the Agency issued in June of 2022 that recommended levels in drinking water supplies for PFOA and PFOS of 0.004 parts per trillion (ppt) and 0.02 ppt, respectively.) An MCL is the maximum level allowed of a contaminant in water that is delivered to any user of a public water system (PWS).

In addition to the regulatory limits, the proposed rule includes monitoring, reporting, and other requirements to ensure that regulated PWS meet the PFAS standards. PWS that exceed the standards may be required to take actions to ensure safe drinking water that could include water treatment, such as use of activated carbon, anion exchange and high-pressure membrane technologies, or utilizing other uncontaminated water sources.

In a related action, in August of 2022, the Wisconsin Department of Natural Resources (WDNR) adopted regulatory standards for PFOA and PFOS in drinking water. The drinking water standards, which are set forth in Wisconsin Administrative Code Chapter NR 809, established an MCL for PFOA and PFOS of 70 parts per trillion (ppt), individually or combined. This standard applies to both "community water systems" (CWS) and "non-transient non-community water systems" (NTNCWS). A CWS is a public water system that provides at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Any public water system serving 7 or more homes, 10 or more mobile homes, 10 or more apartment units, or 10 or more condominium units is a "community water system," unless information is available to indicate that 25 year-round residents will not be served. A NTNCWS is a non-community water system that regularly serves at least 25 of the same persons over 6 months per year. Examples of non-transient non-community water systems include those serving schools, day care centers and factories.

In addition to the MCLs, the WDNR regulations require routine sampling of regulated water systems to test for PFOA and PFOS, and also requires that systems that exceed the MCL implement measures to return the system to compliance, which in some cases, could require installation of a new well or installing a treatment system. Since the federal proposed MCLs for PFOA and PFOS are lower than the state of Wisconsin's current drinking water MCLs, if the EPA's proposed rule is ultimately adopted, the WDNR will need to modify its MCL for PFOA and PFOS to be at least as stringent as the federal standards.

PFAS Background

PFAS is an acronym for per- and polyfluorolalkyl substances, which are chemicals that were widely used from the 1960s to the early 2000s in the manufacture of a variety of consumer products, such as stain resistant carpets, non-stick cookware (e.g., Teflon), firefighting foam, food packaging (e.g., microwave popcorn bags/pizza boxes), water resistant clothing (e.g., pre-2000 GoreTex), water resistant repellent (e.g., Scotchgard) and dental floss. While the manufacture of PFAS compounds has largely been phased out in the U.S., these compounds are still used in the manufacturing of many products worldwide, and products containing PFAS are still imported to the U.S. These substances, known as "forever chemicals," have received considerable attention by federal and state environmental regulatory agencies because of their resistance to chemical breakdown due to the chemical bond between carbon and fluorine atoms in the PFAS compounds, which is one of the strongest in nature. Because of this, humans can still be exposed to PFAS long after the chemicals were released into the environment. A groundwater study in 2016 detected PFAS chemicals in the drinking water supply in over 20 states in the U.S. Further, it is estimated that the drinking water supply of approximately 16 million Americans has been impacted with PFAS chemicals. U.S. Center for Disease Control (CDC) health studies estimate that 98% of Americans likely have detectable concentrations of PFAS in their bodies, and medical studies have suggested that PFAS can cause thyroid disease, pancreatic dysfunction, hormone disruption, kidney and liver damage, and an elevated risk of cancer.

The EPA's public comment period for the proposed PFAS drinking water rules ends on May 30, 2023, and the EPA has indicated that it hopes to issue a final rule later this year or early next year.

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