EPA Announces Drinking Water Standards for Six PFAS

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On April 10, 2024, the United States Environmental Protection Agency ("EPA") announced the first enforceable federal drinking water standards under the Safe Drinking Water Act ("SDWA") for six per- and polyfluoroalkyl substances ("PFAS"). PFAS compounds have come to be known as "forever chemicals" because of their ability to indefinitely persist in the environment and toxicity at extremely low levels. The final rule, which will go into effect 60 days after its imminent publication in the Federal Register, will set into motion likely legal challenges and wide-ranging consequences for drinking water providers who will need to comply with the stringent new standards, as well as for companies that may have liability for their cleanup.

Under the rule, individual enforceable limits, or Maximum Contaminant Levels ("MCLs"), for PFOA, PFOS, PFHxS, PFNA, and HFPO-DA, as well as a combined MCL for mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS using a Hazard Index ("HI") approach. In addition, the rule will establish health-based, non-enforceable Maximum Contaminant Level Goals ("MCLGs") for these PFAS. The MCLs and MCLGs are summarized in the table below.

Compound	MCLG	MCL (Enforceable)
Perfluorooctanoic acid ("PFOA")	Zero	4.0 parts per trillion ("ppt")
Perfluorooctane sulfonic acid ("PFOS")	Zero	4.0 ppt
Perfluorohexane sulfonate ("PFHxS")	10 ppt	10 ppt
Perfluorononanoic acid ("PFNA")	10 ppt	10 ppt
Hexafluoropropylene Oxide Dimer Acid ("HFPO-DA") (also referred to as "GenX")	10 ppt	10 ppt
Mixtures containing two or more of the following: PFHxS, PFNA, HFPO-DA, and perfluorobutane sulfonate ("PFBS")	1 (unitless) Hazard Index	1 (unitless) Hazard Index

EPA determined that there is no level of PFOA and PFOS, which it has determined are likely carcinogens, that is without risk of adverse health effects. Therefore, the MCLs for these two

contaminants are being set at 4.0 ppt, the lowest feasible level that can be detected and the most stringent in the nation. The rule also uses a risk-based standard for mixtures of PFHxS, HFPO-DA and its ammonium salt (also known as a GenX chemicals), PFNA, and PFBS. For these compounds, the rule will require the use of a formula to determine if any mixture of these chemicals in drinking water, taken together, has an HI score of 1.0 or greater, which indicates potential risk of adverse health effects. HI calculations account for the fact that, although certain PFAS may not be harmful at low levels, mixtures of PFAS can have additive adverse health effects.

The individual MCLs and MCLGs for PFHxS, PFNA, and HFPO-DA, are being set at 10 ppt to ensure protection of public health when only one of these PFAS is present. EPA also finalized an HI of 1.0 for any mixture containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS to address health concerns related to the co-occurrence of these PFAS.

Pursuant to the final rule, public water systems that do not already monitor for PFAS will need to begin doing so. By 2027, public water systems must have completed the prescribed initial monitoring and will need to conduct ongoing compliance monitoring going forward. Systems must also include PFAS test results in consumer confidence reports and alert the public of any monitoring procedure violations beginning in 2027.

Beginning in 2029, the rule will require public water systems to be in compliance with all PFAS MCLs and to provide public notifications of any exceedances. Should exceedances occur, systems must then take action to reduce PFAS levels.

EPA also announced $1 billion in need-based funding through the Bipartisan Infrastructure Law ("BIL") to help states and territories implement PFAS testing and treatment at public water systems and to help owners of private wells address PFAS contamination. This is included in the $9 billion that the BIL already provides to invest in communities with drinking water impacted by PFAS and other emerging contaminants, including $4 billion to the Drinking Water State Revolving Fund and $5 billion through EPA's Emerging Contaminants in Small or Disadvantaged Communities Grant Program.

More frequent sampling and testing will impose high costs on water systems, especially those with MCL exceedances. To reduce costs for systems, EPA said that previously collected monitoring data may satisfy some or all the initial monitoring requirements if the sampling was conducted as part of the data collection program known as UCMR 5 or other appropriate monitoring campaigns.

Some industry groups and local officials are dissatisfied with EPA's new rules, questioning the economic burden placed on water systems and manufacturers and predicting that certain manufacturing industries will seek residence in countries with less stringent environmental protections. Advocates of the rule argue that the health risks posed by PFAS are dangerous enough to warrant the cost of compliance.

The new MCLs are likely to be adopted into remedial actions performed pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA), especially if EPA also finalizes its pending proposed rule to list PFOA and PFOS as hazardous substances under CERCLA. In addition, in states and/or U.S. territories that employ federal and state MCLs as a driver for remediation cleanup standards, EPA's promulgation of the new MCLs may affect remedial activities required under state environmental remedial programs, such as state equivalents of CERCLA.