

PFAS to Drive Environmental Enforcement in 2019



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Perfluoroalkyl and polyfluoroalkyl substances (PFAS), a group of manmade chemicals that have been used in various manufacturing processes throughout the past century, have made headlines around the country due to emerging information about their potential impact on human health and the environment. As the public becomes increasingly aware of the potential effects of exposure to PFAS, it is expected that regulators will take significant steps to address the existence of PFAS in the environment in the coming year.

Some states, including Michigan, have imposed PFAS limitations that are more stringent than current federal regulations. In 2016, EPA issued drinking water lifetime health advisories for two PFAS compounds — perfluorooctanoic acid (PFOA) and

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perfluorooctanesulfonic acid (PFOS) — at 70 parts per trillion, individually or combined. These standards are unenforceable, nonregulatory values, however, aimed at providing information about the public health risks of exposure to PFAS.

As one of a handful of states that has promulgated criteria related to PFAS substances, Michigan is at the forefront of PFAS regulation. Michigan established surface water quality criteria for PFOA at 420 parts per trillion for drinking water and 12,000 parts per trillion for nondrinking water. For PFOS, the criteria are 11 parts per trillion for drinking water and 12 parts per trillion for nondrinking water. Guided by EPA's health advisory levels, in January, Michigan set drinking water criteria for PFOA and PFOS at 70 parts per trillion.

Michigan also established the Michigan PFAS Action Response Team, a multiagency action team to investigate sources and locations of PFAS contamination in the state. The Michigan Department of Environmental Quality (MDEQ) continues to undertake a statewide sampling initiative to identify industrial sources and sites where PFAS contamination may be present. MDEQ has, in many cases, imposed sampling requirements through the Industrial Pre-Treatment Program and through permit modifications and administrative orders issued under the National Pollutant Discharge Elimination System stormwater and wastewater permitting programs.

Some municipal wastewater treatment plants in Michigan have also begun to impose stringent limitations for PFAS on users within their systems. For example, the Great Lakes Water Authority (GLWA) issued a letter in December 2018 stating that a user discharging *any* amount of PFAS compounds — even at concentrations below the MDEQ water quality standards — will be considered a potential significant source of PFAS compounds and a contributor to PFAS pass-through. As such, the GLWA will require these users to reduce and/or eliminate PFAS compounds from their discharges. GLWA states that individual permits will be modified to incorporate those new requirements. As GLWA and other municipal wastewater treatment facilities attempt to impose these new requirements, it is expected that MDEQ or individual users may challenge their legal basis and authority to do so.

Both federal and state regulators will continue to work to halt the spread of PFAS in surface and drinking water in the coming year. EPA has committed to taking four significant actions to address PFAS:

- establish maximum contaminant levels for PFOA and PFOS in drinking water
- designate PFOA and PFOS as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- consider making groundwater cleanup recommendations for PFOA and PFOS
- collaborate with federal and state partners to develop draft toxicity values for additional PFAS compounds, including GenX and perfluorobutane sulfonic acid (PFBS).

In September 2018, the agency sent draft groundwater cleanup recommendations for PFOA and PFOS to the White House for review. It is expected that these recommendations will be delivered as early as the end of the year.

Michigan is expected to continue to take a leadership role in regulating PFAS in the coming year. It is expected that regulators may take the following steps in 2019:

- MDEQ will continue to issue requests for information to identify sources of PFAS and locations where PFAS contamination exists.
- The sampling efforts led by state and local agencies noted above that are already underway will continue and likely intensify.
- Owners and operators of sites listed under Michigan Part 201 should expect to receive requests to sample for PFAS, even if the site was previously closed after remediation.
- Further, criteria beyond PFOS and PFOA can be expected, as Michigan is gathering data on other PFAS compounds and is analyzing 24 separate compounds when collecting PFAS samples.
- When the PFAS compounds are discovered, owners and operators should expect to receive additional regulatory requirements, including the imposition of more stringent effluent limitations and corresponding treatment requirements.

- MDEQ may also impose additional cleanup requirements for sites listed under CERCLA or Michigan Part 201, especially if new cleanup criteria for PFAS are promulgated.

Much is happening on the PFAS front nationally and locally. The regulated community should pay close attention in the coming months so it can be best prepared to address potential regulatory liabilities due to the widespread existence of PFAS in many manufacturing processes. If you have any questions about PFAS regulations in Michigan or elsewhere, please contact the authors or another member of Pepper's Environment and Energy Practice Group.