

Accelerating PFAS Regulations

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Editor's Note: Godfrey & Kahn attorneys Bill Nelson and Ned Witte practice environmental law and have been retained by the League to provide periodic updates to League members concerning Brownfields Redevelopment and per- and polyfluoroalkyl substances (PFAS). This is the second entry in the series.

Enforceable PFAS Values in Wisconsin

The 36-step, 30-month Wisconsin Administrative Rule process has reached the end for the two most well-studied PFAS analytes: PFOA and PFOS. The Wisconsin Legislature allowed their passive review period on the proposed surface water and drinking water rules to expire without taking an action, allowing the rules to be published as soon as July 2022. Therefore, Wisconsin will soon have enforceable surface water criteria and drinking water values for the two PFAS chemicals. These regulations will impact entities operating public water systems, wastewater systems, businesses discharging PFAS to wastewater treatment plants, and industries operating near sources of municipal drinking water wells.

PFAS in Wastewater Permits

As early as July 2022, entities that hold Wisconsin Pollutant Discharge Elimination System (WPDES) permits may address PFOA and PFOS through pollution minimization plans and source reduction measures. Entities holding pretreatment permits may be required to address PFAS to meet the WPDES criteria for PFOA and PFOS held by the wastewater treatment plants who receive their wastewater. The wastewater rule relies on source control by allowing entities to utilize a flexible compliance schedule to phase out and effectively eliminate PFAS in their waste stream.

PFAS Monitoring in Drinking Water Supplies

For the drinking water rule, all public water systems will be required to evaluate PFOA and PFOS in their drinking water systems and address values that exceed the maximum contaminant levels (MCLs). DNR has indicated that guidance will be issued to require municipalities with over 50,000 residents to sample for PFOA and PFOS by fall

2022 with small public water systems to follow in a similar cadence. This limited sampling requirement by Wisconsin for two PFAS will begin prior to the United States Environmental Protection Agency (EPA) directive to all public water suppliers in the country to sample for 29 PFAS beginning as early as January 2023. Suffice it to say, the question of “where” PFAS may be found in Wisconsin will be answered within the next calendar year.

Future Administrative Rules Concerning PFAS

The Wisconsin Department of Natural Resources (DNR) has three active scope statements concerning additional PFAS, including hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt, known as GenX chemicals, and perfluorobutanesulfonic acid (PFBS), in drinking water, groundwater, and surface water. DNR is tasked with promulgating these three rules for the 12 additional PFAS by June 2024.

EPA Issues Extremely Low Health Advisory Levels (HAL) for PFAS Chemicals

On June 15, 2022, EPA updated the lifetime health advisories for PFOA and PFOS and issued final health advisories for GenX chemicals and PFBS. The PFOA and PFOS updates are the first recommended changes to these advisories since 2016. The changes are significant decreases from the 2016 value of 70 parts per trillion (ppt) HALs for PFOA and PFOS:

- Interim updated Health Advisory for **PFOA** = 4 parts per quadrillion (ppq) or 0.004 ppt
- Interim updated Health Advisory for **PFOS** = 20 ppq or 0.02 ppt
- Final Health Advisory for **GenX** = 10 ppt
- Final Health Advisory for **PFBS** = 2,000 ppt

Yes, that is 4 parts per 1,000,000,000,000,000 parts or is 4 parts per quadrillion for PFOA. The EPA has concluded that lifetime exposure to PFOA and PFOS is an even greater a health risk than previously understood. The first health advisories for the two additional PFAS chemicals, GenX and PFBS, are significant, as these replaced the active ingredients for Teflon and Scotchgard in the 2000s.

These EPA advisory levels are not enforceable and are not tied to the DNR drinking water values. However, the tasks of the regulatory agencies are similar, as the advisory levels are based on EPA toxicologists aggregating and compiling the most recent human health studies concerning these chemicals. Studies linking exposure potential to probable causes of human health effects have only recently been evaluated and understood. New studies conducted from 2016 to present suggest very low levels of these chemicals are safe for human consumption. The Wisconsin DNR MCL for PFOA is based on older available studies and is 17,500 times higher than the EPA health advisory level.

Future EPA Actions addressing PFAS are outlined in their October 2021 PFAS Strategy Roadmap. The most significant suggested for 2022 include:

- Designating PFOA and PFOS as CERCLA hazardous substances in a draft rule, effective fall 2023.
- Considering additional PFAS as CERCLA hazardous substances in a draft rule.
- Proposing drinking water MCL for PFOA and PFOS in a draft rule, effective fall 2023.

Contact us if you have any questions about any of these PFAS regulatory developments that relate to your community

utility operations or sources of PFAS at remedial action sites in your community affecting municipal redevelopment and environmental liability exemptions.

About the Authors:

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What Are PFAS?

Per- and polyfluoroalkyl substances (PFAS) are human-made chemicals that have been used in a wide range of consumer and industrial products since the 1940s due to their resistance to grease, oil, water, and heat. For example, PFAS are used in stain- and water-resistant fabrics and carpeting, cleaning products, paints, and fire-fighting foams. Certain PFAS are also authorized by the FDA for limited use in cookware, food packaging, and food processing equipment. PFAS are not naturally occurring.

The widespread use of PFAS and their ability to remain intact, not breaking down in the environment, means that over time PFAS levels from past and current uses can result in increasing levels of environmental contamination.



Graphic Credit: Wisconsin Department of Natural Resources

Accumulation of certain PFAS has also been shown through blood tests to occur in humans and animals. While the science surrounding potential health effects of bioaccumulation is developing, exposure to some types of PFAS have been associated with serious health effects.

To learn more: <https://lwm-info.org/1560/PFAS>