



Keeping America's Water Safe to Drink - EPA Announces PFAS MCL

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On April 10, 2024, the U.S. Environmental Protection Agency (EPA) announced its final National Primary Drinking Water Regulation (NPDWR) for six per- and polyfluoroalkyl substances (PFAS). This regulation represents a key step forward in President Biden's PFAS Strategic Roadmap and will lead to significant costs for many water providers.

Regulation Details

The regulation includes two categories of standards – maximum contaminant levels (MCLs) and MCL Goals. As in EPA's fact sheet for the regulation, an MCL Goal is "The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety and are non-enforceable public health goals." MCL Goals are health-based and are not directly enforceable. Conversely, the MCL itself is what is enforceable. As detailed by EPA, an MCL is "The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards."

The final rule includes all of the same MCLs and MCL Goals from the proposed regulation issued approximately a year ago, targeting perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) individually and perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX Chemicals), perfluorohexane sulfonic acid (PFHxS) and perfluorobutane sulfonic acid (PFBS) combined. It also keeps the final regulation at the same levels as the proposed regulation. ***The biggest change is that, on top of covering them as part of a combination, the final regulation includes MCLs and MCL Goals for GenX Chemicals, PFHxS, and PFBS on their own.***

The final regulation includes the following limits:

Compound

MCL Goal

MCL

PFOA

0

4.0 parts per trillion (ppt) (also expressed as ng/L)

PFOA

0

4.0 ppt

PFHxS

10 ppt

10 ppt

PFNA

10 ppt

10 ppt

HFPO-DA (Gen X Chemicals)

10 ppt

10 ppt

Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS

1 (unitless)

Hazard Index*

1 (unitless)

Hazard Index

* As detailed on EPA's fact sheet, "The Hazard Index [HI] is a long-established approach that EPA regularly uses to understand health risk from a chemical mixture (i.e., exposure to multiple chemicals). The HI is made up of a sum of fractions. Each fraction compares the level of each PFAS measured in the water to the health-based water concentration."

Implementation

EPA's final rule presents two key implementation timelines for providers. The first is that public water systems must complete initial monitoring within three years (*i.e.*, by 2027). After the initial monitoring, starting in 2027, providers must notify the public about levels of PFAS in their water as well as complete ongoing compliance monitoring. The second key date is 2029, when the MCL becomes enforceable. This five year timeframe for compliance is a notable change from the proposed rule, which only provided three years.

EPA estimates that implementation of the MCL will cost \$1.5 billion annually and provide \$1.5 billion in annual benefits. Its announcement also identifies \$9 billion in funding via the Bipartisan Infrastructure Law "to help communities impacted by PFAS pollution in drinking water" and another \$12 billion available "to make general drinking water improvements, including addressing PFAS chemicals." On top of that, the EPA also announced that an additional \$1 billion for reduction in PFAS exposures would be made available through the Bipartisan Infrastructure Law via the Emerging Contaminants in Small or Disadvantaged Communities grant program.

Next Steps

There seems to be little debate about two key facts – PFAS are everywhere and they are dangerous. Notwithstanding that agreement, there is still contentious debate about how to address PFAS contamination, to what levels treatment is necessary (and even feasible), what timeline is appropriate, and more. The fact that EPA's analysis shows the costs and benefits of this rule to be essentially equal illustrates the complications of regulating in this space.

The next step for this rule is almost certainly a legal challenge. Given the current state of the Supreme Court and the possibility that it will scale back judicial deference to administrative rulemaking, the results of any such challenge are impossible to predict.

For PFAS regulation, there are still a variety of pending rulemakings in front of the EPA, including regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (commonly referred to as Superfund) and the Resource Conservation and Recovery Act (RCRA). Given that the clock is starting to run out on the (first?) Biden administration, it is likely that the EPA will take other steps and finalize other rules in 2024.