



EPA announces new strategy to address PFAS in federally-issued wastewater permits

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Addressing the emerging contaminants known as per- and polyfluoroalkyl substances (“PFAS”) is a priority of the U.S. Environmental Protection Agency (“EPA”). PFAS are toxic, persistent, and bioaccumulative “forever chemicals” linked to cancer and other health issues. Thousands of PFAS compounds exist, including perfluorooctane sulfonic acid (“PFOS”) used in firefighting foams, and perfluorooctanoic acid (“PFOA”) used in nonstick cookwear, stain- and water-repellant fabric, food packaging, and more. Due to its widespread use, PFAS are frequently found in soil, landfills, and water, including drinking water.

To address the widespread existence of these forever chemicals in the environment, the EPA is rolling out multiple strategies for managing and mitigating PFAS, including [its recent announcement](#) that it will require PFAS monitoring in EPA-issued National Pollutant Discharge Elimination System (“NPDES”) permits, which regulate wastewater discharges.

Pursuant to this strategy, EPA is advising its permit writers to require PFAS monitoring in wastewater at regulated facilities, where such chemicals may be present in wastewater discharges. This additional monitoring is anticipated to be implemented for new NPDES permits, as well as for renewals of existing NPDES permits, which generally occur on five-year cycles. The EPA will also encourage the use of best management practices where appropriate to prevent, control, or abate the discharge of PFAS, such as housekeeping practices and employee training.

EPA directly issues NPDES permits in only three states (Massachusetts, New Hampshire, and New Mexico), the District of Columbia, and most U.S. territories, so other states will not immediately be impacted. However, the delegated states that have been authorized to issue and administer the NPDES program for their state are likely to follow EPA’s lead and add PFAS to their wastewater discharge permits in the future. While these changes are not expected to happen all at once, states will likely adopt the EPA’s approach of adding PFAS monitoring requirements to new permits and as permits come up for renewal.

Since PFAS first came into the limelight as a public health concern this century, reliable testing methods to detect the presence of various PFAS chemicals in water continues to be challenging. EPA is developing new analytical methods to test for various PFAS chemicals in water and soil, in

collaboration with the U.S. Department of Defense. EPA anticipates that the new testing methods will be finalized and approved in 2021, allowing a wider range of PFAS to be monitored.

Businesses and other wastewater dischargers expected to be affected by these changes should, at minimum, take measures to monitor these critical developments on a regular basis, and, where appropriate, actively comment on proposed regulations and proposed analytical methods. If PFAS are anticipated to potentially be present in a business' wastewater, further analysis of that potential may be warranted under attorney-client privilege to help mitigate the risk and cost of PFAS monitoring upon future NPDES permit renewals.

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