

Insights

MULTIPLE STATES ENACT DRINKING WATER AND GROUNDWATER REGULATIONS FOR PFAS CHEMICALS

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SUMMARY

Although much of the world's focus has been consumed by the global pandemic, six states have issued important regulations for per- and polyfluoroalkyl substances ("PFAS"), which are expected to have significant impacts on businesses in those states. Specifically, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Vermont have enacted Maximum Contaminant Levels ("MCLs") for certain PFAS substances, including perfluorooctane sulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA") in drinking water.

In addition, Michigan and New Jersey have established groundwater quality standards for certain PFAS compounds, which means that there is now a reference standard for groundwater investigation and cleanup actions, as well as guidelines for entities conducting due diligence for real estate acquisitions.

What are the Drinking Water Standards?

PFAS Compound	Massachusetts	Michigan	New Hampshire	New Jersey	New York	Vermont
PFOS	3.3 ng/L*	16 ng/L	15 ppt	13 ppt	10 ppt	4 ng/L
PFOA	3.3 ng/L*	8 ng/L	12 ppt	14 ppt	10 ppt	4 ng/L
Perfluorononanoic acid (PFNA)	3.3 ng/L*	6 ng/L	11 ppt	13 ppt	N/A	4 ng/L
Perfluorohexane sulfonic acid (PFHxS)	3.3 ng/L*	51 ng/L	18 ppt	N/A	N/A	4 ng/L
Hexafluoropropylene oxide dimer acid (HFPO-DA)	N/A	370 ng/L	N/A	N/A	N/A	N/A
Perfluorobutane sulfonic acid (PFBS)	N/A	420 ng/L	N/A	N/A	N/A	N/A
Perfluorohexanoic acid (PFHxA)	N/A	400,000 ng/L	N/A	N/A	N/A	N/A

Perfluoroheptanoic acid (PFHpA)	3.3 ng/L*	N/A	N/A	N/A	N/A	4 ng/L*
Perfluorodecanoic acid (PFDA)	3.3 ng/L*	N/A	N/A	N/A	N/A	N/A

*In Massachusetts and Vermont, the MCL cannot exceed 20 ng/L, combined, for all of the PFAS substances regulated by each state.

What is an MCL and How Does it Impact Businesses?

MCLs set the maximum concentration of a given contaminant that can be present in drinking water. Publicly owned treatment works (“POTWs”) and drinking water systems are required to ensure that drinking water distributed to the public meets these limits. In order to do that, POTWs and state agencies often include discharge limits in the permits of upstream dischargers to ensure that the treatment facility can comply with the MCL.

Businesses in these states that currently or historically have used PFAS compounds or have reason to believe that they may be present in their wastewater effluent should evaluate: (1) whether they discharge any substances to water that are eventually used for drinking water; and (2) whether their discharge contains any of the regulated PFAS compounds. Having that information will allow those businesses to determine whether to modify their operations to reduce or eliminate PFAS from their waste stream in anticipation of permit conditions based on the MCLs.

What Are the Groundwater Standards?

Both Michigan and New Jersey have also enacted groundwater quality standards for PFOA and PFOS which is important from a liability and cleanup perspective. Since 2018, New Jersey has enacted a MCL for PFNA in groundwater.

	PFOA	PFOS	PFNA
Michigan	8 ppt	16 ppt	N/A
New Jersey	14 ppt	13 ppt	13 ppt

These groundwater standards will be used by agencies to establish screening and cleanup levels for sites undergoing investigation and remediation, and confirms that at least these PFAS compounds will be part of the official site closure process going forward. The groundwater standards can also be used as part of due diligence, to help prospective purchasers evaluate the anticipated cleanup costs and potential liability posed by a site.

While this initially may seem like a minor change, it provides clarity to property owners and purchasers with respect to what standards will be applied for these chemicals during site cleanup actions in these states.

Conclusion

Businesses in Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Vermont should consider whether they use or discharge any of the compounds that are the subject of the MCLs. Businesses should then consider whether they want take any steps to address the anticipated regulatory requirements based on the MCLs. In addition, owners of property with legacy PFAS use, and prospective purchasers of commercial and industrial properties should use the groundwater quality standards as part of the investigation and risk analysis processes when considering what site cleanup may be required.

Importantly, this information is current as of **January 4, 2021**. Some other states, such as Rhode Island and Washington, have proposed Drinking Water regulations for PFAS. Only six states have enacted and adopted MCLs at this time, but more could be issued soon. In addition, President-elect Biden's Environmental Justice Plan includes a commitment to set "enforceable limits for PFAS in the Safe Drinking Water Act," presumably for PFOA and PFOS, so these considerations may soon apply across the country.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you have a question about how to manage PFAS risk in any jurisdiction, contact Tom Lee, John Kindschuh, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

RELATED CAPABILITIES

- PFAS

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