

New Jersey Sets Limits for “Forever Chemicals” (PFOA and PFOS) in Drinking Water

June 23, 2020

On June 1, 2020, the New Jersey Department of Environmental Protection adopted standards for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). The DEP established maximum contaminant levels (MCLs) of 14 parts per trillion for PFOA and 13 parts per trillion for PFOS. In 2018, NJ adopted an MCL of 13 parts per trillion for perfluorononanoic acid, or PFNA.

PFOA and PFOS are per- and polyfluoroalkyl substances (PFAS) which are man-made chemicals that have been around since the 1940s. PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and can accumulate in the human body over time. There is evidence that exposure to PFAS can lead to adverse human health effects. The federal government has not established MCLs for any PFAS.

Drinking Water

All public water systems will begin testing in the first quarter of 2021. Positive test results will require treatment or that the wells with exceedances be taken offline until they meet all criteria for potable water. DEP reports that over 1,000 water systems have already been testing for PFOA and PFOS. The results for particular water systems may be found by searching for a water system at https://www9.state.nj.us/DEP_WaterWatch_public/index.jsp. DEP estimates that of the 506 public community water systems and 715 public nontransient noncommunity water systems (schools, churches, office buildings, hotels, casinos, country clubs, etc.) the Department believes that 207 may have sampling results that exceed the MCLs for PFOA or PFOS.

Private Well Testing

Starting December 1, 2021, private well owners will have to test for PFOA, PFOS, and PFNA in connection with any real estate transaction under the Private Well Testing Act. Under the Private Well Testing Act, rental properties are required to test once every five years. The owner of rental property is required to provide the results of the testing within 30 days of receipt of the test results and provide a written copy of the most recent test results to a new tenant.

While no treatment of private wells is required, the local public health department is notified of test results that exceed MCLs. Additionally, because of the potential health risks, property owners with private wells should

consider testing before it is required so that possible treatment options can be considered, if appropriate. Evaluation of any point of entry (POET) and point of use (POU) filters should make sure that they achieve compliance with NJ limits and not just the USEPA Health Advisory level of 70 parts per trillion.

Site Remediation

While these rules set limits for NJ's drinking water, they are really far-reaching. The rule adds PFOS and PFOA to New Jersey's list of hazardous substances. This means that there are now groundwater quality standards for PFOA and PFOS which implicates site remediation activities and now regulates discharges to groundwater that include PFOA and PFOS. PFOA and PFOS were used in stain-resistant coatings, water-resist outdoor clothing, grease-proof food packaging and non-stick cookware. They were both found in firefighting foam. Given their widespread use and the fact that they don't breakdown, if indicated, LSRPs need to determine if these substances may have been discharged at a particular property and, if appropriate, test for PFOA and PFOS and remediate discharges of PFOA and PFOS as part of the remedial actions. Remediation may require issuance of a NJPDES permit.

If you have questions regarding any aspects of these changes to the Safe Drinking Water Act or the implications for remediation that may be required on a particular property, feel free to contact Scott E. Rekant at (201) 488-1300 or srekant@cullenllp.com, Neil Yoskin at (609) 279-090 or nyoskin@cullenllp.com, Herbert Bennett at (609) 279-0900 or hbennett@cullenllp.com, Amie Kalac at (609) 279-0900 or akalac@cullenllp.com.

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