ERM Market Update

New Jersey Adopts New Regulations for PFOA and PFOS

June 2020

New Jersey has adopted Maximum Contaminant Levels (MCLs) and Ground Water Quality Standards (GWQS) for PFOA and PFOS. PFOA, PFOS, PFNA and their various acids, anions, salts and esters are also now listed on Appendix A List of Hazardous Substances and subject to additional permit and discharge requirements under the New Jersey Pollutant Discharge Elimination System rules (NJPDES).

What are PFAS?

PFAS are a complex class of chemicals that include more than 3,000 fluorinated compounds with varying physical and chemical properties. Because the fluorine-carbon bond is one of the strongest chemical bonds in nature, fully fluorinated PFAS tend to be very resistant to thermal, chemical, and biological degradation. These properties make them useful in many industrial applications and consumer products. New Jersey regulates three specific PFAS in environmental media - perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), and perfluorononanoic acid (PFNA).

Maximum Contaminant Levels (MCLs) for PFOA and PFOS

New Jersey Department of Environmental Protection (NJDEP) adopted amendments to the New Jersey Safe Drinking Water Act (SDWA) rules at N.J.A.C. 7:10 to include maximum contaminant levels (MCLs) of:

- 0.014 micrograms per liter (µg/l) for PFOA, and
- 0.013 µg/L for PFOS.

Potential PFAS containing products or processes that may have been used at Secondary Manufacturing Facilities include, but are not limited to:

- Fluoropolymer/fluorocopolymer manufacturing and applications
- Class B firefighting foams
- Metal plating/etching, wire manufacturing
- Wire and cable
- Oil and water-resistant coatings
- Automotive and aviation oils
- Hydraulic fluids
- Fluoropolymer applications
- Textiles/leather
- Paper products
- Industrial surfactants/resins/ molds/plastics
- Paints, varnish, dyes, inks
- Polishes, waxes, adhesives
- Photolithography

The amendments are effective as of 1 Jun 2020. These MCLs are in addition to the existing MCL of 0.013 µg/L for PFNA.

Monitoring requirements for PFOA and PFOS for public community and public nontransient noncommunity water systems are being added to the existing rules at N.J.A.C. 7:10-5 with monitoring to commence in the first quarter of 2021 and thereafter be included in annual consumer reports. Under amendments to the Private Well Testing Act (PWTA) rules at

N.J.A.C. 7:9E, testing of private wells subject to sale or lease will also be required for PFOA, PFOS and PFNA.

Ground Water Quality Standards (GWQS) for PFOA and PFOS

Specific ground water quality standards of 0.014 µg/L for PFOA and 0.013 µg/L for PFOS have been added at N.J.A.C. 7:9C. A GWQS of 0.013 µg/L for PFNA had previously been established in 2018. The GWQS will also serve as remediation standards and apply to groundwater at remediation sites.

Further, under New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A, the Department is adding PFNA, PFOA, and PFOS to the Permit Application Testing Requirements/Pollutant Listings and the Requirements for Discharges to Ground Water. This requirement is focused on restoring contaminated water and groundwater and ensuring that water containing PFOA, PFOS, or PFNA at concentrations over the GWQS is not reinjected or otherwise released to the environment. Facilities with discharges of storm water to groundwater will also be required to monitor for PFAS if it suspected that these chemicals may be present. NJDEP is very likely to modify direct-discharge permits for local publicly-owned treatment works to include monitoring requirements and discharge limitations for PFAS. By extension, municipal utility authorities are likely to cascade these same requirements to significant industrial users.

Listing as Hazardous Substances

PFOA, PFOS, PFNA and their various acid, anions, salts and esters are also now listed on the Appendix A List of Hazardous Substances. This listing will impose upon all responsible parties, regardless of the environmental statute they are liable under, the obligation to identify and remediate PFOA, PFOS, and PFNA discharges. For example, this listing will require owners and operators of industrial establishments subject to Industrial Site Recovery Act (ISRA), and any site where the owner/operator is looking to obtain a Site-Wide Response Action Outcome (RAO) to assess and, if necessary, remediate sites for the presence of these compounds.

See https://www.nj.gov/dep/rules/adoptions/adopt_20200601a.pdf for information on these rules.

What Do These PFAS Rules Mean for Your Site?

These regulations including the establishment of specific GWQS (to be used as remediation standards) will impact facilities within the Site Remediation program that are seeking a Site-Wide Response Action Outcome (RAO).

- For sites that have received an unrestricted use final remediation document prior to the publication of the Interim Specific Groundwater Quality Standards for PFOA and PFOS on March 13, 2019, no further evaluation is required. However, the next triggering event (e.g. ISRA trigger) will require an assessment for PFAS.
- Sites within the Site Remediation program in the process of investigation or remediation will complete an assessment and either: 1) certify that the release of these PFAS to the environment from current or historical operations is unlikely, or 2) include these PFAS in a subsequent sampling program to assess presence or absence. This assessment will need to be documented in the next major regulatory submittal.
- For sites with remedial action permits, the issue of PFAS must be addressed in the Remedial Action Protectiveness / Biennial Certification submission, with either the certification that PFAS release is unlikely or inclusion of PFAS in the monitoring program to assess presence or absence.

ERM can help

ERM has technical experts experienced with PFAS and we are tracking this issue with NJDEP and other regulatory agencies in the US and around the world to provide advice and advocacy for our clients. Expected challenges companies may face include:

- Likelihood of PFAS use based on facility history
- Knowledge and understanding of the latest PFAS sampling and analysis guidance and requirements
- Securing and scheduling laboratory capacity to complete the required investigation

Key contacts

For further information on how ERM can provide you with up-to-date PFAS information and solutions, please contact:

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