



Secretary Patrick McDonnell
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Comments on Pennsylvania's Proposed PFOS and PFOA MCL Rulemaking

Secretary McDonnell and members of the Environmental Quality Board,

The Environmental Quality Board (Board) has proposed an amendment to Title 25, Chapter 109 in the Pennsylvania Code to establish maximum contaminant level goals (MCLG) and maximum contaminant levels (MCL) for two per- and polyfluoroalkyl substances (PFAS)—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS).

The Pennsylvania Chemical Industry Council (PCIC) represents chemical and petrochemical manufacturers and related industries in Pennsylvania. Please find our comments below in response to the proposed rulemaking.

Pennsylvania Should Defer to National Drinking Water Standards

The Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act and the Safe Drinking Water Act provide the United States Environmental Protection Agency (USEPA) authority to regulate the production and distribution of commercial and industrial chemicals.

This system of rules also ensures USEPA follows a ratified process to conduct a thorough evaluation that utilizes the best available science and considers the feasibility and achievement costs to inform any regulatory action. Specifically with regard to drinking water, the SDWA charges the EPA, in coordination with other federal agencies, to set standards for water quality and oversee states, localities and water suppliers on implementation of those standards.

The SDWA directs all public water systems in the U.S. to follow the standards and regulations set by the EPA. Because this process is resource intensive and because quick judgments that exclude aspects of the SDWA may eliminate valuable chemistries and technologies with societal benefits but result in no improvement to environmental or health outcomes, it is best suited for the EPA, rather than individual states or localities, continue to oversee and manage.

Disregard for the thoughtful federal process as laid out in the SDWA and promulgated by Congress could result in undue cost burdens associated with water monitoring and remediation and would establish an irresponsible precedent. A patchwork of state and local regulations creates the challenge of uncertainty for industry as continued investments are made in new and existing products and technologies.

PCIC supports the EPA's approach to addressing concerns raised around the legacy chemicals, PFOS and PFOA through its directed authority under the SDWA for an outcome that provides consistency in data, science and the potential nationwide promulgation of new standards.

PCIC also supports the EPA's continued coordination with states and site owners undertaking a process for establishing contaminated site cleanup standards for PFOS and PFOA using the best available science and tools.

In February 2021, EPA published a final determination to regulate PFOA and PFOS while also evaluating additional PFAS and considering regulatory actions to address groups of PFAS. The EPA projects they will publish national MCLs by the end of 2023.

This is the first proposal by the Pennsylvania Department of Environmental Protection (Department) to establish an MCLG or MCL. We have significant concerns with the department's proposal to establish drinking water standards at the state level and the precedent this will set for including additional future substances, which are already regulated through the federal SDWA.

While the department notes an attempt to adhere to the federal rulemaking requirements, several aspects of the proposed rulemaking lack complete data or the accurate inputs to generate a true cost-benefit comparison and create a feasible path to compliance.

PFOS and PFOA

Concerns were raised in the early 2000s about older fluorotelomers, known as "long chains." Industry worked with the USEPA and regulators to voluntarily phase out the older legacy chemicals, specifically PFOS and PFOA. These chemicals are no longer imported, manufactured or used to manufacture products in the U.S.

There are some products that contain PFOS and PFOA still in use today because of the lack of adequate substitutes. For example, aqueous film forming foam (AFFF) is a highly effective fire extinguishing foam used for high-hazard flammable liquid fires such as gasoline and jet fuel. In Pennsylvania, there is pending legislation that would restrict the use of these products during training exercises so they are only utilized for life-saving emergencies.

Detections and Release Remediation

As with any chemical product, responsible care and stewardship are critical to the continued use of these valuable building blocks of the products that make up modern society. Certainly, mismanagement of any chemical product, such as improper dumping or disposal of waste or spills and leakage that results in releases into the environment, should be addressed and remediated.

According to USEPA, when PFAS is found in drinking water, it is "typically localized and associated with a specific source of PFAS." This was reinforced through the department's statewide sampling plan. While there are assumptions of widespread detections of PFOS and PFOA in drinking water systems, the department only detected six systems with these substances above the 2009 Provisional Health Advisory Levels (HAL).

Treatability and Costs

Rulemaking requirements under the SDWA include the identification of technology and treatment techniques to achieve the MCL, dispose of waste materials and establish a determination as to whether the benefits of the MCL justify the cost based on the analysis laid out.

The department notes in the proposed rulemaking that the assessed compliance techniques were not included in the cost assessment due to one technology being “currently impractical” and others lacked sufficient data to generate a trust cost projection.

Instead, a general water treatment facility that did not include technologies specific to the filtration and disposal of PFOS and PFOA was modeled. Costs to transport, store or destroy the substances post-filtration were also not modeled or included in the assessment.

USEPA is researching and reviewing treatment and remediation approaches, along with potential unintended consequences of implementation, and has stated it will work with stakeholders to select the most efficient treatment methods. As USEPA has stated, states and water utilities will benefit by having treatment technology guidance and accurate associated costs.

The department has not included these in the proposed rulemaking.

Conclusion

PCIC opposes the department’s proposal to establish state-specific drinking water standards and supports USEPA’s existing management plan in an effort to maintain regulatory uniformity and avoid the potentially costly duplication of efforts and resources.

Sincerely,

Abby Foster, President
PA Chemical Industry Council