Massachusetts and Federal Updates on PFAS Regulation

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On February 20, the U.S. Environmental Protection Agency (EPA) announced that it would begin a regulatory determination process aimed at deciding "whether or not to begin the process to propose and promulgate a national primary drinking water regulation" for per- and polyfluoroalkyl substances, known as PFAS. PFAS encompasses a large class of chemical compounds commonly used in both household and industrial substances. To date, there are no enforceable federal PFAS cleanup standards, only a 2016 EPA health advisory setting a combined limit of 70 parts per trillion (ppt) for the two most common PFAS chemicals. If you're waiting for federal regulation of PFAS, it's going to be a while.

The Massachusetts Department of Environmental Protection (MassDEP), by contrast, continues to proactively regulate PFAS compounds, as we've covered in previous PFAS updates. The Commonwealth recently broadened these regulatory efforts, creating PFAS groundwater and soil cleanup standards under the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.0000, and proposing PFAS drinking water standards.

Groundwater and Soil Cleanup Standards under the MCP

On December 27, 2019, MassDEP published the final rule for groundwater and soil cleanup standards under the MCP for a group of six PFAS compounds — perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluoroheptanoic acid (PFHpA), and perfluorodecanoic acid (PFDA). These regulations became effective on date of publication. In doing so, the MassDEP formally brought these six compounds under the regulatory framework of the MCP. The final MCP revisions set groundwater cleanup standards for areas classified as GW-1 (e.g. drinking water) at 20 ppt for all six PFAS compounds combined. The S-1 soil cleanup levels range from 0.0003 to 0.3 milligrams per kilogram (mg/kg) depending on the individual PFAS compound.

Massachusetts Proposed Drinking Water Standards

The same day MassDEP released the final MCP revisions, they also published proposed drinking water standards for the same six PFAS compounds. Public comment closed on February 28th, 2020, and MassDEP has yet to publish any changes to the proposed regulations as a result of this comment period. The MassDEP's proposed maximum contaminant level (MCL) for all six PFAS compounds is 20 ppt. These new regulations will affect community water systems (e.g. public suppliers serving year-round residential customers) and non-transient, non-community suppliers (schools/daycares, businesses with 25+ employees). The proposed regulations do not apply to transient, non-community water systems (e.g. recreational areas, campgrounds, hotel/motels, and small businesses).

For affected water suppliers, quarterly monitoring will be required for the first year with an option to waive Q3 and Q4 if no PFAS compounds are found during Q1 and Q2, pending MassDEP approval. Thereafter, routine monitoring is required. If PFAS compounds are detected, there will be increased monitoring, subject to consultation with MassDEP.

The MassDEP plans to roll out the monitoring requirement in phases. Municipalities serving more than 50,000 individuals would start monitoring next month, in April 2020. Suppliers serving 10,000 to 50,000 individuals would start in October 2020, and those serving 10,000 individuals or fewer would start in October 2021. A supplier would be considered in violation if: three months of sampling results exceed the 20 ppt level for all six compounds cumulatively, or if PFAS levels from one or two months are high enough to identify a violation regardless of subsequent monthly results.

We've previously helped clients navigate PFAS contamination issues and settlements concerning drinking water. It remains to be seen how MassDEP's proposed standards will affect water suppliers and surrounding communities.

We will continue to update this post with more information on Massachusetts and federal PFAS regulation as it arises.