

PFAS Water Regulations In California Closer To Becoming Reality

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On September 28, 2021, the state of California (through the Office of Environmental Health Hazard Assessment) held a virtual workshop for proposed Public Health Goals (PHGs) for two types of PFAS – PFOA and PFOS. The release of proposed PHGs is extremely significant for any company situated in California, as PHGs are used to create enforceable drinking water standards and limits for groundwater contamination. The enforceable PFAS water regulations would trigger significant enforcement liability and cost concerns for thousands of businesses in California – well beyond the historic manufacturers of PFOA and PFOS. Downstream commerce businesses situated in California absolutely must ensure that they have a full compliance program in place that is adequately identifying PFAS risks and determining appropriate steps for risk mitigation. Failing to do so could cost some companies millions of dollars in enforcement action expenses.

PFAS Water Regulations In California

In August 2019, the California State Water Resources Control Board (State Water Board) requested that OEHHA develop PHGs for PFOA and PFOS for drinking water. PHGs are not regulatory standards, but they are a critical step in the development of enforceable Maximum Contaminant Levels (MCLs). While the State Water Board has some flexibility in setting a MCL, by law the MCL must conform as closely as possible with the PHG as is reasonably feasible.

In July 2021, [OEHHA released](#) proposed PHGs for PFOA and PFOS in drinking water. The PFAS water regulations proposed by OEHHA would set the PHG for PFOA at 0.007 parts per trillion (ppt) and PFOS at 1 ppt. OEHHA indicates that at such levels, they would expect only one additional cancer case per million residents that are exposed over a lifetime to either PFOA or PFOS. These levels would not only be dramatically lower than the State Water Board's current drinking water notification levels (set at 5.1 ppt for PFOA and 6.5 ppt for PFOS), but they would be by far the most aggressive standards set for PFAS in drinking water in the entire country. Many companies have concerns that the technology does not exist to adequately detect PFOA or PFOS levels in financially reasonable ways, such that they can adequately comply with the possible MCLs.

OEHHA's development of PHGs also impacts the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly referred to as Proposition 65 or Prop. 65). Under Prop. 65, businesses are prohibited from releasing chemicals “known to the state to cause cancer or reproductive toxicity” into

drinking water sources and prohibits companies from exposing people to chemicals on the [Prop. 65 List](#) without providing “clear and reasonable” warnings. Both PFOA and PFOS are on the Prop. 65 List as causing developmental or reproductive toxicity. OEHHA is currently evaluating whether to list PFOA as a carcinogen. The PHGs that OEHHA is developing at the moment can be used for risk assessment purposes under Prop. 65 regulations.

The next step in the process in California is the close of the public comment period on October 28, 2021 for the proposed PHGs for PFOA and PFOS.

Impact of PHGs On Businesses

Many companies assume that any PFAS water regulations enacted in California will not impact them, as virtually no industries, aside from water utilities, have any direct impact on drinking water. However, this belief provides a false sense of security that must immediately be dispelled. PFAS emissions through water effluent, wastewater discharge, air pollution, and leaching from the soil may all ultimately feed into drinking water sources. California, like many other states with PFAS drinking water standards and enforcement agency action to pursue remediation, will aggressively target any businesses that it feels in some way contributed to PFOA and PFOS pollution of drinking water sources. Their aim is targeted when triggering enforcement actions – remediate the drinking water sources, ensure no future contamination, and ensure parties allegedly responsible for the contamination pay for the associated costs.

It is critical that businesses of all types closely follow OEHHA’s PFAS water regulations and the PHGs that are likely to follow. Compliance programs absolutely must ensure that all known intake sources of PFOA and PFOS are accounted for, and that all known discharges of PFOA and PFOS are identified. Without such scrutiny, remedial steps taken in an effort to reduce pollution concerns and minimize future damages may be fruitless if PFAS pollution continues for reasons that were not identified during a compliance audit.

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