

New Enforcement of PFAS Requirements in CWA NPDES Industrial Permit

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The U.S. Environmental Protection Agency (EPA) continues to expand its toolbox for addressing PFAS constituents — this time, by branching out into Clean Water Act (CWA) enforcement of industrial permit effluent limitations. Last week, [EPA announced](#) the resolution of its first-ever enforcement action concerning wastewater discharges of per- and poly-fluoroalkyl substances (PFAS). This development and EPA's efforts to publicize the case broadly signal that the agency will prioritize the enforcement of PFAS limitations in National Pollutant Discharge Elimination System (NPDES) permits once they establish such limits.

EPA's Recent PFAS Efforts

Since October 2021, EPA has pursued a far-reaching [strategic roadmap](#) to address PFAS under multiple statutes. [EPA is currently considering](#) the listing of several PFAS constituents as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The agency [recently proposed Maximum Contaminant Levels](#) for six specific PFAS under the Safe Drinking Water Act.

Under the Clean Water Act, EPA has taken a series of actions that may lead to the broader establishment of numeric limits and other conditions in NPDES permits that address PFAS. In April 2022, EPA issued [guidance](#) for addressing PFAS in NPDES permits and pretreatment programs in the limited jurisdictions where EPA is the permit-issuing agency or the pretreatment control authority. Eight months later, EPA issued [similar guidance](#) directed to states authorized to issue NPDES programs. Though this is only guidance, EPA can use measures such as this to pressure NPDES-authorized states to follow its PFAS policy even if it is not an enforceable federal regulation.

EPA also proposed aquatic life water quality criteria for [perfluorooctanoic acid \(PFOA\)](#) and [perfluorooctane sulfonate \(PFOS\)](#). The agency's recent [Effluent Guidelines Program Plan 15](#) signaled EPA's intention to establish technology-based effluent limits for PFAS in landfill leachate and to continue studying PFAS from other sources.

CWA Permit Enforcement Action and a Harbinger

Although EPA's Clean Water Act-related efforts under its PFAS strategic roadmap focus currently on tasks aimed at developing effluent limits for PFAS in NPDES permits (or state-delegated equivalents), EPA's recent enforcement case concerned one of the few facilities in the country that already has numeric effluent limits for PFAS in its permit: Chemours's Washington Works facility in Parkersburg, West Virginia. EPA alleged that the plant, which manufactures organic fluoropolymers, violated effluent limits for PFOA and HFPO Dimer Acid (also known as GenX). In the consent order resolving the action, Chemours agreed to implement an EPA-approved sampling plan, conduct analyses to better understand the presence of PFAS in stormwater and effluent discharges, and implement a revised Storm Water Pollution Prevention Plan to minimize PFAS in its discharges.

EPA's decision to publicize what would otherwise be a straightforward enforcement action for violating numeric limits in an NPDES permit likely signals that the agency will enforce PFAS limits aggressively upon their establishment. As EPA's announcement states, "Administrator Regan has directed EPA staff to use every enforcement tool at our disposal to compel manufacturers of PFAS to characterize, control, and clean up ongoing and past PFAS contamination." As EPA builds out that toolbox, it is clear that one of those tools will be aggressive enforcement where PFAS has been made subject to controls in a discharge permit. The agency will likely push its NPDES-delegated state partners to follow suit.

This approach underscores the need for regulated entities across industries to remain engaged in EPA's PFAS regulatory initiatives and permit writing proceedings. Permittees will need to ensure that they have permit limits with which they can reasonably and cost-effectively comply. They will also have to ensure the use of reliable methods for sampling and lab analysis of the presence and concentrations of PFAS constituents regulated in an NPDES permit.

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National Law Review, Volume XIII, Number 126

Source URL: <https://natlawreview.com/article/new-enforcement-pfas-requirements-cwa-npdes-industrial-permit>