Published on *The National Law Review* https://natlawreview.com

Virginia DEQ Begins Identifying Potential Sources of PFAS in Public Drinking Water

Article By:

Gregory R. Wall

Paul T. Nyffeler, PhD

The Virginia Department of Environmental Quality (DEQ) has begun issuing notifications to facilities in the Commonwealth that it has identified as potential sources of per- and polyfluoroalkyl substances (PFAS) detected in public drinking water systems. DEQ's notifications were issued pursuant to a recently enacted Virginia law intended to protect public health by reducing significant sources of certain PFAS in raw water sources of public water systems and to minimize the costs of public water systems to comply with federally-mandated limits of these so-called "forever chemicals" from Virginia drinking water. On or before January 1, 2025, DEQ will release its Prioritization Plan, which is expected to identify approximately 10-12 public water systems that will be the focus of DEQ's efforts to identify sources of PFAS and recommend regulatory and non-regulatory options for reducing PFAS levels in source waters in 2025.

As of September 1, 2024, 28 drinking water systems were identified as providing drinking water with excessive levels of PFAS, and on November 25th and 26th, DEQ sent notifications to facilities it deemed to be potential sources of PFAS for those drinking water systems. DEQ is expected to send additional notifications to potential PFAS sources in at least six more drinking water systems in February 2025. Recipients of DEQ's notifications will be required to self-report information about their PFAS manufacturing and usage, as well as begin monitoring their wastewater discharges for PFAS, for use by DEQ to develop potential regulatory and nonregulatory options for addressing each significant source of PFAS.

Virginia's efforts to investigate PFAS began in earnest in April of 2024. During that month, the U.S. Environmental Protection Agency (EPA) finalized its Maximum Contaminant Levels (MCLs) for certain PFAS in drinking water under the Safe Drinking Water Act (SDWA). Because drinking water treatment plants' processing of raw water does not add PFAS to the treated drinking water, PFAS detected in the final product was already present in the raw water before entering the treatment plants. Drinking water that exceeds one or more PFAS MCLs will likely result in drinking water treatment plants installing expensive filtration equipment to remove or reduce PFAS concentrations in raw water.

Also in April, Virginia enacted a new PFAS monitoring law designed to minimize drinking water

treatment costs by tracking PFAS contamination back to its points of origin to encourage reducing or eliminating further PFAS releases. For any drinking water treatment plant that exceeds one or more PFAS MCLs, Virginia's PFAS law authorizes DEQ to identify relevant facilities that are potential sources of PFAS, require those facilities to report any intentional manufacturing or use of PFAS and monitor their wastewater discharges for PFAS, and prepare PFAS assessments that propose potential regulatory and nonregulatory options for addressing each source of PFAS.

Virginia's PFAS law requires the following procedures:

- **Public Water System (PWS) Routine Reporting:** PWSs must send to the Virginia Department of Health (VDH) the results from routine PFAS testing (which is required by SDWA).
- **VDH Notification of Exceedances:** Every quarter, VDH notifies DEQ if a PWS has exceeded any PFAS MCLs.
- **DEQ Assessment Plans:** After receiving VDH's notice, DEQ has 6 months to develop and implement a plan to prioritize and conduct PFAS assessments for identifying significant sources of PFAS in the PWS's raw water source.
- **Facility Self-Reporting Requirements:** If DEQ identifies a facility to be a potential source of PFAS in the PWS's raw water, DEQ will require that facility to report within 90 days details about PFAS the facility intentionally used or manufactured so long as the facility:
    - discharges to surface water under a Virginia Pollution Discharge Elimination System (VPDES) permit (which may be for wastewater, stormwater, or both), or
    - discharges to a publicly owned treatment works (POTW) under an industrial pretreatment program permit (*e.*, facilities with Significant Industrial User (SIU) permits). The Virginia law requires DEQ to forward the information provided by a facility's self-reporting to their POTW.
- **Facility Discharge Monitoring:** DEQ must also require the owner or operator of the following facilities, if deemed by DEQ to be a potentially significant source of PFAS in the PWS's raw water source and after three months' advance notice, to perform and report results from quarterly discharge monitoring for an initial one year period (which DEQ may discontinue if a facility's monitoring detect no PFAS for the first two quarters):
    - Facilities subject to self-reporting
    - Facilities manufacturing PFAS
    - Electroplating or metal finishing facilities using PFAS
    - Semiconductor or circuit board facilities using PFAS
    - Paper or packaging manufacturing facilities using PFAS
    - Textile mills, tanneries, or leather, fabric, or carpet treatment facilities using PFAS
    - Industrial launderers defined by NAICS 812332
    - Facility discharging groundwater remediation wastewaters pursuant to the VPDES General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests
    - Airports, air bases, air stations, fire training facilities, landfills, or other facilities or sites that DEQ has a reasonable basis to believe has significant soil or groundwater PFAS contamination significantly impacting finished water levels
    - Any other facility that DEQ has a reasonable basis to believe may use or manufacture PFAS based on the facility or activity type
- **DEQ Identification of Regulatory and Nonregulatory Options:** In its PFAS assessment reports, DEQ must "identify potential regulatory and nonregulatory options for addressing each significant source of PFAS," with the goal of such assessments being "to protect public

> health by reducing significant sources of PFAS in raw water sources of public water systems and to ensure, to the maximum extent practicable, that the costs of public water systems are minimized."

Once DEQ has identified regulatory and nonregulatory options for addressing PFAS sources in the PFAS assessments, Virginia's PFAS law does not require DEQ to take further action (not even to implement the options it identified). However, facilities that have been (or may be) identified as potential PFAS sources should begin for preparing for self-reporting and monitoring requirements now to ensure compliance with DEQ requirements, although consulting with counsel may provide opportunities to challenge a facility's designation.

National Law Review, Volume XIV, Number 354