



NJDEP Takes a Further Step in Regulating Emerging Contaminants

Publication:

Riker Danzig Environmental UPDATE June 2018

In November 2017, the New Jersey Department of Environmental Protection (“NJDEP”) set the lowest limits in the country for perfluorooctanoic acid (“PFOA”) and perfluorononanoic acid (“PFNA”) in drinking water (See our November 8, 2017 Blog Article – [NJDEP to Adopt Strict Standards for PFOA and PFNA in Drinking Water.](#)) Now, by rule adoption published in the January 16, 2018 New Jersey Register, NJDEP took a further step in regulating these emerging contaminants by adopting a regulation that adds PFNA to the List of Hazardous Substances under the New Jersey Spill Compensation and Control Act (the “Spill Act”). Adding PFNA to the Hazardous Substance List not only confirms that parties may face strict liability for cleanup and removal costs resulting from any discharge of PFNA to the environment, but also provides a mechanism for compensating individual property owners whose wells may be contaminated with this substance. The rule also adopts a permanent specific Ground Water Quality Standard (“GWQS”) for PFNA of 10 parts per trillion as well as permanent specific GWQS for 22 other constituents.

PFNA, historically used primarily as a processing aid in emulsion processes, is a developmental toxicant, liver toxicant, and immune system toxicant that bioaccumulates in humans. It is extremely persistent in the environment and is highly soluble and mobile in water.

The Department stated that it amended the Hazardous Substance List because PFNA groundwater contamination “is anticipated to continue in the foreseeable future due to its persistence as well as formation from precursor compounds in the environment.” As part of its justification, the Department referred to an extensive area of PFNA groundwater contamination affecting 20 public water supply wells and 91 private potable wells in three southwestern New Jersey counties where NJDEP has borne the entire burden and cost of investigating the

contamination and providing potable water to affected businesses and residences. Now that PFNA is on the Spill Act Hazardous Substances List, major facilities that handle PFNA will be subject to all discharge and prevention and control requirements of the Spill Act. Further, Spill Act funding for PFNA remediation as well as payment of damage claims resulting from PFNA discharges is also now available. Significantly, its listing confirms that persons with Spill Act liability are affirmatively required to remediate discharges of PFNA. Remediating parties should keep informed of NJDEP's efforts to regulate contaminants of emerging concern. Even if not included on the Hazardous Substances List, NJDEP has stated that contaminants of emerging concern must be remediated if discharged to the environment. Given the prevalence and persistence of many of these chemicals in the environment and the extremely low concentrations to which they may have to be remediated, addressing these emerging contaminants may change the approach to any site remediation case where they are present.

For more information, please contact the author Alexa Richman-La Londe at alalonde@riker.com or any attorney in our [Environmental Practice Group](#).en

Attorney:

Alexa Richman-La Londe

Practice:

Environmental Law