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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Bureau of Safe Drinking Water

Chapter 109 Safe Drinking Water: Draft-Final PFAS MCL Rulemaking

Public Water System TAC Board Meeting

July 14, 2022

Tom Wolf, Governor

Patrick McDonnell, Secretary

Agenda

- Discuss the background and purpose
- Examine the significant public comments
- Describe the key provisions of the draft-final rule
- Review the changes to the draft-final rule
- Discuss the rulemaking schedule and next steps

Note: A walk-through of the Annex A will follow this presentation.

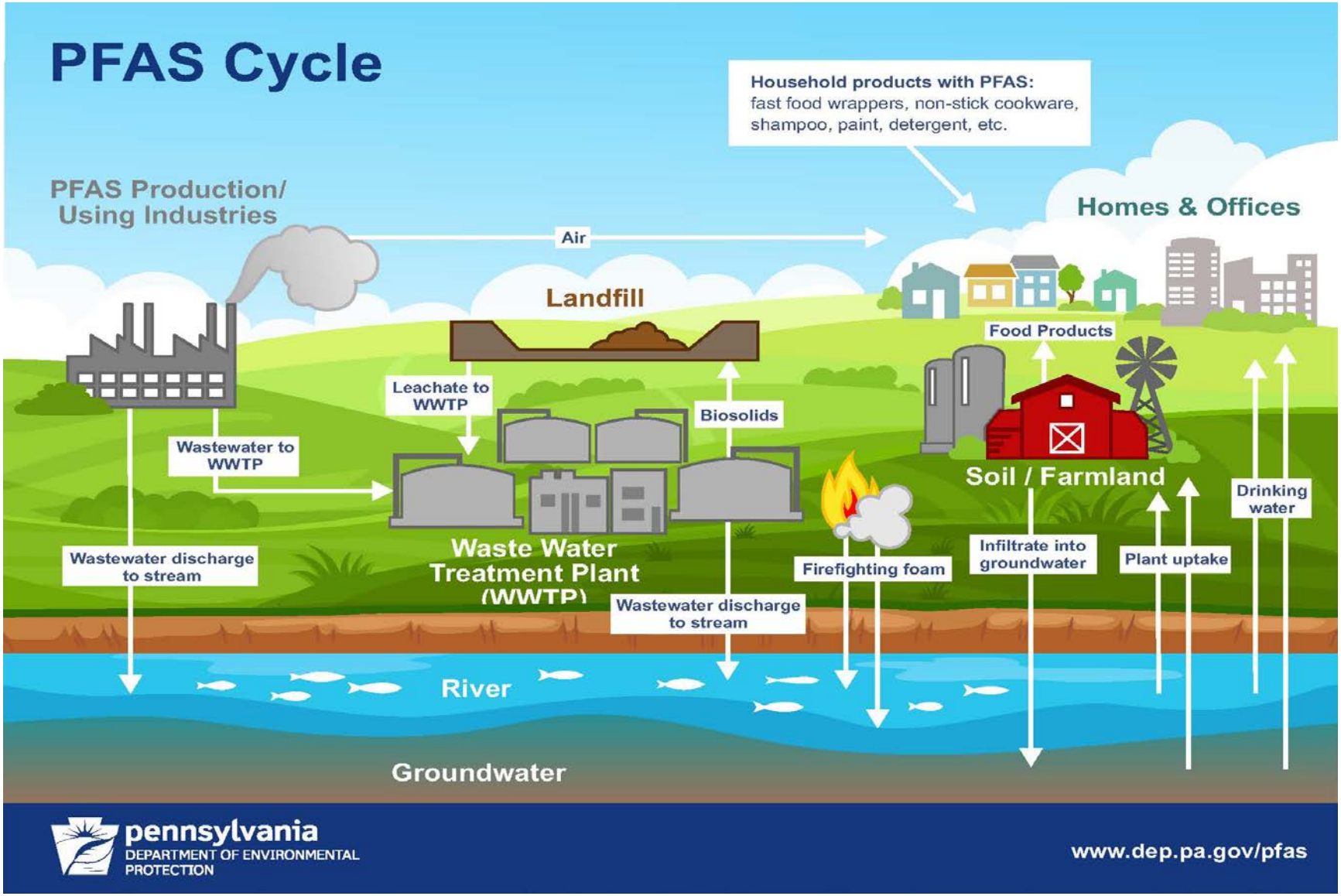
Background

- Per- and polyfluoroalkyl substances (PFAS) are a class of synthetic chemicals that have been manufactured and in use since the 1940s.

- PFAS are used to make products resistant to water, heat and stains and are found in industrial and consumer products such as clothing, carpeting, food packaging, non-stick cookware, firefighting foam, personal care products, adhesives, metal plating, wire manufacturing and many other uses.

- PFAS have unique chemical properties because they readily dissolve in water and are mobile, are highly persistent in the environment, and bioaccumulate.

PFAS Background



Rulemaking Background

- **Pennsylvania's PFAS Action Team** was formed in 2018 and has worked to: develop a comprehensive response to identify and eliminate sources of PFAS contamination; ensure drinking water is safe; manage environmental contamination; review gaps in data and oversight authority; and recommend actions to address those gaps.
  - One of the Action Team's recommendations is for DEP to establish drinking water standards for PFAS.
- **TAC Board** – Reviewed the pre-draft proposed rule on July 29, 2021; unanimously recommended that DEP move forward with the rule to present to EQB as a proposed rulemaking.
- **EQB** – Reviewed and approved the proposed rulemaking at its November 16, 2021 meeting.
- **Proposed PFAS MCL Rule** – was published in PA Bulletin on February 26, 2022 for 60-day public comment period.

MCL Rulemaking Process

The PFAS MCL rule is based on available data, studies, and science, and considers all factors as required by the Federal Safe Drinking Water Act (SDWA) and Pennsylvania's Regulatory Review Act (RRA), including:

- Health effects (as determined by Drexel University)
- Occurrence data (from UCMR3 and PFAS Sampling Plan)
- Technical limitations such as available analytical methods and detection and reporting limits
- Treatability of the contaminant and available treatment technologies
- Costs and benefits

Purpose of Rule

- Establish Maximum Contaminant Levels Goals (MCLGs) and Maximum Contaminant Levels (MCLs) for PFOA and PFOS to be protective of adverse developmental and immune system effects.
- Set MCL compliance provisions for monitoring, reporting and public notification.
- Specify analytical methods, reporting limits and acceptable treatment technologies.

Public Comments

- The proposed PFAS Rule was published in the *Pennsylvania Bulletin* on February 26, 2022, with a 60-day public comment period that included 5 public hearings.
- The public comment period ended on April 27, 2022.
- DEP received comments from 3,555 commentators, the House Environmental Resources and Energy Committee and IRRC.
- The majority of comments are based on a few form letters.

Public Comments

- The majority of comments were supportive of DEP's efforts to set MCLs.
- However, many commentators felt that the rule did not go far enough and recommended:
  - Lower MCLs for PFOA and PFOS
  - Setting MCLs for more PFAS either individually or as a group
  - More stringent monitoring requirements, such as an increased monitoring frequency (monthly), more immediate monitoring, and no allowance for waivers

Public Comments

There were also concerns about:

- Insufficient laboratory capacity
- Monitoring overlapping with UCMR5
- Supply chain issues and potential delays with installation of treatment
- Disposal of used media/resins

Public Comments

- The cost to benefit analysis was inadequate:
  - Costs for small systems are underestimated
  - Costs for large systems are not accurate
  - Monitoring costs are underestimated
- The rule is not based in science:
  - The sampling plan was insufficient and the occurrence data does not support conclusions
  - The use of targeted sampling is biased
- PA should wait for EPA to set PFAS standards.

Public Comments

Comments outside the scope of the rulemaking:

- There should be blood testing/health monitoring.
- There are other sources of PFAS; reducing PFAS in drinking water will not eliminate exposure.
- Polluters should be held responsible for cleaning up contamination.
- PFAS are in gas well fracking wastewater; fracking should be banned.
- PFAS are in biosolids; land application should be banned.
- Private wells should be included in the rule.

Key Provisions of Draft-Final Rule

- PFOA: MCLG of 8 ng/L; MCL of 14 ng/L
- PFOS: MCLG of 14 ng/L; MCL of 18 ng/L
- MCL Compliance:
  - Based on a running annual average (RAA) for each EP
  - If any quarterly result causes the RAA to exceed the MCL, a violation is generated for that quarter

ng/L = nanograms per liter = parts per trillion (ppt)
EP = entry point

Key Provisions of Draft-Final Rule

Monitoring

- Applies to all community, nontransient noncommunity, bottled, vended, retail and bulk hauling water systems.
- Initial monitoring is quarterly at each EP (based on plan).
- EP must stay on quarterly frequency if detected results *are not* reliably and consistently less than the MCL.
- Repeat monitoring is annual if detected results *are* reliably and consistently less than the MCL.
- Repeat monitoring is triennial if initial results are all non-detect.
- Confirmation sample is required if on annual or triennial monitoring and result > MCL; must resume quarterly testing.

Key Provisions of Draft-Final Rule

- Tier 2 public notice (PN) is required for MCL violations.
- Results must be reported in the Consumer Confidence Report.
- Analysis:
  - Samples must be analyzed by an accredited lab using an approved method
  - Labs must achieve reporting limit of 5 ng/L
- Treatment:
  - Approved technologies are Granular Activated Carbon (GAC), Ion Exchange or Reverse Osmosis
  - Other technologies approved by DEP

Changes to Draft-Final Rule

- Edits made to § 109.301(16) and § 109.1003(xv) to eliminate redundant or unnecessary language and improve readability.
- A provision is being added to accept UCMR5 data if it meets DEP criteria.
  - Samples must be analyzed by a PA-accredited lab that is also an EPA-approved lab for UCMR5.
  - Lab is able to meet PA reporting limits and data is reported to DWELR.
  - Systems may need to request sampling schedule change.
  - Systems may still need to conduct some of their own sampling.

Changes to Draft-Final Rule

- Deleted the requirement for sample collectors to be trained by an accredited lab.
- Clarified that entry points with PFAS treatment are not eligible for monitoring waivers.
- Clarified that performance monitoring may be required at least quarterly because some permits require monthly monitoring at initial start-up.
- Clarification will be added to the Order that the field blank need not be analyzed unless PFOS or PFOA is detected in the sample.

Schedule and Next Steps

- Obtain TAC's comments and recommendations on the draft-final rulemaking.
- Present the rulemaking to the EQB for consideration and adoption as a final-form rulemaking.
- If EQB adopts the final-form rulemaking, the final-form rulemaking would be delivered to the House and Senate Environmental Resources and Energy committees and to Pennsylvania's Independent Regulatory Review Commission (IRRC) for consideration.

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Dawn Hissner, Chief
Operations, Monitoring & Compliance Division
Bureau of Safe Drinking Water
dhssner@pa.gov