

## The Impacts of Regulatory Status of PFAS and What it Might Mean

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) include thousands of compounds used in manufacturing, coatings, consumer products, and firefighting. PFAS molecules have a chain of linked carbon and fluorine atoms representing strong bonds that typically resist breaking down in the environment. Toxicological studies indicate that exposure to some PFAS substances may cause serious health effects.

### PFAS and Drinking Water

The United States Environmental Protection Agency (USEPA) is developing a proposed National Drinking Water Regulation for publication by the end of 2022 for the PFAS compounds perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). We expect the proposed regulation to include non-enforceable Maximum Contaminant Level Goals (MCLGs) and enforceable standard or Maximum Contaminant Levels (MCLs) for PFOA and PFOS. The MCLG is the maximum level of a contaminant in drinking water at which no adverse effects are anticipated to human health, allowing an adequate margin of safety. Based on recent revisions to USEPA's Health Advisories for PFOA and PFOS, the MCLG is anticipated to be very low. Considering technological feasibility, the enforceable MCL is set as close as feasible to the MCLG. The expectation is that the MCLs for PFOA and PFOS may be low (on the order of 10± nanograms per liter, ng/L, equivalent to parts per trillion, ppt).



*For our municipal clients, federal MCLs/MCLGs may mean identifying and applying for loans and grants to secure funding to assist with treatment system design and installation.*

On November 14, 2022, USEPA published the final Fifth Drinking Water Contaminant Candidate List (CCL 5), which will be used nationwide to monitor contaminants in drinking water. The CCL 5 expands the definition of PFAS, including PFAS as a group rather than listing select individual compounds (like PFOA and PFOS). Sampling completed under CCL 5 will provide USEPA and other stakeholders with data on the national occurrence of many more PFAS in drinking water. While redefining PFAS under the CCL does not necessarily mean future regulation of PFAS under this expanded definition, USEPA's inclusion of PFAS as a group may influence the development of future regulation for these compounds.

The federal Safe Drinking Water Act governs the testing of public drinking water systems in the United States. Monitoring of private drinking water supplies is generally the responsibility of individual homeowners.

### **What Might an MCL/MCLG Mean to You**

Adoption of federal MCLs/MCLGs may have wide-ranging consequences.

For our municipal clients, federal MCLs/MCLGs may mean identifying and applying for loans and grants to secure funding to assist with treatment system design and installation. In addition, these federal regulations may have implications for considering potential municipal sources, including municipally owned fire department facilities, municipal airports, public works buildings, storage areas, and wastewater treatment systems.

Considering on-site use and potential sources will become paramount for our industrial clients. From identifying potential PFAS sources during due diligence to completing risk ranking for facilities based on their potential current and historical PFAS use and their location, new (low) federal MCLs/MCLGs will raise the visibility and importance of recognizing potential on-site sources, evaluating potential replacement chemicals for production, tracking/registering such use, and identifying background and potential off-site sources. In addition, changes in Toxics Release Inventory (TRI) reporting and proposed Toxic Substances Control Act (TSCA) Significant New Use Rules (SNURs) relative to PFAS have significant implications on annual reporting for facilities that use PFAS compounds in production.

For our real estate sector clients, adopting federal MCLs/MCLGs emphasizes the need to identify potential PFAS sources during due diligence to increase awareness of possible historical liabilities and consider the implications of encountering soil that may contain PFAS during redevelopment. Several states have developed or are currently developing leaching-based soil standards, and the adoption of low federal MCLs/MCLGs can potentially drive lower soil standards for PFAS. These lower standards may have significant consequences on soil relocation and removal/disposal actions required by federal and state remediation programs such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), TSCA, and similar state laws.

PFAS regulations are evolving rapidly – on the federal and state levels. In addition, we know that litigation is also intensifying around these compounds. At Verdantas, we are providing our clients with diverse technical assistance relative to PFAS, including evaluating potential on-and off-site sources based on desktop reviews; evaluating PFAS sources and potential liability during due diligence; completing field investigation focused on fate and transport assessment; providing litigation support; identifying and applying for possible sources of funding; and completing feasibility evaluation, design, and construction remediation systems. Please contact us if you have questions about how changing PFAS regulations may impact your business. We will connect you with one of our experts who can help you identify potential implications for you and your business.