

JUNE 2024

VOL. 24-6

PRATT'S

ENERGY LAW

REPORT



LexisNexis

EDITOR'S NOTE: OUT OF THIS WORLD

Victoria Prussen Spears

METHANESAT JOINS GREENHOUSE GAS MONITORING CONSTELLATION

Arie T. Feltman-Frank

U.S. ENVIRONMENTAL PROTECTION AGENCY FINALIZES PFAS DRINKING WATER REGULATION

Dianne R. Phillips, Jose A. Almanzar, Meaghan A. Colligan, Robert P. Frank and Molly Broughton

U.S. DEPARTMENT OF THE TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL REVOKES GENERAL LICENSE 44 RELATED TO VENEZUELA'S OIL AND GAS SECTOR

Andres Fernandez, Gabriel Caballero Jr., Jonathan M. Epstein, Ronald A. Oleynik, Andrew K. McAllister, Antonia I. Tzinova, Daniel A. Noste and Catherine Yepes

WAREHOUSE AND LOGISTICS OPERATIONS TARGETED BY REGULATORY PUSH FOR "INDIRECT SOURCE RULES" TARGETING VEHICLE EMISSIONS

Meera Gorjala, Joshua R. More and J. Michael Showalter

INFLATION REDUCTION ACT: INTERNAL REVENUE SERVICE EXPANDS ELIGIBILITY FOR ENERGY COMMUNITY BONUS CREDIT

Steven Lorch, Jonathan J. Macke, Nathan Bunch and Natalia Pierotti

ARTIFICIAL INTELLIGENCE AND ENERGY: NETWORK INNOVATION AND GROWTH

Gene F. Price, Lauren E. Cole and Janelle E. Thompson

CHINA RELEASES CARBON ALLOWANCE TRADING REGULATIONS

Hui Xu, Paul A. Davies, Jean-Philippe Brisson and Qingyi Pan

ENERGY TAX UPDATE

Amish Shah, Brad M. Seltzer, Nicole M. Elliott, Joshua David Odintz, Roger David Aksamit, Kenneth W. Parsons, Daniel Graham Strickland, Bryan Marcelino, Mary Kate Nicholson, Eli Brander and Rachel T. Provencher

Pratt's Energy Law Report

VOLUME 24

NUMBER 6

June 2024

Editor's Note: Out of This World Victoria Prussen Spears	179
MethaneSat Joins Greenhouse Gas Monitoring Constellation Arie T. Feltman-Frank	182
U.S. Environmental Protection Agency Finalizes PFAS Drinking Water Regulation Dianne R. Phillips, Jose A. Almanzar, Meaghan A. Colligan, Robert P. Frank and Molly Broughton	186
U.S. Department of the Treasury's Office of Foreign Assets Control Revokes General License 44 Related to Venezuela's Oil and Gas Sector Andres Fernandez, Gabriel Caballero Jr., Jonathan M. Epstein, Ronald A. Oleynik, Andrew K. McAllister, Antonia I. Tzinova, Daniel A. Noste and Catherine Yepes	193
Warehouse and Logistics Operations Targeted by Regulatory Push for "Indirect Source Rules" Targeting Vehicle Emissions Meera Gorjala, Joshua R. More and J. Michael Showalter	197
Inflation Reduction Act: Internal Revenue Service Expands Eligibility for Energy Community Bonus Credit Steven Lorch, Jonathan J. Macke, Nathan Bunch and Natalia Pierotti	201
Artificial Intelligence and Energy: Network Innovation and Growth Gene F. Price, Lauren E. Cole and Janelle E. Thompson	206
China Releases Carbon Allowance Trading Regulations Hui Xu, Paul A. Davies, Jean-Philippe Brisson and Qingyi Pan	209
Energy Tax Update Amish Shah, Brad M. Seltzer, Nicole M. Elliott, Joshua David Odintz, Roger David Aksamit, Kenneth W. Parsons, Daniel Graham Strickland, Bryan Marcelino, Mary Kate Nicholson, Eli Brander and Rachel T. Provencher	214

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Raeesa Hoosen, LLB. at (1908) 673-3323
Email: raeesa.hoosen@lexisnexis.co.za

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
LexisNexis® Support Center <https://supportcenter.lexisnexis.com/app/home/>
For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (518) 487-3385

ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT’S ENERGY LAW REPORT [page number]
(LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT’S ENERGY
LAW REPORT 4 (LexisNexis A.S. Pratt)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc. Copyright © 2024 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

SAMUEL B. BOXERMAN

Partner, Sidley Austin LLP

ANDREW CALDER

Partner, Kirkland & Ellis LLP

MATTHEW DOBBINS

Partner, Vinson & Elkins LLP

M. SETH GINTHER

Partner, Hirschler Fleischer, P.C.

STEPHEN J. HUMES

Partner, Holland & Knight LLP

R. TODD JOHNSON

Partner, Jones Day

BARCLAY NICHOLSON

Partner, Norton Rose Fulbright

ELAINE M. WALSH

Partner, Baker Botts L.L.P.

SEAN T. WHEELER

Partner, Kirkland & Ellis LLP

Hydraulic Fracturing Developments

ERIC ROTHENBERG

Partner, O'Melveny & Myers LLP

Pratt's Energy Law Report is published 10 times a year by Matthew Bender & Company, Inc. Copyright © 2024 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 9443 Springboro Pike, Miamisburg, OH 45342 or call Customer Support at 1-800-833-9844. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house counsel, government lawyers, senior business executives, and anyone interested in privacy and cybersecurity related issues and legal developments. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

U.S. Environmental Protection Agency Finalizes PFAS Drinking Water Regulation

*By Dianne R. Phillips, Jose A. Almanzar, Meaghan A. Colligan, Robert P. Frank and Molly Broughton**

In this article, the authors discuss the final rule issued by the Environmental Protection Agency setting legally enforceable maximum contaminant levels for six per- and polyfluoroalkyl substances.

The U.S. Environmental Protection Agency (EPA or Agency) announced the final rule¹ for the National Primary Drinking Water Regulation (NPDWR) on April 10, 2024. The EPA evaluated more than 120,000 comments to the proposed rule that was issued more than a year ago. The final rule sets legally enforceable maximum contaminant levels for six per- and polyfluoroalkyl substances (PFAS).

THE RULE IN BRIEF

The six specific PFAS compounds covered are:

- Perfluorooctanoic acid (PFOA);
- Perfluorooctane sulfonic acid (PFOS);
- Perfluorononanoic acid (PFNA);
- GenX chemicals: hexafluoropropylene oxide dimer acid (HFPO-DA);
- Perfluorohexane sulfonic acid (PFHxS); and
- Perfluorobutane sulfonic acid (PFBS).

The maximum contaminant levels (MCLs) and MCL goals proposed for these chemicals are listed in Table 1.

Table 1

PFAS Compound	Final Legally Enforceable MCL	Final MCL Goal
PFOA	4 parts per trillion (ppt)	0
PFOS	4 ppt	0

* Dianne R. Phillips, Jose A. Almanzar, Meaghan A. Colligan and Robert P. Frank, attorneys with Holland & Knight LLP, may be contacted at dianne.phillips@hklaw.com, jose.almanzar@hklaw.com, meaghan.colligan@hklaw.com and robert.frank@hklaw.com, respectively. Molly Broughton, a legislative assistant at the firm, may be contacted at molly.broughton@hklaw.com.

¹ <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-first-ever-national-drinking-water-standard>.

PFNA, PFHxS, PFBS, GenX chemicals	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1. Hazard Index (unitless)	1. Hazard Index (unitless)

Public water systems will have three years after the rule promulgation to comply with monitoring requirements, at which point they must begin reporting the results of their monitoring. The initial monitoring requirements will mandate four quarterly samples for larger systems serving populations over 10,000 people and biannual samples from smaller systems serving populations of 10,000 or fewer. Beginning five years after promulgation, if the levels of PFAS detected in these samples exceed the MCLs, public water systems must notify their served communities and take steps to reduce levels of PFAS in their drinking water.

The EPA does not specify how water systems must reduce levels of PFAS in their water supply or mandate a single technology to be used, but it has outlined the following as Best Available Technologies: granular activated carbon (GAC), anion exchange (AIX), nanofiltration (NF) and reverse osmosis (RO).

WHAT CHANGED?

The EPA modified² several provisions from the NPDWR proposed rule,³ such as adding new MCLs for individual chemicals previously only considered when combined with others and extending the deadline for compliance. The changes will primarily impact the implementation of the final rule without radically altering its intent, but the cumulative impacts will inform public water facilities and industry as they work to meet the standards.

Arguably the most drastic change to the standard was the addition of MCLs for four compounds that previously were targeted only when found in mixtures. The EPA set an MCL of 10 ppt for PFNA, PFHxS, PFBS, and “GenX Chemicals,” a change advocated by many environmental groups during the comment period.⁴ However, the final rule also increases the threshold required for mixtures of PFAS compounds to trigger compliance actions by changing the institution of a 1.0 “Hazard Index MCL” on mixtures of one or more of

² https://www.epa.gov/system/files/documents/2024-04/fact-sheet_proposal-vs.-final-pfas-ncpdwr-comparison_final.pdf.

³ <https://www.govinfo.gov/content/pkg/FR-2023-03-29/pdf/2023-05471.pdf>.

⁴ <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0114-1808>.

PFHxS, PFNA, HFPO-DA and PFBS to mixtures of two or more of those compounds.

The EPA also clearly considered comments from public water works and industry as the Agency lengthened timelines for compliance and eased restrictions to some degree. Now, instead of requiring compliance for monitoring and reduction procedures within three years of rule promulgation, affected entities will have three years to complete initial monitoring and five years overall to implement solutions that reduce PFAS and also alert the public to the new levels and reduction efforts. The monitoring and remediation phases run concurrently. Under the final rule, compliance monitoring protocols will now go into effect when levels reach one-half final MCLs as compared to the previous trigger being set at one-third final MCLs.

WHAT THIS MEANS FOR PUBLIC WATER WORKS

All public water facilities will be subject to the monitoring conditions of the NPDWR, requiring monitoring be complete within three years of promulgation of this rule and continuing monitoring on a biannual or quarterly basis until the facilities reach one-half MCLs and are eligible for reduced monitoring conditions. Public water systems with PFAS contamination exceeding the MCLs will be required to take steps to reduce the presence of PFAS in their water supplies using best available practices within five years of promulgation. The EPA found that 6 percent to 10 percent of the 66,000 public drinking water systems subject to this rule are estimated to be out of compliance and will need to take remedial measures.

To alleviate the compliance costs for public water systems in small and/or disadvantaged communities, the EPA announced nearly \$1 billion in newly available funding in conjunction with the National Drinking Water Standard.⁵ This funding falls under the same \$9 billion investment from the Bipartisan Infrastructure Law (BIL) aimed at assisting drinking water facilities reduce the presence of PFAS and other emerging contaminants in their water. An additional \$12 billion in BIL funding aimed at improving public water infrastructure to handle PFAS contamination will further reduce the regulatory burden placed on public water systems.

Despite this influx of funding, the mounting costs of compliance to address PFAS contamination have spurred concern among public water facilities. Although the EPA estimated the annual costs will total \$1.5 billion in their

⁵ <https://www.epa.gov/dwcapacity/emerging-contaminants-ec-small-or-disadvantaged-communities-grant-sdc>.

comments on the proposed rule, one trade association shared a study⁶ that projects an annual cost of \$3.8 billion, largely falling on the facilities and, in turn, the communities they serve. The report continues to estimate that “annual costs to households for removing PFAS from drinking water can range from \$100 or more per year (for a population of over 1 million) to even \$10,000 (for a population of less than 100).”

WHAT THIS MEANS FOR STATES

Mounting public pressure and high-profile, multibillion-dollar water contamination cases prompted several states to act previously on PFAS MCLs in the absence of EPA regulatory activity. Over the last few years, multiple states – Maine,⁷ Massachusetts,⁸ Michigan,⁹ New Hampshire,¹⁰ New Jersey,¹¹ New York,¹² Pennsylvania,¹³ Rhode Island,¹⁴ Vermont,¹⁵ Washington¹⁶ and Wisconsin¹⁷ – established enforceable drinking water standards for certain PFAS in drinking water.

⁶ <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0114-1759>.

⁷ <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0064&item=3&snum=130>.

⁸ <https://www.mass.gov/doc/310-cmr-2200-the-massachusetts-drinking-water-regulations/download>.

⁹ <https://casetext.com/regulation/michigan-administrative-code/department-environmental-quality/drinking-water-and-municipal-assistance-division/supplying-water-to-the-public/part-6-state-drinking-water-standards-and-analytical/section-r-32510604g-mcls-for-per-and-polyfluoroalkyl-substances>.

¹⁰ [https://www.pfas.des.nh.gov/drinking-water#:~:text=Health%20standards&text=In%20July%202020%2C%20New%20Hampshire,acid%20\(PFHxS\)%20%E2%80%93%2018%20ppt](https://www.pfas.des.nh.gov/drinking-water#:~:text=Health%20standards&text=In%20July%202020%2C%20New%20Hampshire,acid%20(PFHxS)%20%E2%80%93%2018%20ppt).

¹¹ <https://dep.nj.gov/pfas/standards/>.

¹² https://www.health.ny.gov/environmental/water/drinking/emerging_pfas_publicwater.htm.

¹³ <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-2/46.html>.

¹⁴ <https://webserver.rilegislature.gov/Statutes/TITLE46/46-32/INDEX.htm>.

¹⁵ <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT021/ACT021%20As%20Enacted.pdf>.

¹⁶ <https://doh.wa.gov/community-and-environment/drinking-water/contaminants/pfas-drinking-water>.

¹⁷ <https://dnr.wisconsin.gov/topic/DrinkingWater/2022PFASMCLs.html>.

Several states including Delaware¹⁸ and Virginia,¹⁹ are also in the process of considering MCLs for certain PFAS.

Other states, such as Connecticut,²⁰ Maryland²¹ and Oregon,²² have established non-enforceable “action levels” or drinking water guidelines.

Some states such as California²³ and Utah²⁴ have begun monitoring programs in addition to EPA’s Unregulated Contaminant Monitoring Rule.²⁵ All of this adds another layer of complexity to the matter and confusion to consumers and regulated entities.

The foregoing patchwork approach has resulted in a wide range of concentrations for state-based PFAS drinking water standards or guidelines, ranging from 2 ppt (Connecticut “action level”) to 400,000 ppt (Michigan enforceable standard) for certain compounds. Now that the EPA has finalized MCLs for six PFAS compounds, however, states must adhere to the federal standards as required by the SDWA if the federal standards are stricter. In practice, this means that states must yield to EPA implementation and enforcement of the MCLs within their jurisdiction or retain primacy by adopting new drinking standards that are at least as strict as the federal ones. States that decide to adopt new PFAS drinking water standards will need to ensure that their respective environmental agencies have the capacity, budgets and regulatory framework in place to safeguard against improper and ineffective implementation and enforcement.

WHAT THIS MEANS FOR INDUSTRY

Given the high public costs of the final rule, we can anticipate attempts to offset these expenses by reducing the presence of upstream PFAS contamination. Comments²⁶ from industry actors discussed the resounding implications MCLs will have on their businesses and usage of PFAS. Many industry actors reaffirmed their commitments to environmental stewardship and support for

¹⁸ <https://www.dhss.delaware.gov/dhss/dph/hsp/files/MCLImplementationPlanPFAS.pdf>.

¹⁹ <https://rga.lis.virginia.gov/Published/2021/RD681>.

²⁰ <https://portal.ct.gov/dph/drinking-water/dws/per--and-polyfluoroalkyl-substances>.

²¹ https://mde.maryland.gov/programs/Water/water_supply/Documents/PFAS_MDH_PFHxS_Advisory%20Fact_Sheet.pdf.

²² <https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/DRINKINGWATER/OPERATIONS/Pages/PFAS.aspx>.

²³ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/pfas.html.

²⁴ <https://deq.utah.gov/drinking-water/drinking-water-pfas>.

²⁵ <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule>.

²⁶ <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0114-1655>.

commonsense PFAS regulations, but urged the EPA to consider how increased cleanup costs could drive companies to areas where regulations are less stringent. As a result, industry commenters warn that the U.S. would lose jobs to offshoring while increasing global PFAS contamination.

Companies also voiced concerns about the essential uses of PFAS that may be regulated offshore, once again detracting from the domestic economy or causing supply shortages as there is often no viable replacement for PFAS at this time.

Further complicating the issue, many of the products that utilize PFAS in critical capacities are necessary for the clean energy transition, pitting two environmental goals squarely against one another.

WHAT COMES NEXT?

The EPA's PFAS Strategic Roadmap²⁷ has outlined the regulatory agenda for systematically tackling PFAS contamination. The EPA has largely followed the timeline presented in the roadmap, but an upcoming congressional deadline has fast-tracked the finalization of many Biden Administration rules, primarily regarding environmental policy. The Congressional Review Act allows lawmakers to swiftly reverse rules finalized and adopted 60 days before the end of a congressional session by allowing simple congressional majorities to overturn them. This strongly incentivizes the Agency to finalize high-priority regulations before reaching such a deadline. One example of this concern for timing is EPA's announcement on April 19, 2024, and the subsequent publication in the Federal Register on May 8, 2024, of a final rule under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA, a/k/a Superfund) listing two PFAS – specifically, PFOA and PFOS – as hazardous substances under CERCLA.

Communities dealing with PFAS in their drinking water will also have to contend with residual impacts on wastewater processing facilities. The combination of the MCLs for six PFAS, the designation by EPA on April 19 of PFOA and PFOS as hazardous substances under CERCLA, the proposed changes²⁸ to the Resource Conservation and Recovery Act (RCRA) regulations, and potential Effluent Limitations Guidelines²⁹ and testing requirements³⁰ under

²⁷ <https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024>.

²⁸ <https://www.federalregister.gov/documents/2024/02/08/2024-02328/definition-of-hazardous-waste-applicable-to-corrective-action-for-releases-from-solid-waste>.

²⁹ <https://www.epa.gov/eg/current-effluent-guidelines-program-plan>.

³⁰ <https://www.epa.gov/newsreleases/epa-issues-guidance-states-reduce-harmful-pfas-pollution>.

the National Pollutant Discharge Elimination System (NPDES) will have significant impact on wastewater treatment operators, which will further compound the impact on communities.

IN SUMMARY

- The long-awaited National Primary Drinking Water Regulation setting maximum contaminant levels (MCLs) and MCL goals for six per- and polyfluoroalkyl substances (PFAS) compounds in drinking water under the Safe Drinking Water Act was finalized by the U.S. Environmental Protection Agency on April 10, 2024.
- The finalized rule maintains limits of 4 nanograms per liter or parts per trillion (ppt) for perfluorooctane sulfonic acid and perfluorooctanoic acid and includes new limits for four compounds.
- While the final rule does not change the initial monitoring timelines, it does lengthen the MCL compliance deadline, allowing affected public water facilities five years to reduce the presence of PFAS compounds in their water.