Chemical and Water Associations Challenge EPA's Maximum Contaminant Level Regulations

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On June 7, 2024, the American Water Works Association (AWWA) and the Association of Metropolitan Water Agencies (AMWA) filed suit challenging the United States Environmental Protection Agency's (EPA) recent rule that established Maximum Contaminant Levels (MCLs) for certain per-and polyfluoroalkyl substances (PFAS) in drinking water. The American Chemistry Council (ACC) and National Association of Manufacturers (NAM) followed shortly thereafter, filing suit on June 10, 2024. Both suits were filed in the US Court of Appeals for the DC Circuit.

On April 26, 2024, EPA promulgated the first-ever national, legally enforceable MCLs for six PFAS in drinking water. EPA established MCLs for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), at 4 parts per trillion (ppt), the lowest level that current technology can reliably detect. The rule also set a MCL of 10 ppt for perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA) (commonly known as GenX chemicals), and perfluorohexane sulfonic acid (PFHxS). In addition, based on EPA's assertion that certain PFAS are often found together in various combinations, the rule regulates the mixture of PFNA, HFPO-DA, PFHxS and perfluorobutane sulfonic acid (PFBS) through the use of a Hazard Index of 1 to determine if the combined levels of these PFAS pose a potential risk to human health.

This regulation will require public water systems to monitor for these six chemicals within three years and to comply with the drinking water standards beginning in 2029. If monitoring reveals levels that exceed the regulatory standards, public water systems will be required to: (1) notify the public within thirty (30) days; and (2) reduce the levels of these PFAS below the regulatory standards. While EPA estimates that only six to ten percent of public water systems will be required to “take action” to meet the federal standard, industry groups tell a different story—they anticipate that the vast majority, if not all, water systems in the United States will require costly remediation in order to meet the EPA's new standards, potentially costing ratepayers and/or taxpayers billions of dollars. And while EPA estimates that compliance with the new rule will cost approximately $1.5 billion annually, AWWA estimates it will be much costlier—approximately $3 billion to $5 billion annually.

Both suits challenge the propriety of EPA's rule and request the court vacate the rule as soon as possible. The AWWA and AMWA petition asserts that the rule is legally defective because it is “arbitrary and capricious or otherwise contrary to law, in excess of statutory authority, unreasonable, not feasible, and not supported by the best available health effects and occurrence data and science.” The petition states: “EPA did not rely on the best available science and the most recent occurrence data, and used novel approaches as the basis for certain portions of the rule.” AWWA and AMWA further argue that EPA did not allow the public sufficient opportunity to provide feedback, and “significantly underestimated the costs” of compliance with the rule. ACC and NAM similarly argue that the final rule is arbitrary and capricious, while also alleging that the rule “exceeds the agency's authority under the Safe Drinking Water Act of 1974 . . . [is] an abuse of discretion; and . . . was promulgated without observance of procedures required by law.”0 Petitioners strongly support protection of public health, but believe the rule “significantly underestimates nationwide costs, does not take into account the latest PFAS data, and will add to affordability challenges for many households.”

The Natural Resources Defense Council is currently evaluating its legal options and is considering intervening to support EPA's rule.

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