



Litigation



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California Increasing Scrutiny of PFAS

In recent days, there have been a couple of significant developments regarding California's regulation of per- and polyfluoroalkyl substances (PFAS).

On Feb. 6, the California Division of Drinking Water, an arm of the California State Water Resources Control Board (State Water Board) announced that it is reducing the response levels (RLs) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. Previously, the RL for these chemicals was 70 parts per trillion (ppt) combined. The new levels are 10 ppt for PFOA and 40 ppt for PFOS (based on a running four-quarter average). These RLs are not currently mandatory. However, as a result of the enactment this past year of A.B. 756, local water systems that are ordered by the State Water Board to test for PFOA or PFOS and detect concentrations above these levels will be required to take the water source out of service, provide treatment to reduce the levels or notify their customers in writing.

This development is likely to have several impacts. First, the State Water Board is likely to issue orders to local water systems to sample for PFAS. Given the prevalence of PFOA and PFOS in groundwater, some of these systems are likely to detect these chemicals and, because of the new, lower RLs, more of those systems will have to either remove the sources, treat the water for PFAS or notify customers. In addition, even though the new RLs are not mandatory, others

that detect PFOA and PFOS above the new, lower RLs, will also be under pressure to address the excess levels. The new RLs will also likely lead to increased pressure on those that released PFAS into the environment to investigate and remediate PFAS.

In addition, until now, although there are literally thousands of PFAS, regulatory attention has focused on PFOA and PFOS, which are the most studied PFAS. Other PFAS have generally avoided close scrutiny. However, the State Water Board also reported this week that investigations conducted at its behest have identified seven additional PFAS as being prevalent in water wells in California. As a result, the board asked the State's Office of Environmental Health Hazard Assessment for its recommendation for developing notification levels for these additional varieties of PFAS. This may lead to the development of Notification Levels (NLs) and RLs for additional PFAS. As a result, additional water sources may be considered threatened by PFAS contamination.

Both of these developments will likely result in significantly increased scrutiny, regulatory activity and litigation. It is reasonable to expect that regulatory agencies will increase efforts to require sampling for PFAS and will take action to require cleanup of sites impacted by PFAS, thereby putting increased pressure on entities that manufactured, used or disposed of PFAS and products containing PFAS and

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those that released PFAS into the environment. These developments also increase the likelihood of litigation amongst private parties that released or are impacted by PFAS.

Related Professionals

For more information, please contact:

Albert M. Cohen acohen@loeb.com

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