

PFAS in California — Impact of the 2020 Defense Authorization Act

Information about PFAS compounds in California is literally exploding, with additional contamination sites identified almost daily, while the science and legal environments surrounding these “forever chemicals” also see rapidly moving action. Per- and poly-fluoroalkyl substances of concern are no longer limited to the legacy compounds PFOS and PFOA, but now also include investigations of dozens of different PFAS compounds. In the face of these moving targets, California has undertaken a major sampling effort with State Water Board Orders for sampling at soil and groundwater sites near landfills, airports, and chrome platers, covering, to date, up to 38 compounds and analytes based on analysis potential. Additional orders are expected, targeting military sites, wastewater treatment, and secondary manufacturing sites. These orders contain provisions requiring notification at levels of 5.1 ppt for PFOA and 6.5 for PFOS. On February 6, California announced new response levels for drinking water at 10 ppt for PFOA and 40 ppt for PFOS. As a result of these and other efforts, the state now has information about contamination levels and locations throughout the state and has made that information available to the public.

It is into this context of rapid and sustained information about PFAS contamination in California that the recently passed 2020 Defense Authorization Act (DAA) implementation will play out.

The 2020 DAA and DOD Cleanups

While the DAA did not include requirements that some PFAS be designated as hazardous substances (thus avoiding Department of Defense Superfund liability for private cleanups), it does contain several provisions that are likely to significantly increase the number and pace of DOD PFAS cleanups. A large number of military facilities are located throughout California, and positive PFAS samples of groundwater or drinking water have been seen at or near as many as 21 bases in the state — many well above the federal drinking water action levels — the most in any state.

The DAA requires DOD cleanups of PFAS on federal facilities. It also requires DOD to conduct remediation and provide water supplies on contaminated adjacent farms and to enter into cooperative agreements with affected communities for testing, monitoring, and cleaning up sites involving PFAS contamination from military facilities.

Taken together, and in light of the large population of DOD facilities in California, these provisions are likely to dramatically affect assessment and remediation activities throughout the state.

The 2020 DAA and Toxic Release Inventory Reporting

The DAA added 160 distinct PFAS compounds to the Toxic Release Inventory (TRI), effective immediately, with an automatic addition of any PFAS for which EPA finalizes a toxicity value. As a result, all businesses in the categories covered by TRI with 10 full-time employees who import, manufacture, or otherwise use in a quantity that meets the 100 pound threshold for any of these listed compounds must report annually, starting with 2021 reports on the year 2020. Covered categories of businesses in designated NAICS codes include mining, utilities, manufacturing, merchant wholesalers, publishing, and others. Covered reporters must provide detailed information about how much is released to the environment and/or managed through recycling, energy recovery, and treatment. A “release” means that the chemical is emitted to the air or water, or placed in some type of land disposal.

The information is compiled by EPA into the Toxic Release Inventory, which is made available to the general public.

Given the scale and variety of California’s economy, it is inevitable that this TRI reporting will lead



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to a great deal of new information about the location of PFAS and about PFAS releases to the environment in communities all over the state.

The DAA and Drinking Water Sampling

The DAA also directly adds to EPA's list of contaminants to be sampled in the next (fifth: 2022-2026) cycle of the Unregulated Contaminants Monitoring Rule (UCMR) under the Safe Drinking Water Act. The UCMR is a five-year cycle of required monitoring of designated contaminants by large Public Water Systems in the United States with a representative sampling of smaller systems. This nationwide survey included PFOS and PFNA in the third cycle, and provided some of the key initial information about drinking water contamination. The DAA has now added at least 29 PFAS compounds to the UCMR — all those for which an approved EPA analytical method is available.

It is unclear how much this required sampling will impact California, although many of its public water systems will be subject to the rule. The state sampling orders have already targeted locations thought to be more likely to show contamination. In general, larger public water supply systems have not been as prone to show contamination. It is nevertheless likely that this round of sampling, for this range of compounds, will help to clarify the scope and magnitude of PFAS drinking water contamination in the state.

The DAA and USGS Sampling

The DAA also mandates that PFAS compounds be included in the national sampling programs administered by the U.S. Geological Survey (USGS).

The programs include surface water and groundwater, soils, and wells. This is particularly significant because it goes well beyond drinking water or even drinking water sources. USGS sampling programs in California are extensive and widespread.

Conclusion

California's active involvement in the emerging PFAS challenges is likely to be spurred and enhanced by the recently passed requirements of the Defense Authorization Act. California's many military facilities will be under requirements to address assessment and cleanup, both on and off-site. California's many enterprises subject to TRI reporting will be providing EPA, the state, and the public with extensive information about the location, handling, and releases of a large number of PFAS compounds. New extensive sampling at the federal level will supplement state and private sampling efforts. Today's level of rapid expansion of information is likely to be outpaced for the foreseeable future.

References

<https://www.epa.gov/toxics-release-inventory-tri-program>

<https://my.usgs.gov/gcmp/main/map>

<https://www.epa.gov/dwucmr/learn-about-unregulated-contaminant-monitoring-rule>

<https://www.waterboards.ca.gov/pfas/>