

The Withdrawal of PFAS Effluent Limits: Implications for Federal Environmental Regulation and Biosolids Management

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February 11, 2025

The regulation of per- and polyfluoroalkyl substances (PFAS) remains a critical issue in US environmental policy, with significant implications for water quality, biosolids management and state-level regulatory authority. On January 21, 2025, the Office of Management and Budget (OMB) withdrew the Environmental Protection Agency's (EPA) proposed rule on Clean Water Act Effluent Limitations Guidelines (ELG) and Standards for PFAS manufacturers. This decision was part of a broader regulatory freeze mandated by an Executive Order from President Donald Trump. It is unclear at this time whether the withdrawal of the ELG rule represents a delay in implementation simply to provide the new administration time to review the proposed rule, or whether it represents the death knell for the rule, as the Trump administration seeks to deregulate.

Federal PFAS Regulation in Transition

The withdrawn PFAS ELG rule would have established technology-based effluent limitations, compelling manufacturers in the Organic Chemicals, Plastics, and Synthetic Fibers (OCSFP) category to adopt the best available control technologies (BAT) to reduce PFAS contamination at the source. The absence of such a rule leaves wastewater treatment plants and the sewage sludge they produce vulnerable to PFAS contamination.

The decision to withdraw the PFAS ELG rule highlights ongoing shifts in federal regulatory approaches, particularly in response to changing administration priorities. Under the Biden administration, EPA prioritized addressing PFAS contamination, proposing and/or promulgating a number of rules pursuant to its PFAS Strategic Roadmap. While the Trump administration is expected to continue to address PFAS, it is unlikely to pursue PFAS regulation as aggressively as the Biden administration. As such, it is expected that state governments will attempt to fill that vacuum, which will likely lead to inconsistent standards across the country.

State Regulation Through the NPDES Program

In the absence of federal PFAS effluent limits, it is expected that states will use their authority under the National Pollutant Discharge Elimination System (NPDES) permitting process to regulate PFAS discharges under the Clean Water Act (CWA). In fact, the Biden EPA previously released a guidance memorandum to states that outlines how states can use the NPDES system to monitor for PFAS discharges and take steps to reduce them where they are detected. The NPDES program, established under the CWA, is the primary federal mechanism through which the EPA and authorized states regulate discharges of pollutants into US waters. The program requires facilities that discharge pollutants into navigable waters to obtain a permit, which specifies discharge limits for a range of pollutants, including chemicals like PFAS. Through NPDES permits, states can enforce water quality-based effluent limitations (WQBELs) and technology-based effluent limitations (TBELs), with WQBELs specifically addressing pollution levels that may impair water quality and harm aquatic life or human health.

While EPA can establish national standards for discharges through the NPDES program, states that have been delegated authority can take the initiative to regulate pollutants, including PFAS, more stringently than federal guidelines might prescribe. This decentralization allows states to address localized environmental concerns and act

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more swiftly in response to emerging pollutants such as PFAS. As such, the NPDES program provides states with a key tool for addressing PFAS contamination, especially in the wake of delays or changes in federal policy.

Several states, including Michigan, Maine and New York, have already leveraged their NPDES authority to impose PFAS-specific discharge limits. These states have set more stringent WQBELs for PFAS dischargers, creating a regulatory framework for controlling contamination at the state level. For example, Michigan's Department of Environmental Quality (DEQ) introduced specific PFAS limits in the state's NPDES permits, with a focus on wastewater treatment plants and industrial facilities discharging PFAS-contaminated wastewater. Maine and New York have followed suit by implementing their own PFAS discharge limits through their NPDES programs, targeting industries such as paper mills, textile manufacturers and other potential sources of PFAS contamination.

The reliance on state-level regulation, however, presents challenges. Inconsistent state regulations may lead to compliance difficulties for companies that operate in multiple jurisdictions. Furthermore, while the regulatory freeze does not explicitly preempt state action, uncertainty about future federal rules may dissuade states from developing comprehensive PFAS regulations.

Conclusion

The withdrawal of the PFAS ELG rule has left a significant regulatory void, which places the responsibility for managing PFAS discharges on state authorities. While states can utilize the NPDES program to implement their own PFAS discharge limits, the lack of consistent federal standards complicates efforts to uniformly address PFAS contamination and creates difficulties for companies to comply with inconsistent standards.

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