



PFAS: “Forever” Chemicals Causing Growing Concern for Municipalities

Per- and Polyfluoroalkyl Substances (“PFAS”) are widely used, long lasting man-made chemicals, whose components break down very slowly over time. PFAS chemicals are used in a variety of products such as water-resistant clothing, non-stick products, stain-resistant coatings, ski and snowboard waxes, leather goods, personal care products like nail polish and shampoo. PFAS chemicals are persistent in the environment. There are thousands of PFAS chemicals and they are found in the blood of people, animals, food products, air, water, wastewater, and soil.

The Environmental Protection Agency (“the EPA”), states, and municipalities have increased their attention to the potential risk of PFAS exposure and are taking steps towards regulating the presence of PFAS in drinking water, wastewater, and biosolids in an attempt to decrease high level exposure and the associated risks with such exposure. In March 2023, the EPA announced the proposed National Primary Drinking Water Regulation which contains legally enforceable Maximum Contaminant Levels for six PFAS chemicals. The same regulation further proposes monitoring requirements and public notification requirements if PFAS chemicals exceed the required standard. With respect to wastewater, the EPA has recommended that states and municipalities use the most current sampling and analysis methods in their National Pollutant Discharge Elimination System (“NPDES”) programs to identify known or suspected sources of PFAS as well as implemented monitoring requirements. Regarding biosolids, the EPA is currently conducting a risk analysis under the Resource Conservation and Recovery Act and has issued the “Joint Principals for Preventing and Managing PFAS in Biosolids.”

Many states have also acted to address PFAS in drinking water, wastewater, and biosolids. For example, Massachusetts, New York, New Jersey, and others have

established Maximum Contaminant Levels for PFAS in drinking water. Further, regarding wastewater, Massachusetts now requires PFAS testing requirements as NPDES permits are renewed. Additionally, New York Assembly Bill A3296A “PFAS Disclosure Act” seeks to require State Pollutant Discharge Elimination System (“SPDES”) permit holders to conduct quarterly discharge monitoring for at least one year. With respect to biosolids, Maine has banned the land application or distribution of biosolids as fertilizer and Michigan requires sampling of biosolids for PFAS prior to use for land application.

As time passes and more is learned about PFAS and how to best reduce its presence, additional legislation and regulations are likely to follow.

WGL attorneys, in our work representing numerous public clients throughout the country, are at the forefront of managing PFAS compliance obligations and integrating new challenges into older systems. Currently, WGL has projects in several states where we are advising our clients on PFAS issues that have become front and center to project advancement. In addition, our attorneys frequently speak on matters that may affect public entities. Partner Steven A. Torres will present *The Multifaceted Municipal PFAS Challenge: Understanding Permitting, Regulatory and Enforcement issues for Public Water and Wastewater Utility Counsel*, at the 2023 IMLA Annual Conference at the La Quinta Resort & Club, La Quinta, CA on Friday, September 29, 2023 from 9:15 AM – 10:15 AM. Additional conferences will also be attended by WGL attorneys this month. Managing Partner Teno West is attending the New York State Association for Solid Waste Management (NYSASWM) 2023 Fall Conference at the High Peaks Resort in Lake Placid, NY from September 24 – 26 and Partner Steven A. Torres is presenting *Delivering Advanced Environmental Solutions Through Design-Build: Effectively Integrating Teams and Tasks* at the 2023 DBIA Liberty Region Conference in Newark, New Jersey, on Tuesday, September 26 from 3:15 PM – 4:15 PM.

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