
California Moves to Test for PFOA and PFOS

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The State Water Resources Control Board of California (“Board”) [recently announced a plan](#) requiring investigation of potential per- and polyfluoroalkyl substances (“PFAS”) contamination at more than a thousand California facilities. The testing required covers more than 30 PFAS analytes and will be done in phases.

Phase 1 Orders will cover 31 sites, including large international and smaller regional airports. It is likely the airports will receive orders within the next 60 days. Next in line should be 252 landfills believed to have accepted materials that contain PFAS, 578 drinking water wells within a two-mile radius of one of the airports, and 353 drinking water wells within a one-mile radius of the landfills. The Board will also issue orders for 389 drinking water sources within a mile radius of already identified PFAS impacts.

Phase 2, to occur in summer or fall 2019, will likely cover refineries, bulk terminals, and non-airport fire training areas, as well as manufacturers of PFAS, if any exist in California. The Board will also test storm water in areas of the massive 2017 and 2018 California wildfires to evaluate whether burning of consumer products in those fires resulted in PFAS releases to the environment.

Phase 3 will focus on so-called “secondary manufacturers,” that is, those that use PFAS in products or processes, such as plating facilities. The third phase will also include wastewater treatment and pre-treatment plants, along with domestic wells.

It appears that the plan will be enforced through the nine Regional Water Quality Control Boards under their broad powers in Water Code Section 13267(b), which authorizes the Regional Boards to issue orders for investigation of any person “who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within... or ... outside of its region that could affect the quality of water within its region,” and requiring that he or she “shall furnish, under penalty of perjury, technical or monitoring reports which the regional board requires...”

The basis for these orders is the United States Environmental Protection Agency’s establishment in May 2016 of cumulative Health Advisory Levels of 70 parts per trillion (“ppt”), (0.07 micrograms per liter (µg/L)) for perfluorooctanoic acid (“PFOA”) and 70 ppt for perfluorooctane Sulfonate (“PFOS”). The order is further based on a July 2018 decision by the State Water Resources Control Board’s Division of Drinking Water, which issued drinking water notification levels for PFOA and PFOS of 14 ppt and 13 ppt, respectively, in response to recommendations from California’s Office of Environmental Health Hazard Assessment. While none of these levels are considered a mandate to take action, California regulators often demand that these levels be used for remediation.

The stated purpose for the order is to determine whether state groundwater is impacted by PFAS and obtain a preliminary understanding of specific PFAS concentrations at the targeted facilities, setting the stage for further regulatory action.

Companies that may have manufactured, imported, or used PFAS and PFAS-containing products should consider actively engaging on these issues and, where appropriate, evaluate their potential legal vulnerability for environmental contamination liability. Clark Hill attorneys are experienced in working with clients to develop effective legal strategies and advocacy approaches to address regulatory, legislative, and litigation concerns.

For more information, please contact a member of Clark Hill’s [Environment, Energy & Natural Resources practice group](#).