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Municipal utilities need to be concerned with PFAS

Municipalities face increasing challenges under the growing regulatory focus of the United States Environmental Protection Agency (EPA) and state environmental agencies on the emerging contaminants Per- and Polyfluoroalkyl Substances, known by the acronym “PFAS.” This newsletter will describe some of those challenges for municipalities and the announcement of a Godfrey & Kahn webinar on May 1, 2019 to discuss technical considerations and the importance of following good protocol when sampling and analyzing for these compounds.

What are PFASs and why are they considered harmful?

PFASs are a group of chemicals that have been used since the middle of the 20th century in many industrial applications and consumer products including stain proofing for water proof carpeting, clothing, upholstery, leather treatment, food paper wrappings, firefighting foams (commonly used at military bases, airports, fire stations and refineries), car washing cleaners, metal plating and non-stick cookware (such as Teflon). Some research has suggested probable links between exposure to PFAS and diagnosed high cholesterol, ulcerative colitis, thyroid disease, testicular and kidney cancers and pregnancy induced hypertension. As a result, the family of PFAS chemicals have been classified by EPA as an “emerging contaminant.”

EPA has set a lifetime health advisory (LTHA) level (the level below which no harm is expected) for two PFASs in drinking water: perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The PFOA/PFOS LTHA level is 70 parts/trillion, which is equivalent to about 3 ½ drops of water in an Olympic swimming pool. The low threshold is a signal of the risk potential for this emerging contaminant as well as the difficulty in confidently determining the concentrations of PFOA/PFOS in water samples and the challenges in undertaking cost effective remediation when PFASs are discovered.

PFAS concerns for municipal utilities

In November 2018, President Trump signed the America’s Water Infrastructure Act of 2018 (AWIA). This legislation will require smaller communities to test their water systems for chemicals like PFOA and PFOS. Prior to the signing of this AWIA legislation, only water systems with more than 10,000 community customers were required to test for PFAS chemicals. Under this new legislation, smaller water utility communities who serve between 3,000 – 10,000 customers must also begin testing for these emerging contaminants.

In addition, on Feb. 4, 2019, the EPA announced its PFAS Action Plan. See [here](#). In particular, EPA has announced its intention to develop a maximum contaminant level for PFOS and PFOA, including the LTHA reference point of 70 parts/trillion as a federally enforceable drinking water standard, under the Safe Drinking Water Act.

The Wisconsin Department of Natural Resources (WDNR) has convened a PFAS Technical Advisory Group to discuss a broad range of PFAS concerns in Wisconsin. The first quarterly meeting of the Advisory Group occurred on Feb. 22, 2019. More information on the PFAS Technical Advisory Group can be found [here](#).

As a point of reference from a neighboring state, a memorandum dated Feb. 20, 2018, the state of Michigan announced a monitoring proposal for waste water treatment plants that accept potential sources of PFAS to begin testing their facilities for PFAS containing chemicals. Michigan also has begun testing leachate from landfill facilities that accept municipal solid waste. The results of these preliminary tests have recorded the presence of PFAS in leachate generated by many of these landfills. Since leachate is commonly sent to wastewater treatment facilities for treatment, this discovery of PFAS in leachate could raise additional concerns for municipal treatment facilities, particularly since PFAS compounds are not specifically addressed in municipal wastewater treatment, WPDES Permits or local sewer use ordinances. The concern is that the PFAS is eluding treatment and is present in the effluent or other waste streams, or is adsorbing to the biosolids and sludges generated by the WWTP, which are thereafter frequently land spread with uncertain impacts.

An additional concern for municipalities, separate from wastewater, relates to historic (and potentially closed) waste landfills owned and operated by municipalities. Certain studies suggest that discarded carpet (such as Stainmaster products) and clothing (such as products treated with Scotchgard) are leading sources of PFAS contamination, including the leachate, in landfills.

All of these developments suggest that municipal utilities should be concerned about the legal implications of detections of PFAS. Given the extraordinarily low health advisory standards that apply to this class of chemicals (parts per trillion), these municipal utilities must take great care in deciding when to test for these materials and, if a decision is made to test, the quality assurance and quality control measures that should be taken to ensure reliable results.

Upcoming PFAS Webinar

Godfrey & Kahn is sponsoring a PFAS webinar on the proper protocols that should be followed in sampling and testing for this new emerging class of contaminants. It will feature knowledgeable experts from testing laboratories, environmental consulting firms and legal representatives to discuss important sampling and testing protocol for this emerging class of contaminants. The webinar is scheduled for May 1, 2019. More information on how to register for this webinar will be available soon.

Of course, if you have any questions on the topic of this newsletter, please feel free to contact any member of the Environmental/Energy Practice Group here at Godfrey & Kahn.