



Department  
of Health

# Regulatory Update

Bureau of Water Supply Protection  
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# Agenda

- Emerging Contaminants (EC) – PHL §1112
- Unregulated Contaminant Monitoring Rule 5 (UCMR 5)
- Bipartisan Infrastructure Law (BIL)

# Emerging Contaminants PHL §1112

# Public Health Law §1112 Amendments

- Passed by Senate and Assembly in 2021. Signed by Governor in December of 2021 and amended in 2022.
- The Department is required to promulgate regulations. The following slides represent what is in the law. Additional outreach and training will be provided once final regulations are published in the New York State Register.

# Public Health Law §1112 – EC List

- Requires the Department to promulgate regulations to adopt an emerging contaminants list.
  - Compounds must not already have an MCL.
  - Compounds must be known to occur or anticipated to occur in public water systems.
  - Compounds may pose a potential hazard to human health in drinking water.
- Every PWS must test for ECs once every 3 years.

# Public Health Law §1112 – EC List

- When selecting compounds, the Department must consider:
  - Unregulated contaminants monitoring pursuant to the federal Safe Drinking Water Act.
  - Substances that require regulation in jurisdictions outside of New York.
  - Pesticides for which USEPA has established human health benchmarks.
  - Substances found at sites in remedial programs located inside and outside of New York
  - Recommendations from the DWQC.

# PHL §1112 Amendments – EC List

Law establishes the first list of Emerging Contaminants

## Per- and Polyfluoroalkyl Substances

PFNA	PFHxS	PFHpA
PFBS	HFPO-DA	PFDA
PFDoA	PFHxA	PFUnA
11CI-PF3OUdS	9CI-PF3ONS	ADONA
NFDHA	PFBA	8:2FTS
PFEESA	PFHpS	4:2FTS
PFMPA	PFMBA	6:2FTS
PFPeA	PFPeS	

# PHL §1112 Amendments – EC List

Establishes that the following list must added upon review and recommendation of the DWQC by January 1, 2024.

Additional Emerging Contaminants		
1,2,3-trichloropropane	Chloromethane	1,1-dichloroethane
Bromomethane	Chlorodifluoromethene	Vanadium
Molybdenum	Cobalt	Strontium
chromium-6	NetFOSAA	NMeFOSAA
PFTA	PFTrDA	Testosterone*
4-androstane-3,17 dione*		

\* The commissioner, upon review and recommendation of the DWQC may determine to not include these compounds



# PHL §1112 – Notification Levels

- Requires the Department to promulgate regulations establishing a notification level for any compound on the EC list.
- The NL must be equal to or lower than any Federal lifetime health advisory.
- If no health advisory exists, the NL must be determined based on best available science.
- May take into consideration recommendations from the DWQC.

# PHL §1112 – Notification Levels

- NLs must be made easily accessible to the public by a link posted on the Department's website.
- The Commissioner, by declaration, may add any physical, chemical, microbiological or radiological substance to the list of emerging contaminants and require testing if it is determined to be a threat to human health.
  - If this approach is taken, regulations must be promulgated within one year of such declaration.
  - Once regs are adopted, regs supersede the declaration.

# PHL §1112 – Notification Levels

- When an emerging contaminant is confirmed to be present in drinking water at or above a NL, the PWS must take steps to notify public.
- The Commissioner may require that the PWS take actions to reduce exposure to emerging contaminants.
- The Commissioner shall review substances that have been identified as ECs once every 3 years and determine if MCLs should be established.
- The Commissioner shall update the list of ECs every 3 years.

# Drinking Water Quality Council

- DWQC meeting held on March 10, 2022 and May 2, 2022.
- 4 PFAS have sufficient testing and toxicology to show an opportunity for public health protection by setting MCLs now
  - PFNA, PFHxS, PFHpA, PFDA
  - Half-life, toxicology, and structural similarities to PFOA and PFOS
  - 10 ppt health protective, feasible, precedent in NYS and elsewhere
  - Treatment for 6 PFAS MCLs likely capture the treatment needs of co-occurring PFAS
  - DWQC recommended that the Department evaluate an MCL “sum” approach.

# PFOA, PFOS and 1,4-Dioxane Compliance Update

# Drinking Water Standards

- On August 26, 2020, NYS adopted new drinking water standards for public water systems that set MCLs of 10 parts per trillion (10 ppt) each for PFOA and PFOS, and 1 part per billion (1 ppb) for 1,4-dioxane.
- MCLs require public water systems to regularly monitor for contaminants, notify health departments and the public of confirmed exceedances, work with health departments on a timetable to bring water systems into compliance.
- MCLs are enforceable standards that require corrective action.
- As of February 2022, nearly all PWSs have results reported to LHDs and LHDs have entered this data into SDWIS.

# Drinking Water Standards

- The MCLs for PFOA, PFOS and 1,4 dioxane remain among the most protective for these contaminants in public water of any state.
- NYS is the first state to develop an MCL for 1,4-dioxane.
- Because MCLs are set at levels with a large margin of protection, an exceedance of an MCL does not mean that water is unsafe for use while the public water system takes actions to reduce the levels.

# MCL Violation

- Enforcement process involving Local Health Department (LHD) and Public Water System (PWS).
- Bureau of Water Supply Protection (BWSP) assists in advisory capacity when requested.
- LHD issues Notice of Violation (NOV) with compliance steps
  - Deadline for public notice (Tier 2 – 30 days);
  - Compliance timelines established by LHD; and
  - Description of any additional monitoring, if appropriate.
- Data code entered into SDWIS that indicates the system is in violation and tracks enforcement actions.



# MCL Violations – As of April 2022

Compound	Number of PWS
PFOA	49
PFOS	42
PFOA and PFOS	65
1,4-Dioxane	8
<b>Subtotal</b>	<b>164</b>
Deferrals	28
<b>Total</b>	<b>192</b>

# Treatment

- Granular Activated Carbon (GAC) has been successfully used to treat PFOA and PFOS. GAC guidance has been posted on the DOH website.
- Ion exchange resins may also be useful but have not yet been approved for use in NYS.
- Advanced oxidation processes (AOP) is the only treatment currently available for 1,4-Dioxane.
  - AOP piloting guidance has been posted on the DOH website.

# UCMR 5

# 5<sup>th</sup> Unregulated Contaminant Monitoring Rule

- Published on March 11, 2021, in Federal Register.
- Collection of 30 contaminants between 2023 and 2025.
  - 29 PFAS compounds plus lithium.
  - Represents all compounds in methods 537 and 537.1
  - Consistent with Section 7311 of the National Defense Authorization Act which specified that EPA shall include all PFAS in UCMR 5 for which a drinking water method has been validated, and that are not subject to a national primary drinking water regulation.
- As proposed, all PWSs serving 3,300 or more people, and 800 representative PWSs serving fewer than 3,300 would collect samples during a 12-month period
- Under AWIA provisions, EPA continues to be responsible for analytical costs associated with monitoring systems 10,000 or fewer.

# Infrastructure Bill/ DWSRF/ WIIA

# Federal Infrastructure Bill (BIL)

- Passed by Congress and signed by the President in 2021.
- \$43.426 billion for the Clean Water and Drinking Water State Revolving Funds for five (5) years and reauthorizes funding levels for the SRFs.
- Buy American Build American (BABA) supplements American Iron and Steel provisions and is effective for projects that close after May of 2022.
- Breakout
  - \$11.73B to DWSRF for any eligible project.
  - \$4B to DWSRF for emerging contaminants.
  - \$15B to DWSRF to LSL replacement.
- NY gets about 4% of federal allocation. Needs survey currently in process.

# BIL

- EPA has been conducting several engagement sessions with States since December of 2021.
- State requirements
  - Workplan development
  - Preparation of Intended Use Plan(s) for separate allocations
  - Applications for funding to EPA
- States are awaiting guidance from EPA on how J40 and BABA will impact distribution of funds through the SRFs.
- DOH will work closely with the NYS Environmental Facilities Corporation to get information out to public water supplies once it is available.

# BIL Summary

- Most BIL funds will come through SRF programs. Any project must meet all DWSRF requirements including BABA.
- Focus on funding projects in small, rural and disadvantaged communities.
- All BIL funded projects **MUST** meet federal equivalency requirements.
- Awaiting guidance from Office of Management and Budget (OMB) on requirements and any waiver criteria from BABA.
- Posting in the NYS Register to announce availability of funding and call for projects.



# BIL FFY 2022

- Base supplement
  - \$73.4M – Any DWSRF eligible project.
  - 49% provided to disadvantaged communities as grant/principal forgiveness.
- Lead service line replacement
  - \$115.7M – Only projects related to LSL replacement and inventory. Must replace entire lead service line.
  - 49% provided to disadvantaged communities as grant/principal forgiveness.
- Emerging Contaminants
  - \$30.8M – Any project on the CCL 1-5, with focus on PFAS.
  - 100% provided as grant/principal forgiveness; 25% to disadvantaged communities or PWS < 25,000

# BIL FFY 2022

- Solicitation of projects has been published in the NYS Register for BIL 2022 funds. Listing forms are accepted on a continuous basis.
- FFY 2023 Intended Use Plan (IUP) deadlines:
  - June 17, 2022:
    - FFY 2022 BIL Supplemental
    - FFY 2023 DWSRF Base
  - August 31, 2022
    - FFY 2022 BIL Emerging Contaminants
    - FFY 2022 BIL Lead Service Line Replacement
- Contact the Bureau of Water Supply Protection at (518) 402-7650 with questions.