



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Safe Drinking Water

# **Petition for Rulemaking: Maximum Contaminant Level (MCL) for Perfluorooctanoic Acid (PFOA)**

Environmental Quality Board Meeting

June 15, 2021

Tom Wolf, Governor

Patrick McDonnell, Secretary

# Description of Petition

- On May 8, 2017, the Delaware Riverkeeper Network (DRN) submitted a Petition for Rulemaking to the EQB requesting a drinking water MCL for PFOA not to exceed 6 parts per trillion (0.006  $\mu\text{g}/\text{L}$  or 6  $\text{ng}/\text{L}$ ).
- At the August 15, 2017 meeting, EQB voted to accept the Petition for further study. During the meeting, DEP stated that it had never in its history set an MCL and would require toxicology expertise to evaluate the Petition and prepare the report.

# Description of Petition

- In June 2018 and June 2019, DEP updated EQB, expressing the need for more time and providing a summary of the challenges and actions taken to secure the necessary expertise to evaluate the Petition and prepare the report.
- DEP actions included:
  - Securing additional toxicology resources to assist in evaluating the Petition
  - Developing and conducting a PFAS Sampling Plan to generate statewide occurrence data

# Description of Petition

- Upon receipt of the deliverables from the Toxicology Services Contract in January 2021, and completion of the PFAS Sampling Plan in March 2021, DEP completed its review of the Petition and sent a copy of its Evaluation Report to the DRN for review on April 16, 2021.
- DEP received DRN's comments on May 16, 2021.

# Summary of DEP's Report

DEP's April 16, 2021 Report identified several actions that DEP has implemented to address PFOA and protect public health, including:

- Implementing USEPA's Health Advisory Level (HAL) of 70 ppt as an interim measure by requiring one-hour reporting, collection of confirmation samples, issuance of Tier 2 public notice, collection of quarterly samples, and additional actions to reduce levels below the HAL

# DEP Actions – Toxicology Report

- Drexel University contract to: review other states' and federal agencies' work on MCLs; independently review the data, science and studies; and develop recommended maximum contaminant level goals (MCLG) for select PFAS
  - MCLGs are non-enforceable, developed solely based on health effects, and do not take into consideration other factors, such as technical limitations and cost. MCLGs are the starting point for determining MCLs.
- Deliverables – “Drexel PFAS Workbook” and “MCLG Drinking Water Recommendations for PFAS in the Commonwealth of PA”.

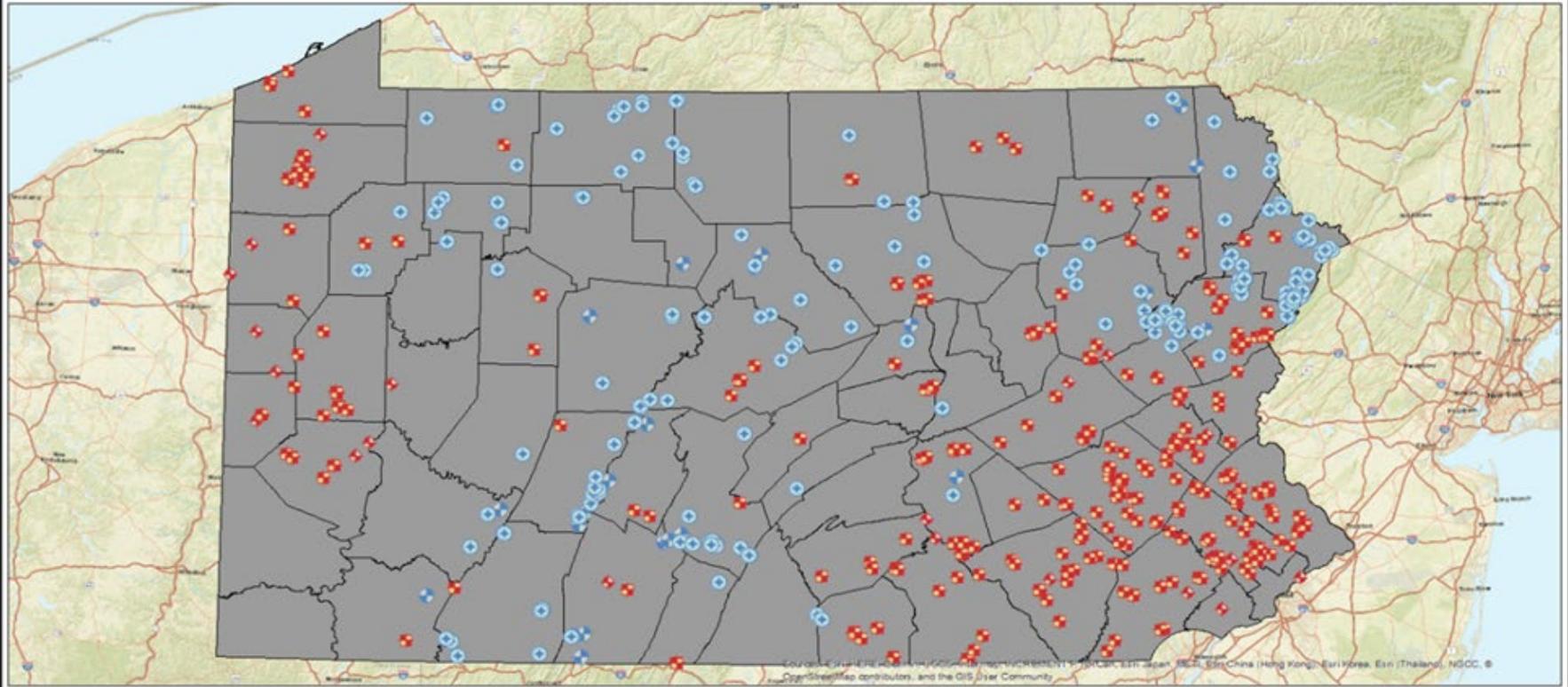
# DEP Actions – Toxicology Report

## MCLG Drinking Water Recommendations for PFAS Report:

- Developed by Drexel PFAS Advisory Group (DPAG) – multidisciplinary team of experts in toxicology, epidemiology, and drinking water standards and risk assessment
- Reviewed pertinent literature and work across the country; independently developed recommended MCLGs
- Recommended an MCLG for PFOA of 8 ppt based on non-cancer endpoints
- Discusses relevant inputs; includes a summary table for the development of the recommended MCLGs

# DEP Actions – PFAS Sampling Plan

Identified Water Sources for Potential Sampling



## LEGEND

- ⊕ Potential Baseline Wells 04102019
- ⊕ Potential Target Wells 04102019
- ⊕ Potential Baseline Intakes 04102019
- ⊕ Potential Target Intakes 04102019



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# DEP Actions – PFAS Sampling Plan

## Summary of PFOA sample results

	PFOA	Units
<b>Total # Samples</b>	412	--
<b>Average</b>	2.0	ng/l
<b>Median</b>	0 (ND)	ng/l
<b>Minimum</b>	0 (ND)	ng/l
<b>Maximum</b>	59.6	ng/l
<b># &amp; % of Detects</b>	112 (27%)	--
<b>Average Detect Value</b>	7.5	ng/l
<b>Median Detect Value</b>	5.3	ng/l
<b>Min Detect Value</b>	1.7	ng/l
<b>Max Detect Value</b>	59.6	ng/l

full results available at [www.dep.pa.gov/pfas](http://www.dep.pa.gov/pfas)

# Summary of DEP's Report

- Based on Drexel University's work and DEP's PFAS Sampling Plan data, DEP concluded that additional measures were needed to protect public health.
- DEP determined that DRN's basis for its petition recommendation failed to recognize the process that DEP must follow when setting an MCL.
- DEP concluded that DRN did not consider all relevant factors when recommending the MCL for PFOA not to exceed 6 ppt.

# Summary of DEP's Report

DEP must consider other factors in addition to health effects when proposing an MCL as required by the Federal Safe Drinking Water Act (SDWA) and Pennsylvania's Regulatory Review Act (RRA), including:

- Technical limitations such as available analytical methods and detection and reporting limits
- Treatability of the contaminant and available treatment technologies
- Costs

# Summary of DEP's Report

- DEP agreed with DRN's Petition in that DEP should move forward with a proposed rulemaking to set an MCL for PFOA, but DEP did not believe that DRN's proposed MCL was developed appropriately.
- DEP's proposed rulemaking should be based on available data, studies, and science, and should consider all factors such as health effects, technical limitations, and costs.
- DEP recommended that the EQB move forward with a proposed rulemaking to establish an MCL for PFOA.

# Petitioner's Reply & DEP's Response

## **Petitioner Comment:**

- DRN's Petition was legally sufficient and met the requirements of the Federal SDWA and Pennsylvania's RRA.
- The Petition should be reconsidered and DEP and EQB should establish an MCL for PFOA of 1 ppt, or in the alternative, not to exceed 6 ppt.

# Petitioner's Reply & DEP's Response

## DEP Response:

- DRN did not consider all relevant factors when recommending the MCL for PFOA not to exceed 6 ppt. DRN's explanation only included health effects information and did not describe how the other factors were taken into consideration.
- DEP could not proceed with DRN's recommendation as it did not provide all factors and technical information to support recommending a specific MCL value.

# Petitioner's Reply & DEP's Response

## **Petitioner Comment:**

DEP's proposed MCLG of 8 ppt does not rise to the level necessary for a standard based exclusively on public health considerations.

## **DEP Response:**

DEP did not propose an MCLG for PFOA in its April 16, 2021 Report. The only recommendation that DEP is making is to move forward with a proposed rulemaking.

# Petitioner's Reply & DEP's Response

## **Petitioner Comment:**

Alternatively, DEP must promulgate an MCLG and MCL for PFOA that adheres to its Constitutional obligations under the Environmental Rights Amendment (ERA). DEP must act to regulate PFAS in the face of USEPA inaction.

## **DEP Response:**

DEP understands its obligations under the ERA and will fulfill those obligations in developing an MCL.

# Recommendation

- DEP recommends that the EQB move forward with a proposed rulemaking to establish an MCL for PFOA.
- DEP recommends that the number in the Petition ***not*** be the basis for the proposed MCL.
- DEP's proposed rulemaking should be based on available data, studies, and science, and should consider all factors such as health effects, technical limitations, and costs.



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