



pennsylvania

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

October 12, 2016

The Honorable Thomas P. Murt
Pennsylvania House of Representatives
House Post Office Box 202152
Harrisburg, PA 17120-2152

The Honorable Todd Stephens
Pennsylvania House of Representatives
House Post Office Box 202151
Harrisburg, PA 17120-2151

Dear Representatives Murt and Stephens:

Thank you for your recent letter, regarding the acceptable levels of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) in the Commonwealth's drinking water. I understand your concerns regarding these unregulated contaminants.

Currently, there is no state or federal maximum contaminant level (MCL) for PFOA and PFOS. As you know, the U.S. Environmental Protection Agency (EPA) established a health advisory (HA) for PFOA and PFOS in May of 2016 based on the agency's assessment of the latest peer-reviewed science. According to EPA, the lifetime HA for PFOA and PFOS of 0.07 micrograms per liter ($\mu\text{g/L}$) is protective of all consumers, including the most sensitive populations, with a margin of protection from a lifetime of exposure to PFOA and PFOS from drinking water. While we continually review new evidence as it emerges, the Wolf Administration believes there is no reason to question the science behind EPA's HA. The federal Agency for Toxic Substances and Disease Registry (ATSDR) does excellent work, and the process used to set HAs has been in place for many years. ATSDR and EPA have set hundreds of HAs during this time.

HAs are non-enforceable and non-regulatory, and while a few states have gone above and beyond EPA and set a lower non-regulatory reference standard, no state has moved forward with setting an enforceable MCL. Pennsylvania can set an MCL for unregulated contaminants such as PFOA and PFOS. As per the Pennsylvania Safe Drinking Water Act (SDWA), the Environmental Quality Board (EQB) is authorized to adopt MCLs or treatment technique requirements, even in situations where a federal standard has not been set. However, in order for the EQB to consider adoption of a state MCL, the Department of Environmental Protection (DEP) would need to provide the necessary science, data, studies, cost to benefit analysis, and justification (for being more stringent than EPA) to support such a proposed MCL. This supporting data is required by Pennsylvania's regulatory review process. This data would also be necessary for DEP to be able to defend and enforce the state MCL in a court of law.

While Pennsylvania has the authority to set state MCLs, DEP is not in a position to move forward with setting a state MCL at this time. In the 32-year history of the Pennsylvania SDWA, DEP has never adopted a state MCL. There are two reasons for this: (1) there has never been a documented need to set a state MCL, and (2) if a need were identified, there are tremendous challenges with setting a state MCL. The challenges include the following:

- Lack of state funding and resources to set standards: States like California that routinely set their own standards have entire programs and budgets dedicated to determining the need for and setting state standards. California spends about \$26 million annually on their MCL development program. Safe Drinking Water Program staffing levels in

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Pennsylvania are down by 25% since 2009 and there are significant challenges in meeting the state's current regulatory and primacy obligations. In addition, federal grants could not be used to set, implement or enforce a state-only drinking water standard. This funding would have to be provided from the general fund.

- Lack of occurrence data to determine whether PFOA/PFOS are a statewide problem: Pennsylvania has approximately 8,600 Public Water Systems (PWS). As per the federal rule, only 175 (2%) PWSs in Pennsylvania were required to monitor under the Unregulated Contaminant Monitoring Rule (UCMR) 3. Of these 175 PWSs, only six (6) PWSs had detects. DEP would need to obtain additional occurrence data (using a statically significant number of PWSs) in order to support a statewide MCL. And since DEP lacks the regulatory authority to require large numbers of PWSs to monitor for unregulated contaminants, DEP would need to secure the necessary funding and conduct this monitoring in-house. Provided the necessary funding and resources were secured, monitoring would need to be conducted on a quarterly basis for at least a year.
- Lack of resources and expertise to develop the necessary science in support of a state MCL: MCLs are legally enforceable standards. DEP would need to conduct the necessary research and present sound science in support of a proposed MCL. EPA's HA would be a good starting point. However, DEP does not currently employ toxicologists. Toxicologists would be needed to develop the necessary science and testify in court should the state MCL be challenged.

Provided the necessary funding and resources were made available, the occurrence data supported a statewide MCL, and DEP's science and conclusions supported a lower HA level, DEP would still need to complete the following steps prior to initiating proposed rulemaking:

- Determine whether the proposed MCL is technically feasible.
 - Research and approve treatment technologies to adequately and consistently remove PFOA/PFOS to levels below the proposed MCL. DEP would also need to work with third-party certification organizations such as NSF International to develop a program for certifying treatment systems for efficacy – something that is required by regulation.
 - Determine any simultaneous compliance concerns or unintended consequences with the Safe Drinking Water regulations or other laws of this Commonwealth.
 - Ensure sufficient lab capacity and capability and maintain a state lab accreditation program for PFOA/PFOS. Labs must be able to achieve detection and reporting limits that are below the proposed MCL.
- Conduct a cost to benefit analysis to support a statewide standard. A state MCL would apply to all PWSs. All systems would be required to conduct routine compliance monitoring. And if levels were found above a state MCL, the system would be required to take any and all actions needed to return to compliance. These potential compliance costs would need to be quantified.

- Develop the necessary justification for proposing a standard that is more stringent than EPA.

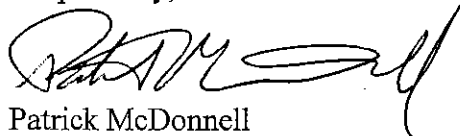
Provided the above steps were satisfactorily completed, DEP could then initiate the proposed rulemaking process. The rulemaking process typically takes approximately two years to promulgate a final rule.

Finally, it is unrealistic to expect that MCLs can be set at zero or non-detected (ND). None of the current 90-plus MCLs are set at zero or ND. While an MCLG (goal) may be set at zero or close to zero, MCLs must be set as described above, and must be based on real-world limitations in treatment technologies to treat to very low levels, limitations in analytical methods to accurately detect the contaminant, simultaneous compliance with other safe drinking water regulations (risk-risk trade-off) and cost versus benefit (risk reduction).

Until such time as EPA moves forward with an enforceable standard, or DEP obtains the necessary funding, resources and expertise to move forward with a state standard, DEP will continue to respond to cases of PFOA/PFOS contamination using existing authorities, tools and protocols. DEP continues to believe that EPA's HA is protective of public health and that everything that can be done is being done to respond to these unregulated contaminants.

Should you have any additional questions or would like to meet to discuss this issue, please feel free to contact Sarah Clark, Director of Legislative Affairs, by e-mail at saraclark@pa.gov or by telephone at 717.783.8303.

Respectfully,



Patrick McDonnell
Acting Secretary

cc: Senator Greenleaf
Representative O'Neill
Representative Watson
Representative Petri