



# HOUSE BILL 1095: PFAS Pollution and Polluter Liability.

2021-2022 General Assembly

<b>Committee:</b>	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	June 2, 2022
<b>Introduced by:</b>	Reps. Davis, Iler, Miller, Reives	<b>Prepared by:</b>	Jennifer McGinnis
<b>Analysis of:</b>	First Edition		Staff Attorney

### OVERVIEW: *House Bill 1095 would:*

- *Authorize the Environmental Management Commission (EMC) to adopt maximum contaminant levels (MCLs) for per- and polyfluoroalkyl substances (PFAS).*
- *Authorize the Secretary of Environmental Quality (Secretary) to order a responsible party to pay a public water system any actual and necessary costs incurred by the public water system to remove, correct, or abate any adverse effects upon the water supply resulting from PFAS contamination exceeding a permissible concentration limit for which the party is responsible.*
- *Appropriate \$2,000,000 in nonrecurring funds for the 2022-2023 fiscal year from the General Fund to both of the following:*
  - *The Department of Environmental Quality (DEQ) to implement the requirements of the legislation.*
  - *The Board of Governors of The University of North Carolina to be allocated to the University of North Carolina at Chapel Hill for the North Carolina Collaboratory (Collaboratory) to conduct research and analysis to provide scientific and economic support for the MCLs to be established for PFAS.*

### BACKGROUND and CURRENT LAW:

#### MCLs

The federal Safe Drinking Water Act (SDWA) establishes public drinking water standards known as MCLs. An MCL is the highest level of a contaminant that the United States Environmental Protection Agency (USEPA) allows in drinking water from public water systems (those systems that serve 15 or more connections (such as residences) or 25 or more year-round individuals). USEPA sets MCLs at levels to ensure that drinking water poses neither a short-term nor long-term health risk, while being economically and technologically feasible standards. A list of federal MCLs is available [here](#).

Enforcement of the SDWA in North Carolina has been delegated by USEPA to DEQ. Under [Article 10 of Chapter 130A \(North Carolina Drinking Water Act\)](#), while the Secretary of Environmental Quality is tasked with enforcing drinking water rules to regulate public water systems, the Commission for Public Health is tasked with adopting such rules, which must include:

- MCLs that are acceptable in water for human consumption, if it is feasible to establish the level of a contaminant in water in public water systems; or

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# House Bill 1095

Page 2

- One or more treatment techniques that lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system.

## PFAS

PFAS are a large group of human-made chemicals not found naturally in the environment that have been used in industry and consumer products worldwide since the 1940s, including use in food packaging, stain and water repellent fabrics, nonstick products such as Teflon, and firefighting foams. Some PFAS have been linked to cancers and other health issues, including reproductive and developmental effects. In 2016, USEPA issued a nonregulatory lifetime health advisory of 70 parts per trillion (ppt) for individual and combined PFOA and PFOS in drinking water.

There are no current federal or State MCLs for PFAS, but USEPA is currently developing a proposed PFAS National Primary Drinking Water Regulation for publication in Fall 2022, and anticipates issuing a final regulation in Fall 2023.

## Liability for PFAS contamination in private wells

Although no MCLs currently exist for PFAS in public drinking water systems, the General Assembly enacted legislation in 2018 to authorize the Secretary to require persons responsible for the discharge of PFAS that results in contamination of a private drinking water well to establish a permanent replacement water supply for affected parties, with contamination defined as: (i) an exceedance of a standard established by the Environmental Management Commission for groundwater, surface water, or air quality, or (ii) an exceedance of a health advisory level established by the United States Environmental Protection Agency, for any chemical classified as a PFAS.

Subsequently, in February 2019, DEQ executed a court-approved consent order with a PFAS discharger which, among other things, required the PFAS discharger to provide reverse osmosis drinking water systems for any party with a contaminated well with concentrations of certain PFAS above 10 ppt or combined concentrations of certain PFAS above 70 ppt, and for public buildings such as schools or government buildings, required that reverse osmosis systems must be provided at each drinking fountain and sink or through another equally effective system approved by DEQ.

## **BILL ANALYSIS:**

**Section 1(a)** would authorize the EMC to adopt MCLs for PFAS, with scientific standards set forth under which the MCLs must be established to achieve a level acceptable for human consumption that is also technologically and economically feasible.

**Section 1(b)** would clarify that the scientific standards set forth for development of MCLs in Section 1(a) would not be required to be adopted as rules in conformance with existing rulemaking exceptions under the Administrative Procedure Act (see [G.S. 150B-2\(8a\)h.](#) and in [G.S. 150B-19\(4\)](#) – note there is a technical drafting error in the bill's First Edition referring to an incorrect citation to 150B-2(8a)d., rather than 150B-19(4)). Rules would be required, however, for the MCLs themselves.

**Section 2** would authorize the Secretary to order a responsible party to pay a public water system any actual and necessary costs incurred by the public water system to remove, correct, or abate any adverse effects upon the water supply resulting from PFAS contamination exceeding a permissible concentration limit for which the party is responsible. Such costs would include costs to procure, implement, maintain,

# House Bill 1095

Page 3

and operate technology to reduce PFAS concentrations in finished drinking water below the permissible concentration level.

A "permissible concentration level" is defined as both of the following:

- For an individual per- and polyfluoroalkyl substances (PFAS) compound, the lesser of: (i) 10 parts per trillion (ppt); or (ii) any maximum contaminant level established for the PFAS compound in question.
- For combined PFAS compounds, a total concentration of 70 ppt.

A public water system receiving funds from a responsible party must reimburse ratepayers of the system through a reduction in future rates charged if: (i) the public water system has previously expended funds to remove, correct, or abate any adverse effects upon its water supply resulting from PFAS contamination; and (ii) the amount of funds expended by the public water system for that purpose has been included in rates charged to its ratepayers.

**Section 3** would:

- Appropriate \$2,000,000 in nonrecurring funds for the 2022-2023 fiscal year from the General Fund to both of the following:
  - DEQ to implement the requirements of the legislation.
  - The Board of Governors of The University of North Carolina to be allocated to the University of North Carolina at Chapel Hill for the Collaboratory to conduct research and analysis to provide scientific and economic support for the MCLs to be established for PFAS. The Collaboratory would be required to jointly develop a work plan for implementation of the legislation.
- Require DEQ and the Collaboratory to report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 15, 2022, and annually thereafter on their use of the funds appropriated under the legislation, including the adoption of maximum contaminant levels for PFAS by the Department, supporting research and analysis provided by the Collaboratory pursuant to the work plan, and abatement orders issued by the Secretary.

## **EFFECTIVE DATE:**

Section 1 of the bill, governing development of MCLs for PFAS, would be effective when it becomes law. Section 2 of the bill, governing liability for PFAS discharges contaminating public water systems, would be effective when it becomes law and applies retroactively to discharges from responsible parties occurring on or after January 1, 2017. Section 3 of the bill, governing appropriations and reporting requirements, would become effective July 1, 2022.