



HOUSE BILL 864: PFAS Pollution and Polluter Liability.

2023-2024 General Assembly

Committee:	House Environment. If favorable, re-refer to Appropriations. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 11, 2024
Introduced by:	Reps. Davis, Iler	Prepared by:	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H864-CSRIa-40		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 864 would:*

- *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 \$300,000 in nonrecurring funds for the 2024-2025 fiscal year from the General Fund to the Department of Environmental Quality (DEQ) to implement the requirements of the legislation.*

BACKGROUND and CURRENT LAW:

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.

MCLs

The federal Safe Drinking Water Act (SDWA) establishes public drinking water standards known as maximum contaminant levels (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.

On April 10, 2024, USEPA finalized a [National Primary Drinking Water Regulation establishing MCLs for six PFAS in drinking water](#): PFOA, PFOS, PFHxS, PFNA, and HFPO-DA (commonly known as GenX), and mixtures containing two or more of these PFAS.

Enforcement of the SDWA in North Carolina has been delegated by USEPA to DEQ. [Article 10 of Chapter 130A \(North Carolina Drinking Water Act\)](#) tasks the Secretary with enforcing drinking water rules to regulate public water systems.

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Director



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Legislative Analysis
Division
919-733-2578

House 864 PCS

Page 2

Liability for PFAS contamination in private wells

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.

Current authority of Secretary to require abatement of nuisance impacting public water supplies

[G.S. 130A-19](#) provides that if the Secretary determines that a public health nuisance exists with respect to public water supplies, the Secretary may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The statute requires that the action be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary to abate the nuisance. If the Secretary is ordered to abate the nuisance, the statute provides that DEQ will have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien.

BILL ANALYSIS:

Section 1 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, and operate technology to reduce PFAS concentrations in finished drinking water below the permissible concentration level.

*Note that language included in the First Edition of the bill providing that an action to enforce an order be calendared for trial within 60 days after service of the complaint upon the defendant has been removed in the PCS.

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.

House 864 PCS

Page 3

The PCS defines the following terms:

- PFAS manufacturer means a person¹ that produces PFAS compounds. The term does not include PFAS customers of PFAS manufacturers that use raw PFAS feedstock, for example: (i) to produce commercial or consumer goods, such as weatherproof caulking, or (ii) as intermediary products for use in the manufacture of commercial goods, such as a greaseproof coating for a pizza box.
- Responsible party means a PFAS manufacturer whose discharge or release of PFAS into the environment has caused or contributed to the presence of PFAS in a public water system.
- "Permissible concentration level" means, in summary, any MCL that may be established by USEPA for an individual PFAS compound, or MCL established for combined compounds.

Section 2 would:

- Appropriate \$300,000 in nonrecurring funds for the 2024-2025 fiscal year from the General Fund to DEQ to implement the requirements of the legislation.
- Require DEQ report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 15, 2024, and annually thereafter, on their use of the funds appropriated by this act, including abatement orders issued by the Secretary.

EFFECTIVE DATE:

Section 1 of the bill, governing liability for PFAS discharges contaminating public water systems, would be effective when it becomes law and applies retroactively to costs incurred by a public water system on or after January 1, 2017, to remove, correct, or abate any adverse effects upon a water supply resulting from contamination, irrespective of when an MCL was established by USEPA for the PFAS compound in question. Section 2 of the bill, governing appropriations and reporting requirements, would become effective September 1, 2024.

¹ Person is defined by [G.S. 130A-313\(9\)](#) as "an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity."