

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3189

BY DELEGATES RILEY, HANSEN, WESTFALL, CLARK,
HORST, HANSHAW (MR. SPEAKER), HORNBY, STEELE,
STORCH, HARDY AND HILLENBRAND

[Passed March 10, 2023; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §22-11C-1, §22-11C-2, §22-11C-3, and §22-11C-4, all relating to identifying
3 the sources of perfluoroalkyl and polyfluoroalkyl substances discharged into source waters
4 used for public drinking water; providing legislative findings; providing state and federal
5 regulation history, status, and future expectations; providing definitions; requiring the
6 Department of Environmental Protection to begin identifying sources of PFAS in water
7 sources and address sources of PFAS for certain public water systems with action plans;
8 requiring facilities using PFAS chemicals to monitor and report their use; setting forth other
9 duties of those facilities; clarifying duties and obligations of public water systems and water
10 treatment systems; providing information disclosure provisions; requiring the Secretary of
11 the Department of Environmental Protection to propose changes to statutes and rules and
12 to update numeric public water supply human health criteria; requiring the Department of
13 Environmental Protection to implement permit modifications to require monitoring; and
14 requiring legislative rule-making.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. PFAS PROTECTION ACT.

§22-11C-1. Legislative Findings.

1 (a) *Legislative findings.* — (1) The Legislature recognizes the prevalence of perfluoroalkyl
2 and polyfluoroalkyl substances, which the United States Environmental Protection Agency
3 (USEPA) has classified as contaminants. These chemicals are used in thousands of applications
4 throughout the industrial, food, automotive, aerospace, electronic, oil and gas, green energy, and
5 textile industries. They are used in some fire-fighting foams, food packaging, cleaning products,
6 semiconductors, computers, cellular phones, electric vehicle batteries, automobiles,
7 pharmaceuticals, agricultural pesticides, oil and gas development, defense equipment, hydrogen
8 production, and various other household items. Many are very stable, some accumulate in the
9 environment, and many are highly water soluble, easily transferring through soil to groundwater.

10 (2) During the 2020 regular session, the West Virginia Legislature passed Senate
11 Concurrent Resolution 46 (SCR 46), which requested that the Department of Environmental
12 Protection (DEP) and the Department of Health and Human Resources cooperatively propose
13 and initiate a public source-water supply study plan to sample PFAS substances for all community
14 water systems in West Virginia, including schools and daycares that operate treatment systems
15 regulated by the West Virginia Department of Health and Human Resources.

16 (3) In compliance with SCR 46, the DEP and the Department of Health and Human
17 Resources contracted with the United States Geological Survey to conduct the PFAS study. The
18 USGS study was completed in 2022, with results for 279 sampled sites.

19 (4) According to the USGS study, PFOA and/or PFOS was detected above the then-
20 current USEPA drinking water health advisory in 13% (37) of the sampled raw water sources
21 between 2019 and 2021.

22 (5) In June 2022, the USEPA issued updated interim or final drinking water health
23 advisories for four PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS),
24 perfluorobutane sulfonic acid and its potassium salt (PFBS), and hexafluoropropylene oxide dimer
25 acid and its ammonium salt (HFPO-DA).

26 (6) According to the data collected for the USGS study, PFOA and/or PFOS was detected
27 above the June 2022 drinking water health advisories in 49% (137) of the sampled raw water
28 sources (involving 130 public water systems) between 2019 and 2021.

29 (7) In August 2022, the USEPA proposed to designate PFOA and PFOS as hazardous
30 substances because, when released into the environment, these chemicals present substantial
31 danger to public health.

32 (8) On December 5, 2022, the USEPA issued guidance to state permitting authorities
33 entitled "Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program
34 and Monitoring Programs."

35 (9) The USEPA has committed to establishing drinking water standards under the Safe
36 Drinking Water Act for PFOA and PFOS in 2023.

37 (10) The USEPA has committed to publishing recommended human health water quality
38 criteria under the Clean Water Act for PFOA and PFOS in 2024.

39 (11) While some manufacturers have already voluntarily done so, it is imperative to identify
40 the remaining sources of PFAS detected in the raw water sources for public water systems so
41 that these sources of pollution can be properly addressed, minimizing the impacts to public
42 drinking water systems. Identifying and addressing PFAS sources will also benefit people who
43 rely on impacted private drinking water wells.

44 (12) It is in the public interest for West Virginia to reduce toxic chemicals in drinking water
45 supplies to protect the health of West Virginians and strengthen the state's economy.

§22-11C-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (1) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means non-polymeric
4 perfluoroalkyl and polyfluoroalkyl substances that contain at least two fully fluorinated carbon
5 atoms, excluding gases and volatile liquids. PFAS includes, among other substances, PFOA and
6 PFOS.

7 (2) "Secretary" means the Secretary of the Department of Environmental Protection.

8 (3) "USGS study" means United States Geological Survey Scientific Investigations Report
9 2022-5067, entitled "Occurrence of Per- and Polyfluoroalkyl Substances and Inorganic Analytes
10 in Groundwater and Surface Water Used as Sources for Public Water Supplies in West Virginia,"
11 published in 2022.

12 (4) "Publicly Owned Treatment Works" means any treatment works owned by the state or
13 any political subdivision thereof, any municipality or any other public entity, for the treatment of
14 pollutants as well as any such treatment works that were subsequently conveyed to a private

15 entity which delivers wastewater treatment services under the regulation of the Public Service
16 Commission of West Virginia.

§22-11C-3. Identification of PFAS sources where PFAS has been detected in raw water sources for public drinking water systems.

1 (a) To identify and address sources of PFAS in raw water sources of public drinking water
2 systems, DEP shall:

3 (1) Write a PFAS action plan to identify and address sources of PFAS by July 1, 2024, for
4 each of the 37 raw water sources for which the USGS study has measured PFOA, PFOS, PFBS,
5 or HFPO-DA above the practical quantitation limit and above USEPA's applicable drinking water
6 human health advisory;

7 (2) For each raw water source for which the USGS study has measured PFOA, PFOS,
8 PFBS, or HFPO-DA above the method detection level, above USEPA's applicable drinking water
9 human health advisory, and below the practical quantitation limit, DEP shall initiate a study to
10 sample the finished water of the associated public water system, after treatment, by December
11 31, 2023;

12 (3) For each public water system for which the measured PFOA, PFOS, PFBS, or HFPO-
13 DA in the finished water is above the method detection level and above USEPA's applicable
14 drinking water human health advisory, whether or not the measured value is above or below the
15 practical quantitation limit, DEP shall write a PFAS action plan to identify and address sources of
16 PFAS for the public water system's raw water source or sources. The first 50 such plans shall be
17 completed by December 31, 2025, and the remaining plans shall be completed by December 31,
18 2026;

19 (4) For each public water system for which a PFAS action plan is required under this
20 section, DEP shall provide information to the public water system regarding PFAS raw water and
21 finished water sampling results, DEP's schedule for developing any required PFAS action plan, a
22 summary of results from any completed PFAS action plan, information about how to obtain any

23 completed PFAS action plan, and contact information for an appropriate person or office at DEP
24 to which questions can be directed. Public water systems are subject to the Fifth Unregulated
25 Contaminate Monitoring Rule (UCMR), 40 C.F.R. part 141, which are also subject to the
26 Consumer Confidence Report (CCR) and the Public Notification (PN) rules under the Safe
27 Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be subsequently
28 amended, to which the public water systems are required to notify their customers of available
29 UCMR results and report UCMR results in their annual Consumer Confidence Report (CCR) when
30 unregulated contaminants, including PFAS, are detected;

31 (5) Recommend any necessary changes to West Virginia statutes or administrative rules
32 to address the sources of PFAS chemicals; and

33 (6) Report annually on its activities to the Joint Legislative Oversight Commission on State
34 Water Resources.

35 (7) In developing PFAS action plans, consult with other applicable units of state
36 government, organizations representing West Virginia public drinking water systems, West
37 Virginia public drinking water systems, and other relevant entities with knowledge related to
38 identifying and addressing PFAS sources.

39 (b) The PFAS action plans, to the extent that data are available, shall identify the source
40 or sources of PFAS in the raw water source, and regulatory and non-regulatory options for
41 addressing each identified source of PFAS and minimizing the impacts on public water systems.

42 (c) The PFAS action plans and associated studies herein required do not change the duty
43 or drinking water standard requirements of public water systems.

**§22-11C-4. Self-reporting of PFAS manufacture and use, monitoring of PFAS discharges,
and establishment of PFAS water quality criteria.**

1 (a) No later than December 31, 2023, all facilities that discharge to a surface water under
2 a West Virginia/National Pollutant Discharge Elimination System permit or that discharge to a
3 Publicly Owned Treatment Works under an industrial pretreatment program, including but not

4 limited to chemical and manufacturing facilities, which manufacture or knowingly use or have used
5 one or more of the following PFAS chemicals in their production process since January 1, 2017,
6 must report the use of these chemicals to the DEP:

7 (1) Any PFAS chemical found in any public water system's raw water source in the USGS
8 study; and

9 (2) Any additional PFAS chemicals that the secretary determines are harmful to human
10 health and that he or she reasonably believes to be present in West Virginia waters at levels that
11 can be detected using USEPA-approved methods: *Provided*, That if USEPA-approved methods
12 are not yet available, USEPA-recommended methods may be used. If two or more methods have
13 been approved by USEPA, monitoring shall use the method with the lowest detection level.

14 (b) This reporting shall include the chemical name, the Chemical Abstracts Service (CAS)
15 number, the amount used in each year from 2017 through 2022, and any additional information
16 required by the secretary to ascertain sources of PFAS chemicals in West Virginia, and shall be
17 provided in a manner and form prescribed by the secretary.

18 (c) For every facility that reports the use of one or more PFAS chemicals in accordance
19 with subsection (a) of this section, and that discharges to a Publicly Owned Treatment Works, the
20 secretary shall forward the information provided by the facility to the Publicly Owned Treatment
21 Works within 30 days of receipt. This reporting requirement does not change the duty or discharge
22 permits of a Publicly Owned Treatment Works.

23 (d) For every facility that reports the use of one or more PFAS chemicals in accordance
24 with subsection (a) of this section, at least quarterly monitoring of the self-reported PFAS
25 chemicals shall be required within six months of notification by the facility: *Provided*, That the
26 secretary may alter the monitoring frequency if monitoring results are below the method detection
27 level for four consecutive samples, or if monitoring results show consistent results and the source
28 or sources of the PFAS detected in the samples have been conclusively determined. This
29 monitoring shall be implemented as follows:

30 (1) If the facility discharges to a surface water under a West Virginia/National Pollutant
31 Discharge Elimination System permit, the secretary shall modify the facility's West
32 Virginia/National Pollutant Discharge Elimination System permit to require monitoring.

33 (2) If the facility discharges to a Publicly Owned Treatment Works under an industrial
34 pretreatment program and the permit holder for the Publicly Owned Treatment Works has
35 pretreatment authority, the permit holder for the Publicly Owned Treatment Works shall modify
36 the pretreatment permit held by the facility that reports the use of one or more PFAS chemicals
37 to require monitoring.

38 (3) If the facility discharges to a Publicly Owned Treatment Works under an industrial
39 pretreatment program and the department has pretreatment authority, the secretary shall modify
40 the pretreatment permit held by the facility that reports the use of one or more PFAS chemicals
41 to require monitoring.

42 (e) Monitoring shall use laboratory and sampling methods approved by the USEPA:
43 *Provided*, That if USEPA-approved methods are not yet available, USEPA-recommended
44 methods may be used. If two or more approved methods are available, monitoring shall use the
45 method with the lowest detection level.

46 (f) For every facility that reports the use of one or more PFAS chemicals in accordance
47 with subsection (a) of this section, the secretary shall modify the facility's West Virginia/National
48 Pollutant Discharge Elimination System permit as directed by the federal Clean Water Act and
49 State Water Pollution Control Act, after consultation with relevant USEPA guidance.

50 (g) After the USEPA establishes final water quality criteria under the Clean Water Act for
51 any PFAS, DEP shall propose adopting appropriate criteria by rule, which criteria may be no more
52 stringent than the criteria established by USEPA, as part of the next regular legislative rulemaking
53 cycle in accordance with §29A-3-1 *et seq* of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor