

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 485

By Senators Trump, Smith, Caputo, Oliverio, Jeffries,
Plymale, Rucker, Woodrum, Barrett, Queen, Woelfel,
Chapman, and Hamilton

[Originating in the Committee on Agriculture and
Natural Resources; reported on February 7, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding four new sections,
2 designated §22-11C-1, §22-11C-2, §22-11C-3, and §22-11C-4, all relating to identifying
3 and abating health risks of perfluoroalkyl and polyfluoroalkyl substances discharged into
4 source waters used for public drinking water; providing legislative findings; providing
5 definitions; requiring the Department of Environmental Protection to write PFAS action
6 plans to identify and address sources of PFAS for certain public water systems; requiring
7 facilities using certain PFAS chemicals to monitor and report their use; setting forth other
8 duties of those facilities; requiring the Secretary of the Department of Environmental
9 Protection to propose updates to the numeric Public Water Supply human health criteria;
10 and directing the Department of Environmental Protection to recommend any needed
11 changes to statutes or rules; requiring annual report to Joint Legislative Oversight
12 Commission on State Water Resources; setting forth other duties of the Department of
13 Environmental Protection; requiring modification of certain NPDES permits; and requiring
14 Department of Environmental Protection to propose adopting water quality criteria at next
15 legislative rule-making cycle to effectuate the provisions herein.

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 and health risks of
2 perfluoroalkyl and polyfluoroalkyl substances, which the United States Environmental Protection
3 Agency (USEPA) has classified as contaminants. These chemicals are used in thousands of
4 applications throughout the industrial, food, automotive, aerospace, electronic, oil and gas, green
5 energy, and textile industries. They are used in some fire-fighting foams, food packaging, cleaning
6 products, 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 Many are known to cause adverse health effects.

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

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

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

23 (5) In June 2022, the USEPA issued updated interim or final drinking water health
24 advisories for four PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS),
25 perfluorobutane sulfonic acid and its potassium salt (PFBS), and hexafluoropropylene oxide dimer
26 acid and its ammonium salt (HFPO-DA). The updated interim health advisory levels for PFOA and
27 PFOS indicate that negative health effects can occur at near-zero concentrations based on
28 decreased serum antibody concentrations.

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

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

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

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

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

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

47 (12) It is in the public interest for West Virginia to reduce toxic chemicals in drinking water
48 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 in
10 Groundwater and Surface Water Used as Sources for Public Water Supplies in West Virginia,"
11 published in 2022.

§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 31,
11 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 and that is required to deliver a Consumer Confidence Report to its customers, under the
21 Safe Drinking Water Act, 42 U.S.C. 300f et seq., as enacted, amended, and as may be
22 subsequently amended, DEP shall provide information to the public water system for inclusion in
23 the Consumer Confidence Report regarding PFAS raw water and finished water sampling results,
24 DEP's schedule for developing any required PFAS action plan, a summary of results from any

25 completed PFAS action plan, information about how to obtain any completed PFAS action plan,
26 and contact information for an appropriate person or office at DEP to which questions can be
27 directed;

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

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

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

36 (b) The PFAS action plans, to the extent that data are available, shall identify the source or
37 sources of PFAS in the raw water source, and regulatory and non-regulatory options for
38 addressing each identified source of PFAS and minimizing the impacts on 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 a
2 West Virginia/National Pollutant Discharge Elimination System permit and that discharge to a
3 publicly owned treatment works under an industrial pretreatment program, including but not limited
4 to chemical and manufacturing facilities, which manufacture or knowingly use or have used one or
5 more of the following PFAS chemicals in their production process since January 1, 2017, must
6 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 paragraph (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.

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

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

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

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

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

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

49 (g) After the USEPA establishes final water quality criteria under the Clean Water Act for
50 any PFAS, DEP shall propose adopting appropriate criteria by rule as part of the next regular
51 legislative rulemaking cycle in accordance with §29A-3-1 et seq of this code.

