



April 27, 2022

Environmental Quality Board
16th Floor Rachel Carson Building
400 Market Street
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Rulemaking Environmental Quality Board, Safe Drinking Water PFAS MCL
Rule submitted electronically via <https://www.ahs.dep.pa.gov/eComment/>

Dear Environmental Quality Board,

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments regarding the above-referenced proposed rulemaking. The MSC was formed in 2008 and is currently comprised of approximately 115 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission, in the country, as well as the suppliers, contractors and professional service firms who work with the industry.

Our members take seriously the topic of PFOA, PFOS and PFAS and have recently authored a Fact Sheet¹ to educate the public. It is important to highlight that there is no evidence that shows that these materials have been used in oil and gas development activities in Pennsylvania.

The MSC offers the following comments for consideration by the Environmental Quality Board (EQB).

Comment and Response Document

The MSC strongly encourages the EQB to include a key, code, or other method in its development of the Comment and Response Document which allows public commentators to identify its comments in the document and how the EQB has responded. The EQB previously has prepared its Comment and Response Documents in this manner, which is extremely helpful and efficient. Such a method also underscores that the EQB has identified and fairly considered all unique comments which it received during the public comment period.

¹ <https://marcelluscoalition.org/wp-content/uploads/2021/12/PFAS.pdf>

Implementation and Enforcement

Nothing in the rulemaking describes the implementation or enforcement of the proposed MCL, and if adopted, the MCL will automatically become the cleanup standard for ground water pursuant to the Land Recycling regulations at 25 PA Code Chapter 250. The MSC is concerned with the lack of details and the absence of expectations set forth under the proposed rulemaking. As an example, we would like to understand whether and how business owners/operators would be affected and/or held liable for PFAS contamination which they did not cause.

Entities, such as fire departments, have supplies and equipment that likely still contain quantities of PFOA and PFOS. Is the state able to provide assistance to reduce the use of these materials and help these entities convert materials that do not contain PFOA and PFOS? Other states, like Minnesota, have adopted a “Toxics Reduction and Pollution Prevention Program” to reduce these materials in firefighting foam and other equipment known to have PFOA, PFOS and PFAS.² Without assistance, these entities might not have the capital resources to make the change and continue to use these materials.

Further, the MSC is concerned that if fire departments are permitted to continue to use these foams to combat fires at construction, commercial and industrial sites, property owners will likely be left with the liability of remediating sites that have now been impacted by PFOA and PFOS. The Department’s cost analysis did not evaluate the cost of ground water remediation if the proposed MCL becomes the cleanup standard.

Moreover, in many areas, including areas where oil and gas operations occur, there is no data on existing background conditions, further complicating remediation responsibility, particularly as it relates to the new standard. A property owner’s liability will potentially result in enforcement actions and fines from the Pennsylvania Department of Environmental Protection (PA DEP or Department), in addition to the cost of remediation, regardless of causation.

Proposed Rulemaking

The proposed rule would set a Maximum Contaminant Level (MCL) of 14 parts per trillion (ppt) for PFOA and an MCL of 18 ppt for PFOS, which notably are more conservative compared to the United States Environmental Protection Agency’s (USEPA) lifetime Health Advisory Level (HAL) of 70 ppt for PFOS and PFOA combined. While the MSC supports the protection of public drinking water, it questions the applicability of the proposal to set limits more than three times lower than those set by the USEPA. Limits should reflect peer-reviewed studies and literature that examine human health risks, and they should be able to be implemented using best available technologies. Will the EQB proposal lower health risks and is the USEPA HAL unsafe for public drinking water? We recommend that the EQB answer this question before implementing a final rule which is significantly lower and in conflict with the data used by USEPA to set its own standard

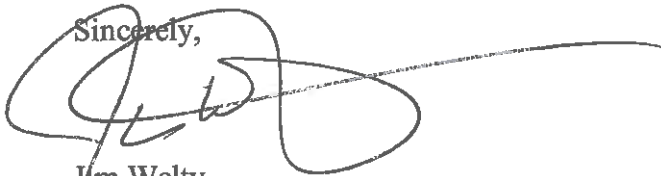
² <https://www.pca.state.mn.us/waste/what-minnesota-doing-about-pfas>

Additionally, PFOA's criteria is based on toxicological studies conducted by Koskela, *et al.* (2016) and Onishchenko, *et al.* (2011). The studies identified developmental effects as the critical effect for the determination of a criterion. The EQB identified a Lowest Observed Adverse Effect Level (LOAEL) as the basis for determining the criterion, but there was only one dose in the study. A dose-response relationship cannot be established with only one dose.

Lastly, the MSC has contacted several private laboratories that serve many industries, and the new MCL would be more difficult to consistently achieve under the accepted USEPA Method 537 or 533. Enacting extremely low groundwater limits could be problematic, both in the field when attempting to remediate and in the laboratory when trying to analyze and achieve results.

The MSC appreciates the opportunity to comment, and we remain committed to working with the EQB on this topic and any others that may arise. Please let us know if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Welty', with a long horizontal flourish extending to the right.

Jim Welty
Vice President, Government Affairs

