

STATE OF NEW YORK

3296--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. KELLES, L. ROSENTHAL, REYES, FAHY -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to enacting the "PFAS discharge disclosure act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "PFAS discharge disclosure act".

3 § 2. Legislative intent. The legislature finds and declares the
4 following:

5 1. PFAS (per- and polyfluoroalkyl substances) are a class of persist-
6 ent, bioaccumulative, and toxic chemicals which have contaminated
7 surface waters and groundwater in New York and across the country.

8 2. New York has led the nation by limiting two PFAS--perfluorooctanoic
9 acid (PFOA) and perfluorooctane sulfonic acid (PFOS)--in drinking water
10 by setting a maximum contaminant level for these two chemicals. However,
11 there are currently no enforceable limits on PFAS discharges to our
12 waters. Further, those proposing to discharge pollutants into New York's
13 waterways are not even required to disclose whether their proposed
14 discharges contain PFAS. Publicly owned treatment works' (POTW) sewage
15 treatment technology, for example, is not designed to remove PFAS from
16 wastewater, meaning any PFAS introduced into a POTW by an industrial
17 source will pass through into the surface water.

18 3. The lack of information about the suite of PFAS chemicals currently
19 entering New York's waterways is a barrier to developing regulations to
20 protect people and the environment from the harms of PFAS in our water-
21 ways.

22 4. In December 2022, the US Environmental Protection Agency (EPA)
23 published guidance encouraging states to require facilities discharging

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 into New York's waters, as well as industrial sources discharging waste
2 into POTWs, to monitor for and disclose the presence of PFAS. Legis-
3 lation is necessary to align New York state law with EPA guidance and
4 ensure key facilities currently discharging or proposing to discharge
5 into waters in New York disclose and monitor their discharges for PFAS.

6 § 3. The environmental conservation law is amended by adding a new
7 section 17-0833 to read as follows:

8 § 17-0833. PFAS discharge disclosure requirement.

9 1. Definitions. As used in this section, the following terms shall
10 have the following meanings:

11 (a) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a
12 class of fluorinated organic chemicals containing at least one fully
13 fluorinated carbon atom.

14 (b) "Covered permit" means all SPDES permits except SPDES permits:

15 (i) issued with respect to discharges by livestock or poultry oper-
16 ations including concentrated animal feeding operations and all other
17 confined animal feeding operations, aquatic animal production facili-
18 ties, aquaculture projects, and municipal separate storm sewer systems;
19 and

20 (ii) general permits, provided, however, that such term shall include
21 SPDES multi-sector general permits for stormwater discharges associated
22 with industrial activity.

23 (c) "Covered permittee" means the holder of a covered permit.

24 (d) "Discharge" means the addition of any pollutant into the waters of
25 the state.

26 (e) "Industrial source" means a source of industrial wastewater into a
27 POTW.

28 (f) "Industrial wastewater" means a type of industrial waste as
29 defined by section 17-0105 of this article.

30 (g) "Outfall" means outlet as defined by section 17-0105 of this arti-
31 cle.

32 (h) "POTW" means any publicly owned or operated treatment works.

33 (i) "Publicly owned or operated" means owned or operated by the state,
34 a municipality, or other public body (created by or pursuant to state
35 law) having jurisdiction over disposal of sewage, industrial wastes,
36 storm water, or other wastes, including a sewer district, flood control
37 district or drainage district, or similar entity, or an Indian tribe or
38 an authorized Indian tribal organization, or a designated and approved
39 management agency under section two hundred eight of the Act, as defined
40 by section 17-0801 of this title, that discharges into waters.

41 2. All covered permittees shall monitor their discharges from each
42 outfall for PFAS quarterly for one year. Covered permittees shall submit
43 the results of such monitoring quarterly to the department. Covered
44 permittees shall submit their first monitoring results within thirty
45 days of the effective date of this section.

46 3. The department shall require that every application for a new
47 covered permit shall include a statement indicating whether the appli-
48 cant knows or has reason to believe that any PFAS are discharged from
49 each outfall.

50 4. All new covered permits shall require covered permittees to monitor
51 discharges from each outfall for PFAS and submit the results of such
52 monitoring within ninety days of the commencement of the discharge.

53 5. The department shall require that every covered permittee seeking
54 to renew a covered permit shall, as part of its complete renewal appli-
55 cation, monitor discharges from each outfall for PFAS and submit the
56 results of such monitoring to the department not less than one hundred

eighty days prior to the expiration of the existing permit. Covered permittees seeking to renew a covered permit within one year of the effective date of this section may use monitoring conducted in compliance with subdivision two of this section to comply with the requirements of this subdivision.

6. If a covered permittee detects PFAS of any amount in its discharge from any outfall, such covered permittee shall continue to monitor PFAS from such outfall on a quarterly basis, for the duration of the covered permit, including any period after the expiration of the covered permit term when the covered permittee is authorized to discharge. The covered permittee shall submit the results of such monitoring quarterly to the department. The department may reduce required monitoring to annually for any covered permittee who detects PFAS within the initial year of testing but subsequently submits at least two consecutive quarters of test results with all analyzed PFAS at non-detect.

7. The department shall require any new industrial source seeking to introduce pollutants into any POTW to monitor for PFAS and submit the results of such monitoring to the POTW and the department prior to receiving initial approval to introduce pollutants to the POTW.

8. Every industrial source introducing pollutants into any POTW shall monitor for PFAS quarterly for one year. Industrial sources shall submit the results of such monitoring quarterly to the POTW and the department. Industrial sources shall submit their first monitoring results within thirty days of the effective date of this section.

9. If an industrial source introducing pollutants into a POTW detects PFAS of any amount, such industrial source shall, on a quarterly basis, monitor for PFAS and submit the results of such monitoring quarterly to the POTW and the department. The department may reduce required monitoring to annually for any industrial source who detects PFAS within the initial year of testing but subsequently submits at least two consecutive quarters of test results with all analyzed PFAS at non-detect.

10. All PFAS monitoring shall be conducted using a PFAS testing method or methods authorized by the department. The department shall immediately authorize the use of EPA method 1633. The department shall authorize additional methods that detect more PFAS as they become available and shall require that the method that detects the largest number of PFAS shall be used.

11. The department shall make publicly available on the department's website all PFAS monitoring results submitted to the department. The website shall be updated at least quarterly with all new monitoring results received.

§ 4. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.