STATE OF NEW YORK

3296

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Environmental Conservation

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

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

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

§ 2. Legislative intent. PFAS (per- and polyfluoroalkyl substances) are a class of persistent, bioaccumulative, and toxic chemicals. PFAS have contaminated surface waters and groundwater in New York and across the country. New York has led the nation by limiting two PFAS--perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS)--in drinking water by setting a maximum contaminant level for these two chemicals. However, no PFAS--not even PFOA or PFOS--are currently limited in discharges to our surface waters. Further, those proposing to discharge pollutants into New York's waterways are not even required to disclose whether their existing or proposed discharges contain PFAS. Publicly owned treatment works' (POTW) sewage treatment technology, for example, is not designed to remove PFAS from wastewater, meaning any PFAS introduced into a POTW by an industrial user will pass through into the surface water. The lack of information about the suite of PFAS chemicals currently entering New York's waterways is a barrier to developing regulations to protect people and the environment from the harms of PFAS in our waterways. In December 2022, the US Environmental Protection Agency (EPA) published guidance encouraging states to require facilities discharging into New York's waters, as well as industrial users sending waste to POTWs, to monitor for and disclose the presence of PFAS. This bill is intended to better align New York state law with EPA guidance and will ensure all facilities currently discharging or proposing to

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

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discharge into waters in New York disclose and monitor their discharge for PFAS.

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

§ 17-0833. PFAS in surface water discharge disclosure requirement.

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

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

(b) "SPDES permit" means an authorization or license issued by the department authorizing discharges to the waters of the state.

(c) "Permittee" means the holder of a SPDES permit.

(d) "Outfall" means the terminus of a sewer system or the point of emergence of any discharge of pollutants into the waters of the state.

(e) "Discharge" means the addition of any pollutant into the waters of the state.

(f) "Industrial user" means a non-domestic source introducing pollutants into a publicly owned treatment works as regulated under the federal water pollution control act.

2. The department shall require all permittees to monitor their discharges at each outfall for at least forty substances that are PFAS quarterly for one year. Permittees shall submit the results of such monitoring quarterly to the department. Permittees shall submit their first monitoring results within ninety days of the issuance of such requirement by the department.

3. The department shall require that every application for a new SPDES permit shall include a statement from the applicant indicating whether the proposed discharge will or may contain any PFAS.

4. All new SPDES permits shall require permittees to monitor discharges from each outfall for at least forty substances that are PFAS and submit the results of such monitoring within ninety days of the commencement of the discharge.

5. The department shall require that every permittee seeking to renew an existing SPDES permit shall, as part of its complete renewal application, monitor for at least forty substances that are PFAS from each outfall and submit the results of such monitoring to the department not less than one hundred eighty days prior to the expiration of the existing permit.

6. The department shall require that if a permittee detects PFAS of any amount in its discharge from any outfall, such permittee shall, on a quarterly basis, monitor its discharge from each outfall where PFAS are detected for at least forty substances that are PFAS for the duration of the SPDES permit, including any period after the expiration of the SPDES permit term when the permittee is authorized to discharge. The permittee shall submit the results of such monitoring quarterly to the department.

7. The department shall require any new industrial user seeking to introduce pollutants into any publicly owned treatment works to monitor for at least forty substances that are PFAS and submit the results of such monitoring to the publicly owned treatment works and the department prior to receiving initial approval to introduce pollutants to the publicly owned treatment works.

8. The department shall require every industrial user introducing pollutants into any publicly owned treatment works to monitor for at least forty substances that are PFAS quarterly for one year. Industrial users shall submit the results of such monitoring quarterly to the

publicly owned treatment works and the department. Industrial users shall submit their first monitoring results within ninety days of the issuance of such requirement by the department.

9. The department shall require that if an industrial user introducing pollutants into a publicly owned treatment works detects PFAS of any amount, such industrial user shall, on a quarterly basis, monitor for at least forty substances that are PFAS and submit the results of such monitoring quarterly to the publicly owned treatment works and the department.

10. All PFAS monitoring shall be conducted using a PFAS testing method or methods authorized by the department. The department shall authorize the use of EPA draft 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.

12. The department shall issue requirements for compliance with this section within ninety days of the effective date of this section.

§ 4. This act shall take effect immediately.