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:

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

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

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

2. 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, there are currently no enforceable limits on PFAS discharges to our waters. Further, those proposing to discharge pollutants into New York's waterways are not even required to disclose whether their 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 source will pass through into the surface water.

3. 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.

4. In December 2022, the US Environmental Protection Agency (EPA) 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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into New York's waters, as well as industrial sources discharging waste into POTWs, to monitor for and disclose the presence of PFAS. Legislation is necessary to align New York state law with EPA guidance and ensure key facilities currently discharging or proposing to discharge into waters in New York disclose and monitor their discharges for PFAS.

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

§ 17-0833. PFAS 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" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

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

(i) issued with respect to discharges by livestock or poultry operations including concentrated animal feeding operations and all other confined animal feeding operations, aquatic animal production facilities, aquaculture projects, and municipal separate storm sewer systems; and

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

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

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

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

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

(g) "Outfall" means outlet as defined by section 17-0105 of this article.

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

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

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

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

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

5. The department shall require that every covered permittee seeking to renew a covered permit shall, as part of its complete renewal application, monitor discharges from each outfall for PFAS 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. 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.