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Enforceable State PFOS/PFOA Drinking Water Standards Likely This Year

Wisconsin drinking water standards for two kinds of PFAS (perfluoroalkyl and polyfluoroalkyl substances) are likely to become effective later this year. PFAS are a large group of widely used, long lasting chemicals, components of which break down very slowly over time. They are widely used to make various types of everyday products. Because of their widespread use and their persistence in the environment, many PFAS are found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment. Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals.

Since Spring 2019, the Wisconsin Department of Natural Resources (DNR) has been working on proposed regulations for two kinds of PFAS -- perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). PFOA and PFOS are the most well-studied PFAS. They were manufactured for a long time but are no longer manufactured in the United States.

In February 2022, DNR submitted its proposed PFOA/PFOS rules to the Natural Resources Board (NRB) for approval. After heated discussion, the NRB:

- did not approve the proposed groundwater rule, which would have set a PFOA/PFOS groundwater standard of 20 parts per trillion (ppt) separately or combined;
- approved the surface water rule, which focused on source reduction instead of treatment and which set a PFOS standard of 8 ppt and a PFOA standard of 20 ppt in waters classified as public water supplies and 95 ppt for other surface waters; and
- modified the drinking water rule to set the PFOA/PFOS standard at 70 ppt (which is the current EPA health advisory level for PFOA/PFOS) instead of at the DNR recommended 20 ppt level.

The two PFAS rules that have been approved now move on to the Legislature for passive review. It is possible that legislative committees could slow down or object to the adoption of these rules. But if they do not, it is possible that the PFOA/PFOS drinking water and surface water rules could become effective as early as June 1, 2022.

The drinking water rule would require all community and non-transient non-community public water systems (e.g. a school system) to test for PFOA and PFOS quarterly, at least initially. The testing requirement for a public water system that serves a population of 50,000 or more would begin on the 4^{th} month beginning after the rule is published. For a public water system that serves a population of 10,000 to 49,999, the testing requirement would begin on the 7^{th} month beginning after the rule is published. And, for a system that serves less than 10,000, the testing

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Wisconsin Legislature Initiates Unclaimed Property Voluntary Disclosure Agreements

When a party (a holder) is holding property presumed to be abandoned (that is, unclaimed property), the holder must first send notice to the apparent owner and then file a report with the Wisconsin Department of Revenue (DOR) summarizing the held property. *See* Wis. Stats. §§ 177.0401, 177.0501 *et seq.* After filing a report, the holder must generally pay or deliver to the DOR the property described in the report. Wis. Stats. § 177.0603(1). What constitutes "property" under this Chapter is expansive and, of particular interest to municipalities, includes municipal bonds issued by a municipality or any other subdivision of a state and any deposits or refunds owed to customers by utilities. *Id.* § 177.01 *et seq*.

It is only necessary to file a report after the property in question is presumed abandoned, however. For example, for a state or municipal bond, this time period is three years after the bond matures or is called, or when the obligation to pay the principal arises – whichever is earliest. For other properties, such as deposits or refunds owed to a subscriber by a utility, the time period is one year after the deposit or refund becomes payable.

Failure to file may lead to various financial penalties. Wis. Stats. § 177.1204. Therefore, it is in a holder's best interest to promptly file an appropriate report.

If a holder forgets to file a report, is there any way to avoid the penalties? Previously, no. However, the Wisconsin Legislature recently provided a means to potentially avoid liability by passing 2021 Wis. Act 87, which amends Wisconsin Chapter 177 (the Uniform Unclaimed Property Act).

Act 87 provides a means by which a holder of presumed-abandoned property can avoid the financial penalties associated with failing to file or improperly filing a required report. To benefit from Act 87, the holder must enter into a voluntary agreement with the DOR between February 1, 2022 and February 28, 2023 and further demonstrate that the holder:

1. Failed to file a report or failed to include all relevant property in a filed report.
2. Is not under examination or investigation by the DOR.
3. Has not received notice from the DOR of an impending investigation.
4. Has not received any notices of assessment under Chapter 177, Subchapter X or XI.
5. Is not subject to civil or criminal prosecution under Chapter 177.
6. Agrees to report and deliver, if possible, any identified property within sixty days of executing the agreement.
7. Agrees to perform all duties under Wis. Stats. §177.0501 within 30 days of executing the agreement.
8. Agrees to prospective compliance with Chapter 177.
9. Agrees to waive all appeal rights under Chapter 177 for the applicable time periods.

If an agreement is executed between the holder and the DOR, the holder is relieved of any and all liability related to the property identified in the agreement for the five reporting periods immediately preceding the agreement's filing date. In addition, the holder must maintain all records relating to the identified property.

A holder entering into an agreement with the DOR should further understand that the DOR may render a prior agreement null and void if at least one of the following applies:

1. The holder committed fraud or intentionally misrepresented information to the DOR.
2. The DOR determines that the prior-reported property is less than 75% of the value of reportable property for the relevant time period.
3. The holder fails to remain in compliance with Chapter 177 for at least the four reporting periods following the final reporting period covered by the agreement.

Practically speaking, entering into an agreement with the DOR for any presumed-abandoned property that has either been improperly reported or that has not been reported at all is a viable means of avoiding potential financial liability and directing any subject property to its rightful owners.

For Wisconsin municipalities, Act 87 may be especially useful when managing municipal bonds, operating municipal utilities, or returning any other forms of property that may end up in their possession. In addition, municipalities should review the separate section on disposal of abandoned personal property, Wis. Stats. §66.0139.

— Peter Tirella

PFOS/PFOA Drinking Water Standards

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requirement would begin on the 10th month after the rule is published. A system must initially take 4 consecutive quarterly samples for PFOA and PFOS. A system may ask the DNR to waive the last 2 quarters of testing if prior levels are below detection.

Once Wisconsin's 70 ppt PFOS/PFOA drinking water standard becomes effective, it will likely stay in effect until EPA establishes a federal PFOS/PFOA standard. EPA has indicated that it intends to issue a proposed PFOA/PFOS regulation in Fall 2022 and a final regulation in Fall 2023. All expectations are that it will be significantly lower than 70 ppt.

— Lawrie Kobza

It's a Good Time to Consider Community Broadband

In its historic Infrastructure Investment and Jobs Act, Congress recognized that "[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States." The Infrastructure Act, signed into law late last year, sets aside an unprecedented 65 billion dollars for broadband funding. While past funding opportunities for broadband have largely focused on private enterprise, these new federal grant programs make broadband funds available to local governments and municipal utilities as well. If your community has been considering municipal broadband (or even if it hasn't), now may be the time to act.

While the Infrastructure Act contains a variety of programs aimed at expanding broadband access, the Broadband Equity Access and Deployment Program ("BEAD") is the largest and most promising source of funding for municipalities looking to expand broadband access in their communities. The BEAD program devotes $42.45 billion to support projects to construct and deploy broadband networks, with a focus on expanding broadband in unserved and underserved areas.

BEAD will be administered by the National Telecommunications and Information Administration ("NTIA"), which will make direct grants of at least $100 million to each state, with the remainder allocated among the states based on the number of unserved high-cost areas in each state. The states will then make sub-grants to eligible entities, which include local governments, utilities, and public-private partnerships, as well as private businesses, to fund broadband projects.

BEAD funds may be used for:

- broadband projects targeting unserved and underserved areas;
- broadband projects connecting eligible community anchor institutions such as schools, libraries, public safety entities, and hospitals;
- data collection, broadband mapping, and planning;
- installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within certain unserved or high-poverty multi-family residential buildings; and
- broadband adoption, including programs to provide affordable internet-capable devices

In awarding funding, states must first prioritize unserved service projects, in which 80% or more of the locations served by the project do not have access to reliable broadband service at speeds of at least 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads. After ensuring coverage of all unserved areas, states may then award funds to underserved service projects (in which 80% or more of the locations served by the project do not have access to reliable broadband service at speeds of at least 100 Mbps for downloads and 20 Mbps for uploads) and then to projects connecting eligible community anchor institutions. In awarding funds, states must also prioritize projects in persistent poverty counties or high-poverty areas and consider factors such as the speeds of the proposed broadband service and how long it will take the project to be completed.

In general, grant recipients must provide a matching contribution of 25% of the project costs. However, the match may consist of funds received by the grantee under the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act, and may also include in-kind contributions.

Broadband networks constructed with BEAD funds must provide reliable broadband service at a speed of not less than 100 Mbps for downloads and 20 Mbps for uploads and must provide access to every customer served by the project who desires broadband service. Grant recipients must begin providing broadband service within four years of receiving the grant, must offer at least one low-cost broadband service option for eligible subscribers, and must carry out public awareness campaigns within the project's service area that are designed to highlight the value and benefits of broadband service. If at any time a grantee is no longer able to provide broadband service to the areas covered by the grant, it must sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to other broadband service providers or public sector entities.

There are a number of variables that will affect the timeline for the distribution of BEAD funds, including how quickly the FCC finishes its new broadband DATA maps, which are still under development. While NTIA must issue a notice of funding opportunity to the states by mid-May, 2022, the states will not be able to submit proposals for grants to the NTIA until after the FCC's broadband maps are complete, likely sometime in 2022. Each state will develop its own process and timeline for awarding BEAD funds for individual broadband projects, subject to the requirements set out in the statute and imposed by the NTIA, but money is not likely to start flowing until 2023. Nevertheless, the time to begin planning an application for BEAD funds is now.

— Julia K. Potter & Anita T. Gallucci

BoardmanClark

1 S PINCKNEY ST SUITE 410 PO BOX 927
MADISON WI 53701-0927

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Eileen A. Brownlee	822-3251	ebrownlee@boardmanclark.com
Anita T. Gallucci	283-1770	agallucci@boardmanclark.com
Brian P. Goodman	283-1722	bgoodman@boardmanclark.com
Eric B. Hagen	286-7255	ehagen@boardmanclark.com
Kathryn A. Harrell	283-1744	kharrell@boardmanclark.com
Richard A. Heinemann	283-1706	rheinemann@boardmanclark.com
Paul A. Johnson	286-7210	pjohnson@boardmanclark.com
Michael J. Julka	286-7238	mjulka@boardmanclark.com
Lawrie J. Kobza	283-1788	lkobza@boardmanclark.com
Storm B. Larson	286-7207	slarson@boardmanclark.com
Michael P. May	286-7161	mmay@boardmanclark.com
Julia K. Potter	283-1720	jpotter@boardmanclark.com
Jared W. Smith	286-7171	jsmith@boardmanclark.com
Catherine E. Wiese	286-7181	cwiese@boardmanclark.com
Steven C. Zach	283-1736	szach@boardmanclark.com