

EPA PFAS Enforcement Has Begun

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The U.S. Environmental Protection Agency (EPA) says it has taken its first-ever Clean Water Act (CWA) [enforcement action](#) against water pollution by so-called “forever chemicals” from a West Virginia chemical plant. On April 26, 2023, [EPA Ordered Chemours Co.](#), owner of Washington Works near Parkersburg, West Virginia, to take action aimed at reducing the levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) the facility discharges into the Ohio River.

Chemours operates several manufacturing units at the Washington Works facility, which produce fluorinated organic chemical products, including fluoropolymers. The facility discharges industrial process water and stormwater to the Ohio River and its tributaries under the terms of a NPDES permit issued in 2018 by the West Virginia Department of Environmental Protection. Until 2015, E.I. du Pont de Nemours and Company was the NPDES permit holder at Washington Works. In 2015, the permit was transferred to Chemours.

The permit imposes discharge limits and requires monitoring of certain pollutants, including PFAS such as perfluorooctanoic acid (PFOA), which was used in the past as a processing aid for manufacturing, and HFPO Dimer Acid, also known as GenX — which replaced PFOA as a processing aid.

The Consent Order

In the administrative compliance order on consent (AOC) issued, EPA sets forth that this facility exceeded permit effluent limits for PFOA and HFPO Dimer Acid on various dates from September 2018 through March 2023 and that Chemours failed to properly operate and maintain all facilities and systems required for permit compliance.

The consent order requires Chemours to:

- take necessary measures to reduce the discharge of PFAS into the water bodies in affected areas,
- conduct sampling and analysis of PFAS discharges and report the findings to the EPA,
- develop and implement a PFAS Reduction Plan that includes measures to reduce PFAS discharges into water bodies, and
- provide funding for monitoring and testing for PFAS in public water systems and private wells.

The consent order also requires Chemours to submit regular progress reports to the EPA, including updates on the implementation of the PFAS Reduction Plan and the results of monitoring and testing. Notably, the order provides for civil penalties of up to \$10,000 per day for non-compliance.

Conclusion

The Consent Order is notable in that it is the EPA’s first Administrative Order on Consent for the unlawful discharges of PFAS under the Clean Water Act. The Order could serve as a precedent for the EPA to bring further

enforcement actions under the CWA for PFAS discharges and signal a new epoch wherein EPA's enforcement program prioritizes the regulation of PFAS and holds entities accountable for its discharges.

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