

S.227-B (May)

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BILL S.227-B (May)
SUBJECT PFAS Monitoring for SPDES Permits
DATE May 08, 2023
OPPOSE

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The Business Council opposes this legislation that would impose expansive PFAS monitoring requirements on direct and, especially, indirect wastewater sources, without any consideration of whether such dischargers ever produced or used PFAS on site and would be a likely source of dischargers. As result, this would impose additional monitoring costs on thousands of New York manufacturers, including small businesses, regardless of the nature of the business and their current or historical material use. While the bill’s “legislative intent” section cites December 2022 U.S.

Environmental Protection Agency guidance on PFAS monitoring, the bill is inconsistent with the federal guidance that recommends monitoring be considered for industrial categories known or suspected to discharge PFAS.

This legislation would require:

- all entities with a direct wastewater discharge, or “SPDES” (state pollutant discharge elimination system) permit to conduct PFAS monitoring at each permitted outfall on a quarterly basis for one year. While the bill has been amended to exclude some general permits, including those related to agricultural production, it still applies to general industrial stormwater permits, which are not applicable to dischargers related to industrial processes.
 - any industrial entity discharging into a publicly owned treatment works (POTW) to monitor for PFAS on a quarterly basis for one year. These indirect dischargers include thousands of small to mid-sized manufacturing facilities.
 - all newly issued SPDES permits to require monitoring for each outfall with monitoring reports required to be submitted to the state Department of Environmental Conservation (DEC) within ninety days of the commencement of the discharge. The bill would also require each applicant for a new SPDES permit to, as part of its permit application, determine whether its proposed discharge will or may include any PFAS, but the monitoring requirement applies regardless of such determination. It is unclear whether new permit holders would be subject to the bill’s proposed quarterly monitoring requirement after this initial test.
- all permittees seeking to renew a SPDES permit to monitor for PFAS from each permitted outfall within one hundred and eighty days prior to the expiration of its existing permits.
 - if any entity detects PFAS “of any amount” in a direct SPDES discharge or an industrial discharge into a POTW, it is required to monitor quarterly for the duration of the term of its permit, including any period after the permit’s expiration that the entity remains authorized to discharge.
 - all such monitoring to be done using methods authorized by the DEC, and requires the DEC to immediately authorize the use of EPA method 1633, and further requires DEC to authorize additional methods that detect more PFAS compounds as they become available.

- the DEC would be required to post on its website all PFAS monitoring reports it receives.

We have several major concerns regarding this legislation.

First, it mandates extensive (and expensive) monitoring of discharges without any specific plan to utilize the results of such monitoring.

Second, its proposed monitoring mandate is unconnected to any assessment of likely sources of PFAS impacting the discharges to be monitored. For example, it requires all industrial indirect discharges to conduct PFAS monitoring, whereas the EPA's December 2022 policy memorandum recommends monitoring for industry categories known or suspected to discharge PFAS. Also, as mentioned above, it requires PFAS monitoring of new SPDES discharges even if a pre-permitting assessment indicated no likely source of PFAS to impact its discharge. Likewise, the bill's monitoring mandate would also apply to all SPDES general permits for industrial stormwater discharges, regardless of any potential on-site source, where PFAS detected in the discharge is likely to be from deposition.

Presently, the wastewater industry is struggling with an insufficient number of qualified laboratories to complete PFAS analytical protocols including inadequate capacity and lengthy turnaround times that fail to satisfy regulatory agency deadlines. This situation would be exacerbated by an across-the-board monitoring mandate.

We appreciate the need to focus on reducing PFAS compounds in the environment, including actions on the state and national level to eliminate new sources and continuing uses of these persistent contaminants, and efforts to reduce public exposure to PFAS in drinking water and through other exposures.

However, we do not believe that the expansive PFAS monitoring program proposed in this legislation would be an effective, or efficient, approach to reducing PFAS levels in the environment.

For these reasons, we oppose adoption of S.227-B.

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