



RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF WATER RESOURCES

**Response to public comments pertaining to proposed amendments to  
Water Quality Regulations 250-RICR-150-05-1**

November 17, 2023

Public Notice of proposed amendments to the Rhode Island **Water Quality Regulations** to establish surface water quality action levels for PFAS compounds, and to make an additional technical change, was posted on the Rhode Island Secretary of State's website on October 4, 2023. A public hearing on the proposed rules was held at 2:00PM on October 19, 2023. No attendees offered public comments during the public hearing. The comment period during which the Department of Environmental Management (DEM) would accept written comments pertaining to the proposed rule amendments ended at 4:00PM on November 3, 2023.

DEM received five written comment submissions. The comments are summarized and presented below in the order of receipt, followed by DEM's response. One comment letter was submitted twice with the same signatory but by different persons. Response to the double letter submission is combined into a single response below. Copies of all comments are on file and available for public review at the RI Department of Environmental Management, Office of Water Resources, 235 Promenade Street, Providence, RI 02908.

Commenter #1 Jody Frymire, representing IDEXX

**COMMENT 1:** IDEXX made a comment suggesting that the bacteria criteria, within Section 1.10.D.1 Table and 1.10.E.1 Table, for all Classes of water [excluding shellfishing criteria], should be changed from fecal coliform to *Escherichia coli* (*E. coli*) or enterococci.

**DEM RESPONSE:** This comment is outside the scope of the proposed changes that were the subject of the public notice. The Department will not make any additional changes to the bacteria criteria at this time. However, the Department appreciates the comment and will consider the input when it reviews the regulations for potential future changes as part of the periodic review of all criteria carried out pursuant to the federal Clean Water Act. DEM notes the state water quality criteria already include enterococci for both freshwaters and saltwaters with respect to recreational use of waters. There is no change to proposed rule in response to this comment.

**COMMENT 2:** IDEXX made a comment that the units associated with the bacteria criteria, included within Sections 1.10.D.1 Table and 1.10.E.1 Table, should change from "MPN/100 mL" and "colonies/100 mL" to "counts/100 mL".

**DEM RESPONSE:** The suggestion to use counts/100 mL is inconsistent with the manner in which laboratory results are being generated and reported to the DEM for water samples analyzed for bacteria. To maintain clarity, the Department will not make any changes to the criteria at this time. However, the Department appreciates the comment and will consider the input when it reviews the regulations for potential future changes as part of the periodic review of all criteria carried out pursuant to the federal Clean Water Act. During the periodic review of criteria, units would be evaluated in light of newer approved testing methods. There is no change to proposed rule in response to this comment.

Commenter #2 Jed Thorp, representing Clean Water Action

**COMMENT 1:** The Department of Environmental Management, along with the Department of Health, has shown leadership in recent years in protecting Rhode Islanders from exposure to PFAS, and these proposed rules appear to be consistent with that leadership, which we appreciate.

**DEM RESPONSE:** The comment expressed general support for the rule, which is noted. No change to this proposed rule was requested or is needed in response to this comment.

**COMMENT 2:** Given the potential for human health harms as well as the persistence of PFAS in our environment, it is important that the state work to both increase our understanding of the various pathways of exposure to PFAS chemicals, as well as proactively take steps to use all of the legal and regulatory tools at our disposal to limit or eliminate that exposure. We feel that the proposed rules will help accomplish both.

**DEM RESPONSE:** The comment expressed general support for the rule, which is noted. No change to the proposed rule was requested and no change to proposed rule in response to this comment.

**COMMENT 3:** While these draft rules require notifying the Department of sampling results that exceed the surface water standard, they do not appear to require dischargers to actually sample. However, it's our understanding that the Department will incorporate sampling requirements into NPDES permits as they come up for renewal via existing authority under the federal Clean Water Act. We feel it's important to incorporate this PFAS sampling requirement into new permits for all dischargers, not just for wastewater treatment facilities.

**DEM RESPONSE:** The proposed rule amendments do not impose a mandate for sampling, but rather a reporting requirement. There is no change to this proposed rule in response to this comment.

While not part of the proposed regulations, the Department confirms that PFAS effluent sampling requirements are being phased into Rhode Island Pollutant Discharge Elimination System (RIPDES) permits as they come up for renewal. As these permits are reissued, the Department is including PFAS monitoring requirements for municipal wastewater treatment facilities as well as certain industrial dischargers, including platers/metal finishers; paper and packaging manufacturers; tanneries and leather/fabric/carpet treaters; manufacturers of part with polytetrafluorethylene (PTFE) or Teflon type coatings; landfill leachate; centralized waste treaters; PFAS contaminated sites; firefighting training facilities; airports; and any other known or expected sources of PFAS. These permitting activities are subject to separate public notice and, therefore, no change to the proposed rule is necessary in response to this comment.

**COMMENT 4:** Moving forward, it's important that we continue to think "upstream" to reduce PFAS use in various consumer products. So long as PFAS are present in products, we will continue to struggle to keep them out of our environment.

**DEM RESPONSE:** This comment is outside the scope of the proposed changes that were the subject of the public notice. There is no change to proposed rule in response to this comment.

The Department agrees with the commenter on the importance of reducing PFAS use in various consumer products to protect public health and reduce PFAS in the environment. The Department notes that, while not directing this regulatory effort, a separate bill was passed and signed into law prohibiting food packaging to which PFAS have been intentionally added in any amount from being manufactured, knowingly sold, or distributed in Rhode Island. See R.I. Gen. Laws § 23-18.13-4

Commenter #3 Stephen P. Risotto, representing American Chemistry Council  
Submitted by Stephen P. Risotto and Erin DeSantis

**COMMENT 1:** ACC is deeply concerned about the use of the sum of individual PFAS as an action level that may trigger reporting and other potential actions under the regulation. The eight substances identified in the proposal represent a broad range of physical, chemical, and biological properties. Two of the substances have not been subject to review by the Department of the US Environmental Agency (EPA). The proposed action level also includes two substances that are not identified in the language approved by the legislature, namely perfluorohexanoic acid (PFHxA) and perfluoropentanoic acid (PFPeA). Although ACC understands that the law requires DEM to promulgate action levels for six PFAS, we encourage the Department to remove the two additional substances – PFHxA and PFPeA – from the proposed action level.

**DEM RESPONSE:** The intent of the regulation is to be used as a screening tool to identify locations with elevated concentrations of PFAS, which are likely to be associated with a discrete source of PFAS. DEM notes the surface water quality action level is not considered an ambient water quality standard. DEM is closely following work to develop guidance or rulemaking on PFAS surface water criteria being pursued by the U.S. EPA. Any future action by DEM to establish numeric PFAS surface water quality criteria would be subject to U.S. EPA review and approval under the federal Clean Water Act framework. After compiling and

assessing available PFAS data in Rhode Island waters, the two additional PFAS compounds, PFHxA and PFPeA, were included based on their prevalence and relative percentage compared to other PFAS compounds detected in Rhode Island samples. When considered against the total sum of the 8 selected PFAS compounds, PFHxA and PFPeA together represented up to 69% of the combined concentration in some Rhode Island surface water samples, and 35% on average. PFHxA and or PFPeA were also detected in 88% of Rhode Island surface water samples. These two compounds are included, along with the 6 compounds outlined in the state law, as part of routine analytical methods used for measuring PFAS compounds in water samples. As these compounds are typically simultaneously analyzed along with the minimum 6 compounds, and would be included in the same lab report, it is not expected that adding these compounds to the regulation will generate significant added analytical or reporting costs to regulated entities. There is no change to this proposed rule in response to this comment.

**COMMENT 2:** ACC also encourages DEM to revise the proposed definition of PFAS to better align with the law's focus on the presence of these substances in water. Since current analytical techniques can detect a relatively small number of PFAS in water, we recommend that the definition focus on those substances for which valid detection methods have been developed by the Department or USEPA. Alternatively, the definition could be revised to eliminate substances that will not [sic] found in aqueous media. For example, the following definition has been adopted in the States of Delaware and West Virginia –

PFAS means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gases and volatile liquids.

**DEM RESPONSE:** The DEM rules are consistent with the state law definitions. However, the Department has reviewed this comment and determined a minor clarifying change to the regulation is appropriate to address this comment. Based on the Department's research to date, including consultation with the RI Department of Health, the primary identified issue with citing a single fluorinated carbon atom in the definition is the unintentional capture of many commonly prescribed organofluorine pharmaceutical products, such as brand names Prozac, Lipitor, Flonase, Celexa, etc. As a clarification, the definition of Per- and polyfluorinated substances or PFAS will be modified as such (new language in *Italics* below):

"Per- and polyfluoroalkyl substances" or "PFAS" means all members of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom, which constitutes a large family of fluorinated chemicals, exceeding several thousand that might be in commercial use or the environment, that vary widely in their chemical and physical properties, *exclusive of organofluorine pharmaceutical products*.

Commenter #4 Eliza Moore, representing the Narragansett Bay Commission

**COMMENT 1:** The new section on a PFAS action level (Part 1.30) is unclear as to whether it may apply to effluent discharges (regulated under RIPDES permits) that may cause an exceedance of the action level in surface waters. Specifically, I'm referring to the following text (Part 1.30.D.1; highlighting is my emphasis):

Notification: Any entity regulated under any of the following citations shall notify the Department in writing within 15 (Fifteen) calendar days when either receipt of an analytical sample result indicates exceedance of the action levels established in § 1.30(B)(1) of this Part has occurred or receipt of information indicates that a discharge or release may have caused an exceedance of the action levels established in § 1.30(B)(1) of this Part."

One could interpret this to apply to RIPDES effluents discharging to surface waters, depending on dilution allowances, if effluent concentrations are detected above the action level. If it is not the intent for this section to apply to RIPDES-regulated discharges, and rather to only apply to spills or other unregulated/unauthorized discharges, the NBC requests the section be clarified as such.

**DEM RESPONSE:** The Department has reviewed this comment and has determined a minor clarifying change to the regulation is appropriate to address this comment. The intent of the section was to address

unauthorized discharges or spills. Therefore, §1.30(D)(1) will be modified as such (new language in Italics below):

Notification: Any entity regulated under any of the following citations shall notify the Department in writing within 15(Fifteen) calendar days when either receipt of an analytical sample result indicates exceedance of the action levels established in §1.30(B)(1) of this Part has occurred or receipt of information indicates that *an unauthorized* discharge or release may have caused an exceedance of the action levels established in §1.30(B)(1) of this Part:

The Department does note that once RIPDES permits are issued, including requirements to report PFAS effluent monitoring results to the Department, permittees will fall into the duplicate reporting exemption in §1.30(D)(2), due to their reporting under a regulation cited in §1.30(D)(1).