

PFAS Update: NJDEP Establishes Interim Soil Remediation Standards for PFNA, PFOA, PFOS, and GenX

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Per- and polyfluoroalkyl substances (PFAS) remain a hot-button topic. Citing health-based risks, the United States Environmental Protection Agency recently proposed to designate certain PFAS compounds as “hazardous substances” under the Comprehensive Environmental Response, Compensation and Liability Act,¹ thus increasing the scope of federal liability and suggesting that these compounds must always be included in Phase I due diligence.² New Jersey has, of course, regulated PFAS compounds for some time. In 2018, it became the first state to regulate perfluorononanoic acid (PFNA), when it adopted a groundwater standard and set a maximum contaminant level (MCL) in drinking water at 13 parts per trillion.³ Then, in 2020, New Jersey adopted groundwater standards and MCLs for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) at 14 and 13 parts per trillion, respectively. New Jersey is now continuing to broaden the scope of its PFAS remediation standards. Today, the New Jersey Department of Environmental Protection (NJDEP or Department) published interim soil remediation standards (Interim SRS) for four PFAS compounds: PFNA, PFOA, PFOS, and hexafluoropropylene oxide dimer acid and its ammonium salt (otherwise known as GenX), which was formerly used as a PFAS alternative.

The NJDEP’s Interim SRS are:

	Interim SRS: Ingestion/ Dermal Pathway – Residential	Interim SRS: Ingestion/ Dermal Pathway – Non- Residential	Interim SRS: Migration to Groundwater Pathway	Interim Soil Leachate Remediation Standard: Migration to Groundwater Pathway
	mg/kg	mg/kg	mg/kg	µg/l
PFNA	0.047	0.67	AOC ⁴ /Site Specific	0.26
PFOA	0.13	1.8	AOC/Site Specific	0.26
PFOS	0.11	1.6	AOC/Site Specific	0.26
GenX	0.23	3.9	N/A	N/A

According to the NJDEP, the Interim SRS will be effective immediately, although the agency is still determining whether there will be an informal phase-in period. Thus, as of today, October 17, the NJDEP’s position is that for active and future sites with PFAS contamination—i.e., sites that have not received a site-wide response action outcome—the Interim SRS are applicable. Consistent with its ordinary practice, the NJDEP has stated that “[f]ollowing these interim standards and in line with the NJDEP’s site remediation regulations, the Department will look to replace the interim SRS with duly promulgated SRS for PFNA, PFOA, PFOS, and GenX as soon as reasonably possible.” Historically, however, in the context of interim standards, the NJDEP has not

¹ See <https://www.epa.gov/newsreleases/epa-proposes-designating-certain-pfas-chemicals-hazardous-substances-under-superfund>.

² For more information about PFAS and their ubiquitous use in the United States, please see our Client Alert: <https://www.lowenstein.com/news-insights/publications/client-alerts/american-society-for-testing-and-materials-adds-pfas-guidance-to-phase-i-due-diligence-standard-environmental>.

³ See <https://www.state.nj.us/dep/pfas/standards.html>.

⁴ “AOC” is the abbreviated form of the term “Area of Concern.”

been quick to act on formal rulemaking. As a result, the new PFAS Interim SRS may be in place for some time. It is worth noting that the NJDEP's past practice of publishing interim standards without prompt formal rulemaking has been challenged. The Interim SRS may be subject to such a challenge.

Practically speaking, because the compounds were not previously regulated, prospective purchasers may have overlooked PFNA, PFOA, and PFOS in soil

and GenX when looking to purchase property in New Jersey. Now, in light of the Interim SRS publication, prospective purchasers should always consider including these compounds in the scope of due diligence investigations.

If you have any questions about the Department's Interim SRS or PFAS in general, please contact the authors of this article.

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