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Delaware Riverkeeper Network Files a Petition for Review to Require DEP to Establish a Maximum Contaminant Level for PFOA

Harrisburg, PA – The Delaware Riverkeeper Network (DRN) filed a Petition for Review in the Commonwealth Court on May 16, 2019, demanding action by the Pennsylvania Department of Environmental Protection (DEP) on DRN’s 2017 petition to set a maximum contaminant level (MCL) for Perfluorooctanoic Acid (PFOA).

On May 8, 2017, DRN filed a Petition with the Environmental Quality Board (EQB) to establish an MCL for PFOA between 1 parts per trillion and 6 parts per trillion. DRN’s Petition was accepted unanimously by a vote of the EQB members. Per the EQB’s regulations, the DEP was required to issue a report on the 2017 Petition within sixty days, or within another time period as suggested by the DEP. At the August 15, 2017 meeting of the EQB, the DEP stated it would issue the report on the proposed MCL by June of 2018. Two years after the initial Petition submission and nearly one year after the June 2018 date the DEP stated it would issue a report, the DEP has failed and refused to issue its report or identify when its report would issue.

“DEP has engaged in indefensible foot dragging, just like the federal government, when it comes to protecting our communities from the dangers of PFOA in their drinking water and environment. There is clear and sufficient scientific evidence of terrible harms to residents, including young children, as the result of PFOA contamination. Even after DRN does the work that the DEP should have done on its own to establish a state maximum contaminant level, DEP is failing, and even refusing, to evaluate DRN’s Petition in a timely manner. This delay violates people’s environmental rights under the Pennsylvania Constitution, including the right to pure water, and violates the clear letter of state law,” **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.** “The Delaware Riverkeeper Network also believes additional regulatory action is needed for PFOS and other PFAS. Pennsylvanians should be able to rely on government to ensure that when they get a glass of water from their faucet that it will be free of harmful and toxic compounds that could make their kids, families and friends sick with serious illnesses, including cancer.”

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“Every day that passes without action by the state to require the removal of PFOA and other PFAS from Pennsylvanians’ drinking water, represents the abrogation of the state’s responsibility to protect its population by providing safe drinking water. The information the state needs about monitoring and treatment technologies, health effects, and exposure pathways is readily available. The fact that upwards of 84,000 people and at least three geographic regions in the Commonwealth are known to suffer PFOA contamination should be enough for DEP to recognize the urgency of this pressing water crisis. Far too much time has already passed during which people, including our most vulnerable populations, have been exposed to the risk of developing debilitating diseases linked to PFOA and other highly toxic PFAS. Further delay is intolerable, which is why we are filing in court today,” **said Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network.**

PFOA is a toxic compound in a family of chemicals known as per- and poly-fluoroalkyl substances (PFAS) and is currently banned from manufacture within the United States. From the 1950’s until recently, companies such as DuPont and 3M used these chemical compounds to make products more stain-resistant, waterproof, and/or nonstick. PFAS were also present in firefighting foam, used liberally on military bases and at firefighting schools. PFAS have been discharged into groundwater, surface water, and aquifers, causing contamination of the public’s water supply systems and pollution to Pennsylvania’s natural resources. In humans, PFOA exposure, even at very low levels, has been linked with significant health consequences including kidney cancer, testicular cancer, thyroid disease, high cholesterol, pregnancy-induced hypertension/preeclampsia, and ulcerative colitis.

There are numerous known and suspected PFAS contamination sites throughout Pennsylvania under investigation by the DEP. For example, PFOA is significantly elevated in many Bucks and Montgomery County water supplies. At least fifteen public and two hundred private wells supplying approximately 84,000 people with water, including DRN members, have been impacted with some of the highest contamination in the United States.

While the federal government has been unwilling to establish mandatory standards for PFAS, other states faced with the toxic contamination have issued state guidance levels or adopted maximum contaminant levels to safeguard their residents and inform cleanup response. In March 2017, New Jersey’s Drinking Water Quality Institute (“NJDWQI”) unanimously voted to approve a recommendation for an MCL for PFOA of 14 parts per trillion. DRN requested a level lower here in Pennsylvania in order to offer protection for the Commonwealth’s most vulnerable exposure group, children. NJ Department of Environmental Protection adopted an MCL for PFNA of 13 parts per trillion in 2018 and issued a proposed rulemaking to adopt an MCL for PFOA of 14 parts per trillion and an MCL for PFOS of 13 parts per trillion in June 2019, which is currently open for public comment. If adopted, these regulations will result in additional testing and cleanup of New Jersey’s drinking water supplies.

DRN’s Petition for Review, brought under the Pennsylvania Safe Drinking Water Act and the Environmental Rights Amendment of the Pennsylvania Constitution, asserts that the DEP could have relied upon NJDWQI’s Report for its MCL for PFOA. The DEP also could have relied upon DRN’s experts, Cambridge Environmental Consulting, to reach a report conclusion with respect to establishing an MCL or Interim MCL. Instead, the DEP has made no meaningful progress in establishing an MCL in two years’ time and well knows of the contamination of drinking water supplies and resultant severe health harms from consumption of the contaminated water.

The Delaware Riverkeeper Network Petition for Review states:

“Contrary to the DEP’s duties necessary for the implementation and enforcement of a public water supply program, the DEP has failed and refused to comply with its duty under the EQB’s Petition Process, 25 Pa. Code § 23.6, and to issue its substantive report on the DRN’s Petition for the MCL within a sixty-day time period or alternatively within the defined time period that DEP requested of the EQB, June, 2018.”

DRN is seeking the DEP to comply with its obligations under the law and fulfill its duty to implement a public water supply program and to evaluate MCLs, including by issuing the DEP Report in response to DRN’s Petition. In addition, DRN is seeking the DEP to fulfill its duty to act as a trustee of the Commonwealth’s natural resources and its duty to protect residents from PFOA contamination in drinking water by establishing an MCL.

View DRN’s 2017 petition to the EQB here:

http://delawariverkeeper.org/sites/default/files/Cover_letter_pet_att_combnd.webpdf.pdf

View DRN’s Petition for Review here:

http://delawariverkeeper.org/sites/default/files/Petition%20for%20Review%20rec%20Commw%20Court_PFAS.pdf

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Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.