



Environmental Commission Meeting Minutes – June 21, 2021

Present: Marilyn Quinn, Rich Rodack, Miriam Reichenbach, Ahmad Tamous (Arrived at the meeting at 7:35 P.M.)

Alternates: Ken Miller (left meeting at 7:50 P.M.)

WD Twp Representative: None

Student Representative: Jake Cobb

Public – Ms. Jean Jordan, Ms. Tracy Carlucci

Guests: Three Solvay representatives – Mr. Chuck Jones (Solvay), Ms. Dana Ponciroli (Solvay), Ms. Kelly Henry (Consultant to Solvay)

Call to Order: Miriam Reichenbach called the meeting to order at 7:05 P.M.

Secretary's Report – May Meeting Minutes – May's draft meeting minutes will be reviewed at July's meeting.

Secretary's Report - Correspondence received – Rich reviewed correspondence that was received by WDEC and emailed copies to WDEC members for their information and circulated the original correspondence at the meeting for WDEC members' information.

Solvay Update to WDEC – Solvay representatives provided an update regarding the ongoing remedial investigation at their West Deptford facility and in the surrounding community. Pertinent points from their update are summarized below. There were no handout materials provided to the WDEC. Chairperson Reichenbach asked that any questions by commission members or the public be relevant to the remediation and the information presented by Solvay..

- Mr. Jones said that Solvay met with West Deptford township in March 2021 to provide an update. At that meeting, township officials asked Solvay to provide an update to the Environmental Commission. That request resulted in this meeting.
- Solvay began its remedial investigation on a voluntary basis in 2013. He said Solvay is committed to completing its investigation and remediation of contamination it is responsible for and following the science. He said Solvay's West Deptford facility stopped using PFNA in 2010.
- Ms. Ponciroli said that Solvay was currently working on a draft fact sheet for public notification and also a website to act as an information depository regarding the remedial investigation. Solvay is working with the NJDEP to finalize the draft fact sheet and estimates that the fact sheet and website may be in place by the end of this summer. This effort is part of NJDEP's public participation process.
- Mr. Jones and Ms. Ponciroli held up a map showing the location of 148 groundwater monitoring wells throughout the area. He reported that Solvay is continuing to delineate groundwater contamination horizontally and vertically to NJDEP's standards of 14 and 13 parts per trillion for PFOA and PFNA, respectively.
- Mr. Jones reported that the use of fluorosurfactant process aid chemicals have been reduced by 80% and will be entirely eliminated by the end of June 2021. He also said Solvay worked on developing a proprietary process technology in order to achieve the goal of eliminating the use of fluorinated process aid chemicals.
- Mr. Jones said the remedial investigation was being overseen by a Licensed Site Remediation Professional who was working with NJDEP to develop remedial investigation work plans.
- Mr. Jones said thousands of samples have been analyzed.
- West Deptford's potable wells are tested on a quarterly basis.
- As part of their groundwater remediation effort Solvay operates an onsite groundwater pump and treat system with a capacity of 200 gallons per minute (gpm). They also operate an offsite groundwater pump and treat system with a capacity of 700 gpm.
- Mr. Jones said Solvay has sampled soils onsite and determined that contaminant concentrations declined as they approached the property fence line. Additional soil and sediment sampling is contingent upon coming to agreement with NJDEP on approved test methods and protocols.
- Solvay has reimbursed NJDEP for the installation of Point of Entry Treatment (POET) systems at private residences with contaminated potable wells.
- When asked by Mr. Rodack about possible other contaminant sources, Mr. Jones would not speculate on other possible sources.

Certain questions raised by WDEC members and the public could not be immediately answered by Solvay. Solvay took note of the questions and said they would respond back to the WDEC. Their response dated July 16, 2021 is included as part of these approved meeting minutes.

Old Business

Township Liaison Report: Adam Reid was not present at the meeting, however, he provided an update to Miriam via email as follows: **RiverWinds Illegal Wildlife Feeding** – A letter was sent to the owner and the owner assured Adam the wildlife feeding would stop.

Grass Mowing and Wildflowers – Nothing new to report.

Possible Butterfly Garden at Rivergate Park – Nothing new to report.

Contact T&M to Assist with Tree Identification – Adam said all trees have been identified and mapped out. He is waiting for an update on the timing for the installation of the signs.

Other – Plastic bag recycling - Adam said plastic bags can be recycled by placing bags in the receptacle located in the entrance in the WD municipal building.

Student Representative Report: - Jake reported that high school attendance is back to normal.

Chairperson's Report: Miriam had nothing new to report.

Talk with Township about Additional Wildflower Space – Miriam asked that we revisit this topic in our July meeting.

New Business:

Communication with Residents: Nothing new to report

LNG Project Update – Nothing new to report from Rich or Marilyn. Jean Jordan said that she thought there was going to be protest march the weekend of June 26-27.

Solvay NJDEP Natural Resource Damages Lawsuit – Nothing new to report,

Grant Applications: Nothing new to report

Potential New Projects - Nothing new to report, need to revisit the topic at the July meeting.

Planning Board - Eric was not present at the meeting and Ken provided email comments for Miriam's consideration regarding three projects, namely, the DocuVault project, the Treetop Development, and the Lovett Industrial project. Ahmad said the DocuVault project was due to be heard before the planning board on June 22. The other two projects are in the conceptual review stage.

Financial Report: Eric was not present at the meeting but emailed the budget reports to WDEC members. Rich reported on Eric's behalf and said the trust fund balance as of June 21st was \$15,906.74 and the general WDEC account balance was \$4,351.70. The account balances were the same as last month.

Public Comment: Ms. Jean Jordan and Ms. Tracy Carlucci had questions for the Solvay representatives as follows:

- What is the status of West Deptford Supply Well #8? – Mr. Jones reported that the potable supply well has been equipped with a treatment system and is now back in service.
- What is the status of West Deptford Supply Well #3? – Mr. Jones reported that the well is currently offline and Solvay is investigating various remedial options, for example, equipping the well with a new treatment system, or drilling a new replacement well.
- When did the offsite pump and treat system begin operation? – Mr. Jones answered that it began operating near the end of 2020.
- What triggered Solvay's investigation in 2013? – Mr. Jones answered that the investigation began because of a NJ.com article regarding contamination in the Delaware River. He said that Solvay met with NJDEP officials a few days after the article was published.
- Would public meetings be conducted in the future? – Ms. Ponciroli and Ms. Henry replied that future public meetings would be conducted as part of the NJDEP's public participation process if the public requested them to do so.
- Given that Solvay needs NJDEP to approve its work plans, does that mean that remediation is not being conducted? – Mr. Jones answered that interim remedial measures are being conducted, such as the operation of Solvay's onsite and offsite pump and treat systems, as well as routine groundwater and potable well sampling.
- What will the public participation process be? – Ms. Ponciroli and Ms. Henry answered that Solvay's draft public participation program is being reviewed by NJDEP and will be communicated in accordance with NJDEP regulations once it is approved and finalized.
- Has there been any remedial investigation of the fluorosurfactant process aid chemicals? Mr. Jones and Ms. Henry answered that Solvay is working with NJDEP on getting approved laboratory test methods in place so that the compounds can be accurately measured.
- Where does the process wash water go? - Mr. Jones answered that the process wash water gets pretreated onsite by ion exchange and activated carbon prior to discharge to the GCUA wastewater treatment plant.

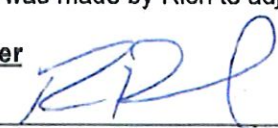
For the Good of the Order: Nothing new to report.

Adjourn: A motion was made by Rich to adjourn and it was seconded by Marilyn. Miriam adjourned the meeting at 8:50 P.M. with no objections.

Dates to Remember

July 19

EC in-person meeting, 7:00 P.M.

 8/17/21
Signed and submitted by Richard Rodack, WDEC Secretary



July 16, 2021

TO: West Deptford Township Environmental Commission (c/o Miriam Reichenbach, Chair)

FR: Dana Ponciroli, Solvay

RE: **Supplemental Information in Response to Questions Raised During Solvay's June 2021 Meeting Presentation**

Chuck Jones and I would like to thank you again for the opportunity to attend the June 21, 2021, meeting of the West Deptford Township (WDT) Environmental Commission and provide an overview and update on Solvay Specialty Polymers USA, LLC's (Solvay) ongoing investigation and remediation related to its West Deptford facility's past use of per- and polyfluoroalkyl substances (PFAS).

As of June 30, 2021, Solvay no longer uses any PFAS at West Deptford or at any of its U.S. operations.

In keeping with our commitment at the meeting, this memo provides answers to questions raised during the meeting by Commission members or the public that the Solvay team present were unable to address at the time. We encourage you to share this information with members of the public who attended the meeting. Consistent with Solvay's desire for full transparency, we are sending a copy of this memo to New Jersey Department of Environmental Protection (NJDEP) case manager.

If you have any questions in the future or the Commission is interested in an update, please do not hesitate to contact us, or NJDEP directly. This includes any questions about reports Solvay has submitted to NJDEP. As mentioned, we are happy to provide copies of reports to the Township to share with the Commission. When the online Information Repository currently under review by NJDEP becomes active, these reports will be readily available to the Commission and the public.

As Chuck highlighted at the meeting, Solvay's ongoing environmental investigation to date has focused primarily on two PFAS compounds Perfluorononanoic acid (PFNA) and Perfluorooctanoic acid (PFOA). Solvay never manufactured, stored, imported, or used Perfluorooctanesulfonic acid (PFOS) at its West Deptford facility. Fluorinated fire-fighting foam, sometimes referred to as Aqueous Film Forming Foam (AFFF), are considered significant potential sources of PFAS. Solvay also never had cause to use or store AFFF at its West Deptford facility.



Progress beyond

Responses to Questions Asked

- 1. From what aquifer (lower, middle or upper) of the Potomac-Raritan-Magothy (PRM) aquifer system does the pump and treatment system constructed by Solvay along Mantua Grove Road access and treat groundwater?**

Solvay constructed and is operating a groundwater recovery and treatment system along Mantua Grove Road about 2 miles from our plant property, as the crow flies. The system became operational in 2020 and sampling has confirmed the system is working as designed.

The groundwater recovery and treatment system pumps groundwater from the upper PRM aquifer for treatment. There are three pumping wells, and all are screened at depths within the upper PRM aquifer, ranging between 205 feet and 220 feet below ground surface. There is a natural clay layer between the Upper PRM and the Middle PRM.

- 2. What wells does West Deptford Township sample?**

Solvay reimburses West Deptford Township for the costs associated with sampling of its public water supply wells that the Township samples quarterly for PFAS. Solvay does not perform the sampling.

Solvay does not select what wells the Township samples. Solvay has reimbursed the Township for this work. We would direct you to speak with Dan Beach of the WDT Water and Sewer Department for the most accurate record of what wells have been sampled and when.

- 3. What is the treatment material used in the Well 8 treatment system – granulated activated carbon (GAC), ion exchange resin, or both?**

Solvay funded the treatment system on WDT public supply well 8. That well is now in service. The treatment for PFAS at Well 8 is ion exchange resin.

- 4. What is the depth of Well 3?**

Solvay is currently assessing treatment options for WDT public supply well 3, which has been offline since 2014. The Well 3 depth is reported to be 243 feet below ground surface. Again, we would direct you to Dan Beach or the township engineer to confirm the depth.



Progress beyond

5. Will Solvay sample soils and if not, why not?

DEP has directed Solvay to delineate the compounds that are the focus of Solvay's investigation not currently regulated in soils to laboratory method detection limits. The method to derive Impact to Groundwater Soil Remediation Criteria for PFAS compounds is currently under evaluation by DEP.

Solvay previously undertook an initial investigation for PFAS in soils at the Site and provided that information to NJDEP. Solvay's investigation identified an area of elevated PFAS in soils, particularly PFNA, near the main production building and materials storage areas. Solvay then self-initiated the installation of an engineered soil cap at this location. This cap inhibits migration of PFNA and other hazardous substances from soil into groundwater. More investigation of soils is needed.

Limited offsite soil sampling was performed in 2014 and 2016, in the immediate vicinity of the West Deptford plant. The results of that sampling were either non detect or near laboratory detection limits for PFNA. Those results were shared with the NJDEP.

At the time this sampling was done, there was an NJDEP-approved methodology for analysis of soil samples for PFAS. NJDEP no longer accepts data from that method for compliance purposes. At this time, neither USEPA nor NJDEP has certified analytical methods for testing for PFAS in soils. NJDEP did not approve a site-specific soil remediation standard that Solvay proposed in 2015 or propose an alternative soils remediation standard.

As mentioned at the meeting, on April 15, 2021, Solvay submitted a formal petition to NJDEP requesting that NJDEP develop remediation standards for PFNA and PFOA in soils and surface water that could be used to efficiently complete investigation and cleanup of those environmental media (enclosed as Exhibit A). On June 14, 2021, NJDEP responded that it would require additional time to evaluate Solvay's petition (enclosed as Exhibit B). Solvay looks forward to NJDEP moving quickly to promulgate PFAS soil and surface water remediation standards.

These are the reasons additional soil sampling for PFAS has temporarily stalled. However, in accordance with requirements resulting from being in Direct Oversight, Solvay's environmental consultant, Integral, is developing a work plan now that includes soil testing, pending approval of the LSRP and review and approval by NJDEP.

6. What are the lowest detection limits for PFNA and PFOA in soil? What method detection limits are NJDEP and US EPA willing to accept?

Please see the preceding response regarding the lack of a soil remediation standard for any PFAS and the lack of a USEPA or NJDEP-certified analytical method for analyzing PFAS in soil.



Progress beyond

Until a method is certified by NJDEP, Solvay cannot speculate on what method detection limits will be acceptable to NJDEP.

7. Do analytic methods exist yet for detecting in the environment the fluorinated process aids Solvay recently stopped using?

Solvay engaged a nationally known, independent, and New Jersey certified laboratory, Eurofins Lancaster Labs, to develop analytical methods to detect the fluorinated process aids Solvay recently discontinued in environmental samples of soil and water. Solvay submitted the methods developed by Eurofins for review and certification by NJDEP in October 2020. NJDEP responded that it would not review those methods for certification but would do so as part of a Quality Assurance Project Plan, which Solvay submitted to NJDEP (including the proposed analytical methods) on May 27, 2021. We have not yet heard the status of NJDEP's review of the Quality Assurance Project Plan or the analytical methods since they were re-submitted to NJDEP in May 2021.

8. Are PFAS compounds present in the environment due to operations before Solvay took over?

Yes, Pennwalt, which was a predecessor company to Arkema, used a product as a process aid that contained PFNA, and we believe PFNA was released to the environment before Solvay took over the plant.

Solvay Specialty Polymers USA, LLC acquired the plant in 2002. The history of the facility's ownership is as follows.

1985	The plant was designed and built by Pennwalt
1990	Atochem, as successor to Pennwalt, sold the plant to Ausimont USA, Inc.
2002	Solvay related entities acquire Ausimont
2003	Name changed to Solvay Solexis, then Solvay Specialty Polymers USA, LLC

9. Since these substances are pretty common, do you know from your research whether there are other sources?

Our ongoing investigation has found that other likely sources of PFNA, PFOA and other PFAS exist in West Deptford and throughout the region. We have compiled and provided to NJDEP with a great deal of information in this regard. Unfortunately, to our knowledge, NJDEP has not taken steps to require these other actual and potential sources to investigate their PFAS contributions to the environment.

The reports Solvay has submitted to NJDEP on other sources include the following:



Progress beyond

- Likely Third-Party Sources of PFNA in the Delaware River Watershed and the Environment in and near Gloucester County, New Jersey (Integral, Oct. 20, 2015)
- Summary Report on Potential Sources of PFAS, Gloucester County, New Jersey (Integral, May 24, 2018)
- Solvay Letter to E. Bergman, NJDEP, dated June 13, 2018, re: Supplemental information on the occurrence of PFNA in the Environment
- February 19, 2020 Gloucester County Fire Training Academy Data Transmittal to E. Bergman, NJDEP
- Solvay's March 11, 2021 Response to NJDEP's February 24, 2021 Directive, and Exhibit A thereto (Technical Memorandum (Integral, March 11, 2021)

If you have any questions about reports that we have submitted to NJDEP regarding other sources, please let me know and we will be happy to provide them to the Township to share with the commission.

Enclosures

cc. NJDEP Case Manager

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Action on Petition for Rulemaking

Surface Water Quality Standards

Remediation Standards

N.J.A.C. 7:9B, 7:26D

Petitioner: Solvay Specialty Polymers USA, LLC

Take notice that the Department of Environmental Protection (Department) has determined to refer the petition for rulemaking described below, which was filed by Solvay Specialty Polymers USA, LLC (petitioner), for further deliberation.

The Petition

Petitioner contends that the promulgation of hazardous substance-specific and environmental media-specific remediation standards are necessary to the conduct of a site investigation and remediation under the Technical Requirements for Site Remediation at N.J.A.C. 7:26E, and that although the Department has promulgated maximum contaminant levels (MCLs) and ground water quality standards (GWQS) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and perfluorononanoic acid (PFNA), the Department has not promulgated residential direct contact soil remediation standards, non-residential direct contact soil remediation standards, or surface water quality standards for these substances.

Petitioner requests that the Department promulgate: residential direct contact soil remediation standards for PFOA, PFOS, and PFNA at N.J.A.C. 7:26D-4.2; non-residential direct contact soil remediation standards for PFOA, PFOS, and PFNA at N.J.A.C. 7:26D-4.3; and surface water quality standards and surface water quality remediation standards for PFOA, PFOS, and PFNA at N.J.A.C. 7:9B-1.14 and N.J.A.C. 7:26D-3.2, respectively.

The Department's Response to the Petition

Petitioner's request concerns complex technical issues involving several different Department programs. In order to fully evaluate the request, the Department will need additional time. Accordingly, the Department is referring the matter for further deliberation for a period not to exceed 90 days in order to provide time for this evaluation.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2. In accordance with N.J.A.C. 7:1D-1.1, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Acting Commissioner

(via email only: Kegan.Brown@lw.com)

June 14, 2021

Kegan A. Brown
Latham & Watkins
53rd at Third
885 Third Avenue
New York, New York 10022

Re: Petition for Rulemaking
Notice of Action
Surface Water Quality Standards, N.J.A.C. 7:9B-1.14
Remediation Standards, N.J.A.C. 7:26D-3.2, 4.2, and 4.3
Petitioner: Solvay Specialty Polymers USA, LLC

Dear Mr. Brown:

Enclosed please find a copy of the notice of action regarding the above-captioned petition for rulemaking that the Department has filed with the Office of Administrative Law for publication. The notice is scheduled to be published in the July 19, 2021 New Jersey Register.

Sincerely,

Ryan H. Knapick, Esq.
Deputy Advisor, Legal, Regulatory, and Legislative Affairs

c: Patricia Gardner, Assistant Commissioner, Water Resources Management
Mark Pedersen, Assistant Commissioner, Site Remediation & Waste Management
DEP file no.: R21-021

LATHAM & WATKINS LLP

April 15, 2021

VIA EMAIL

Office of Legal Affairs
Attn: Rulemaking Petitions
New Jersey Department of Environmental Protection
Mail Code 401-04L
401 E. State Street, 4th Floor
P.O. Box 402
Trenton, NJ 08625

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Re: Public Petition to Promulgate Remediation Standards for Perfluorooctanoic Acid, Perfluorooctanesulfonic Acid, and Perfluorononanoic Acid

Dear Sir or Madam:

Pursuant to N.J.A.C. 1:30-4.1, Solvay Specialty Polymers USA, LLC ("Solvay") hereby petitions the Department of Environmental Protection ("DEP") to promulgate, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*, the following:

1. Residential direct contact soil remediation standards for perfluorooctanoic acid ("PFOA"), perfluorooctanesulfonic acid ("PFOS"), and perfluorononanoic acid ("PFNA") pursuant to N.J.S.A. 58:10B-12(a) and N.J.A.C. 7:26D-4.2;
2. Non-residential direct contact soil remediation standards for PFOA, PFOS, and PFNA pursuant to N.J.S.A. 58:10B-12(a) and N.J.A.C. 7:26D-4.3; and
3. Surface water quality standards for PFOA, PFOS, and PFNA pursuant to N.J.S.A. 58:10B-12(a), N.J.A.C. 7:26D-3.2, and N.J.A.C. 7:9B-1.14.¹

As DEP well knows, the site investigation and remediation process set forth in DEP's Technical Requirements for Site Remediation, N.J.A.C. 7:26E *et seq.* ("Tech Regs") is keyed off of applicable remediation standards, which are hazardous substance-specific and environmental media-specific. In other words, the existence of a promulgated remediation standard for each hazardous substance for each environmental medium is essential to the conduct of an investigation and remediation under the Tech Regs. Although DEP promulgated a groundwater quality standard ("GWQS") and drinking water maximum contaminant level ("MCL") for PFNA

¹ In submitting this letter, Solvay does not admit any fact or liability, and expressly preserves any and all rights and defenses it may have at law or in equity.

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on January 16, 2018 and September 4, 2018, respectively, and promulgated GWQSS and MCLs for PFOS and PFOA on June 1, 2020, DEP has not yet taken any regulatory action to promulgate residential direct contact soil remediation standards, non-residential direct contact soil remediation standards, or surface water quality standards for PFOA, PFOS, or PFNA.

DEP should not delay promulgating the necessary remediation standards for PFOS, PFOA, and PFNA any longer. Solvay, other companies, and Licensed Site Remediation Professionals (“LSRPs”) attempting to investigate and remediate PFOA, PFOS, and PFNA require DEP duly-promulgated remediation standards to complete the site investigation and remediation process mandated by the Tech Regs.

I. THE SUBSTANCE OR NATURE OF THE REQUESTED RULEMAKING

A. The Ubiquitous Nature of PFAS

PFOA, PFOS, and PFNA are specific per- and polyfluoroalkyl substances (“PFAS”), a class of compounds that DEP has designated as “contaminants of emerging concern.” [DEP, Contaminants of Emerging Concern website.]² According to DEP, PFAS, including PFOS, PFOA, and PFNA, present both environmental and human health risks and are ubiquitous:

- “PFAS are being discovered in drinking water, groundwater, surface waters, sediments, soils, air, fish, plants and other natural resources across New Jersey on a near daily basis.” [DEP, Statewide PFAS Directive, Information Request and Notice to Insurers at 1 (Mar. 25, 2019).]
- “These PFAS compounds constitute a substantial threat to human health and the environment and statewide public nuisance: they are extremely resistant to degradation and thus persist indefinitely in the environment; they bioaccumulate; they are commonly contained in consumer and household products; and contamination from PFAS is now ubiquitous in New Jersey.” [*Id.* at 1.]

The ubiquitous nature of PFAS in New Jersey’s environment can hardly be a surprise to DEP, given DEP’s awareness of the widespread use of PFAS since the 1940s: PFAS “have been used in a wide variety of industrial and commercial processes and products, including but not limited to, electroplating and metal finishing (e.g., chromium plating), vapor/mist suppression, stain repellants, electronics, aerospace, automotive, insecticide/herbicides, adhesives/varnish/paints, as well as coatings for textiles (fabrics, upholstery, and carpeting) and paper.” [DEP, Contaminants of Emerging Concern website.]

In addition, PFAS have been used in fluoropolymer manufacturing and aqueous film-forming foams (“AFFFs”), which are also known as firefighter foams. As DEP knows, “AFFF contamination has been identified at many locations where AFFF products were stored and

² Available at <https://www.nj.gov/dep/srp/emerging-contaminants/>.

discharged, including, but not limited to, airports, spill/crash sites, firefighter training facilities, refineries, and bulk petroleum storage facilities.” [Id.]

B. DEP Has Promulgated Only GWQS and MCLs for PFOA, PFOS, and PFNA

Since at least 2007, DEP has been mindful of the need to regulate PFAS. Yet, now 14 years later, DEP has only promulgated GWQS and MCLs for PFOA, PFOS, and PFNA. It is time for DEP to promulgate the remaining remediation standards for PFOS, PFOA, and PFNA.

In 2007, DEP issued a preliminary drinking water guidance level for PFOA of 40 parts per trillion (“ppt”). [Id.] In 2015, DEP issued an interim-specific GWQS for PFNA.³ [Id.] In September 2017, DEP proposed a PFNA MCL of 13 ppt. [Id.] In October 2017, DEP issued an updated drinking water guidance value – but not an MCL – for PFOA of 14 ppt. [Id.] In January 2018, DEP adopted, pursuant to notice and comment rulemaking, a PFNA GWQS of 10 ppt. [Id.] In September 2018, DEP issued a final MCL for PFNA of 13 ppt and amended the PFNA GWQS to align with the MCL. In March 2019, DEP established an interim-specific GWQS for PFOA and PFOS of 10 ppt. [Id.] On April 1, 2019, DEP published proposed MCLs and GWQSs for PFOA (14 ppt) and PFOS (13 ppt). 51 N.J.R. 437(a). On June 1, 2020, DEP adopted these proposed MCLs and GWQS for PFOA and PFOS.⁴ 52 N.J.R. 1165(b).

DEP’s efforts to regulate PFAS have, to date, been focused solely on groundwater and drinking water. DEP must now turn its attention to and promulgate remediation standards for PFOS, PFOA, and PFNA in soils and surface water.

C. DEP is Required to Promulgate Soil Remediation Standards and Surface Water Quality Standards for PFOS, PFOA, and PFNA

Pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 *et seq.*, DEP “*shall* adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property.” N.J.S.A. 58:10B-12(a) (emphasis added).

These legislative mandates to DEP are there for a reason: A party is *not* required to remediate contamination beyond applicable remediation standards. N.J.A.C. 7:26E-1.5(c)(1) (person responsible for conducting the remediation shall remediate “[t]o comply with the

³ This PFNA interim-specific GWQS was subsequently vacated by the Appellate Division because DEP did not comply with the Administrative Procedure Act. *See Solvay Specialty Polymers USA, LLC v. Dep’t of Envtl. Prot.*, No. A-1442-15T1, 2017 WL 6492521, at *5 (N.J. Super. Ct. App. Div. Dec. 19, 2017) (“The record here shows that these interim criteria have become de facto a permanent regulatory scheme without the agency complying with the requirements of the [Administrative Procedure Act]. As such, these measures are declared invalid.”).

⁴ DEP’s MCLs and GWQS for PFOA and PFOS currently are being challenged by private and public entities and trade associations. *In re Appeal of the New Jersey Department of Environmental Protection’s June 1, 2020 “Adopted Amendments: N.J.A.C. 7:1E Appendix A, 7:9C Appendix Table 1, 7:9E-2.1, 7:10-5.2, and 12.30, and 7:14A-4 Appendix A and 7.9,”* No. A-000307-20 (App. Div.).

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Remediation Standards, N.J.A.C. 7:26D”); N.J.A.C. 7:26D-1.1(a) (“This chapter implements the provisions of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 *et seq.*, and other statutes by establishing minimum standards for the remediation of contaminated ground water and surface water, and by establishing the minimum residential direct contact and non-residential direct contact soil remediation standards.”).

Indeed, DEP’s Tech Regs – the regulatory scheme for investigating and remediating contamination in New Jersey, N.J.A.C. 7:26E-1.1(a) – ties its iterative process to contaminant-specific and environmental media-specific remediation standards, as detailed below.

Site Investigation Phase of the Tech Regs

- “The purpose of a site investigation is to determine if additional remediation is necessary because contaminants are present at the site or area of concern, or because contaminants have emanated or are emanating from the site or area of concern, ***above any applicable remediation standard or criterion.***” N.J.A.C. 7:26E-3.3(a) (emphasis added).
- “The person responsible for conducting the remediation ... shall conduct a site investigation of soil by sampling the soil in each potentially contaminated area of concern that includes soil to determine if any contaminants ***are present above any soil remediation standard***[.]” N.J.A.C. 7:26E-3.4(a) (emphasis added).
- “If the concentration of any contaminant in the soil ***exceeds any soil remediation standard***, then the person responsible for conducting the remediation shall conduct a remedial investigation of the soil pursuant to N.J.A.C. 7:26E-4.2.” N.J.A.C. 7:26E-3.4(b) (emphasis added).
- “If the concentration of any contaminant in the ground water ***exceeds any ground water remediation standard***, then the person responsible for conducting the remediation shall conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-4.3.” N.J.A.C. 7:26E-3.5(b) (emphasis added).
- “If there is evidence that contamination from the site has reached the surface water, then the person responsible for conducting the remediation shall conduct a site investigation of surface water and sediment to determine if there is ***any exceedance of any aquatic or human health based surface water quality standard, ecological screening criterion, or residential direct contact soil remediation standard***[.]” N.J.A.C. 7:26E-3.6(b) (emphasis added).

Remedial Investigation Phase of the Tech Regs

- The purpose of a remedial investigation is to “[d]elineate the horizontal and vertical extent of contamination ***to the remediation standard***, in each environmental medium at a contaminated site[.]” N.J.A.C. 7:26E-4.1(a)(1) (emphasis added).

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- The person responsible for conducting the remediation shall conduct a remedial investigation when “[t]he concentration of any contaminant *exceeds any remediation standard*[.]” N.J.A.C. 7:26E-4.1(b)(1) (emphasis added).
- The person responsible for conducting the remediation shall conduct a remedial investigation of soil by delineating the horizontal and vertical extent of soil contamination to the “*residential direct contact soil remediation standard*” or the “*non-residential direct contact soil remediation standard* if a remedial action will be implemented that will appropriately restrict the use of the entire property and the property owner has agreed to place a deed notice and engineering controls, as appropriate, on the property[.]” N.J.A.C. 7:26E-4.2(a)(1)(i)(1)-(2) (emphasis added).
- The person responsible for conducting the remediation shall conduct a remedial investigation of groundwater by “[d]elineating the horizontal and vertical extent of all ground water contamination *to the ground water remediation standard*[.]” N.J.A.C. 7:26E-4.3(a)(4) (emphasis added).
- The person responsible for conducting the remediation shall conduct a remedial investigation of surface water by “[c]ollecting a sufficient number of surface water samples to delineate the extent of the observed contaminants *to the human health based surface water quality standards*[.]” N.J.A.C. 7:26E-4.4(a)(2) (emphasis added).

Remedial Action Phase of the Tech Regs

- The person responsible for conducting the remediation shall conduct a remedial action when “[t]he concentration of any contaminant *exceeds any applicable remediation standard*[.]” N.J.A.C. 7:26E-5.1(b)(1) (emphasis added).
- The person responsible for conducting the remediation shall submit a remedial action report that identifies “*the remediation standards* that apply to each remedial action[.]” N.J.A.C. 7:26E-5.7(b)(5) (emphasis added).
- The person responsible for conducting the remediation shall submit a remedial action report that documents, “by area of concern, that each remedial action is effective in protecting the public health and safety and the environment by ... [d]emonstrating compliance *with the applicable remediation standards*[.]” N.J.A.C. 7:26E-5.7(b)(6)(ii) (emphasis added).

Without DEP duly-promulgated soil and surface water remediation standards for PFOS, PFOA, and PFNA, parties and LSRPs cannot complete the regulatory process set forth in DEP’s Tech Regs.

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II. SOLVAY'S INTEREST IN THE REQUESTED RULEMAKING

As DEP knows, Solvay has been undertaking an investigation and remediation of PFNA and PFOA with respect to its facility at 10 Leonard Lane in West Deptford, New Jersey since 2013. That work continues, but is practically being impeded by DEP's failure to duly-promulgate soil and surface water remediation standards for PFNA and PFOA.

III. CONCLUSION

DEP has often touted itself as a nationwide leader in addressing PFAS. It is time for DEP to take the next step and begin the notice and comment rulemaking process to (1) promulgate residential direct contact soil remediation standards for PFOA, PFOS, and PFNA pursuant to N.J.S.A. 58:10B-12(a) and N.J.A.C. 7:26D-4.2; (2) promulgate non-residential direct contact soil remediation standards for PFOA, PFOS, and PFNA pursuant to N.J.S.A. 58:10B-12(a) and N.J.A.C. 7:26D-4.3; and (3) promulgate surface water quality standards for PFOA, PFOS, and PFNA pursuant to N.J.S.A. 58:10B-12(a), N.J.A.C. 7:26D-3.2, and N.J.A.C. 7:9B-1.14.

Pursuant to N.J.A.C. 1:30-4.1(c), Solvay requests that DEP file this petition with the Office of Administrative Law for publication in the New Jersey Register within 15 days of receipt. Pursuant to N.J.A.C. 1:30-4.1(d), Solvay requests that DEP publish this petition on its website no later than the publication of Solvay's petition in the New Jersey Register.

Solvay looks forward to DEP beginning the necessary Administrative Procedure Act rulemaking process sought by this petition, and to receiving DEP's response to this petition within 60 days of receipt. N.J.A.C. 1:30-4.2(a).

Sincerely,



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