

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 444  
Mar 29, 2021  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10191-RI-1

Short Title: PFAS Mitigation Measures Cost Reimbursement. (Public)

Sponsors: Representative Butler.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO HOLD PERSONS THAT HAVE DISCHARGED OR RELEASED POLY-FLUOROALKYL SUBSTANCES (PFAS) RESULTING IN CONTAMINATION OF SURFACE WATER OR GROUNDWATER USED FOR A PRIVATE OR PUBLIC DRINKING WATER SUPPLY, WHICH ENDANGERS THE HEALTH AND SAFETY OF PERSONS OBTAINING DRINKING WATER FROM THAT WATER SUPPLY, RESPONSIBLE FOR COSTS NECESSARY TO ADDRESS THE CONTAMINATION IN ORDER TO ENSURE SAFE DRINKING WATER SUPPLIES FOR AFFECTED PERSONS.

Whereas, per-fluoroalkyl, poly-fluoroalkyl substances (PFAS), and other perfluorochemicals are a large group of human-made chemicals not found naturally in the environment; and

Whereas, the PFAS group includes chemicals such as perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), GenX, and others; and

Whereas, PFAS have been used in industry and consumer products worldwide since the 1940s, including use in food packaging, stain- and water-repellent fabrics, nonstick products such as Teflon, and firefighting foams; and

Whereas, PFAS may enter the environment from numerous industrial or commercial sources, including when emitted during a manufacturing process, from the disposal of goods containing PFAS, or as leachate from landfills; and

Whereas, these chemicals can travel long distances, move through the soil, seep into groundwater, or be carried through the air; and

Whereas, many PFAS do not readily break down and persist in the environment for a very long time, especially in water, and, consequently, PFAS can be found in many bodies of water and in the blood of humans and wildlife; and

Whereas, PFAS have been linked to cancers and other health issues, and according to the United States Environmental Protection Agency (USEPA), studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and negative immunological effects in laboratory animals; and

Whereas, in 2016, USEPA issued a nonregulatory lifetime health advisory of 70 parts per trillion (ppt) for individual and combined PFOA and PFOS in drinking water; and

Whereas, in 2019, USEPA issued a formal PFAS Action Plan outlining the long- and short-term actions that USEPA plans to take surrounding PFAS which includes developing an MCL for states and local water utilities under the federal Safe Drinking Water Act and listing PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund); and



1           Whereas, in 2018, the General Assembly enacted legislation to require persons  
2 responsible for the discharge of PFAS that result in contamination of a private drinking water  
3 well to establish a permanent replacement water supply for affected parties, with contamination  
4 defined as (i) an exceedance of a standard established by the Environmental Management  
5 Commission for groundwater, surface water, or air quality, or (ii) an exceedance of a health  
6 advisory level established by the United States Environmental Protection Agency, for any  
7 chemical classified as a PFAS, including GenX; and

8           Whereas, Subchapter 2L of Chapter 15A of the North Carolina Administrative Code  
9 provides that for substances which are not naturally occurring and for which no standard is  
10 specified, the substance shall not be permitted in groundwater at concentrations at or above the  
11 practical quantitation limit (PQL), defined as the lowest concentration that can be reliably  
12 achieved among laboratories within specified limits of precision and accuracy by a given  
13 analytical method during routine laboratory analysis; and

14           Whereas, the current PQL for GenX is 10 parts per trillion (ppt); and

15           Whereas, as the General Assembly has already enacted legislation to require a PFAS  
16 discharger to pay for remedies for polluted drinking water wells where there is an exceedance of  
17 a standard established by the Environmental Management Commission for groundwater, and the  
18 State's groundwater rules provide that for substances which are not naturally occurring and for  
19 which no standard is specified, the substance shall not be permitted in groundwater at  
20 concentrations at or above the PQL, and the PQL for GenX is 10 ppt, it is therefore logical and  
21 appropriate to apply this limit to groundwater or surface water that is a source of drinking water  
22 from public water supplies, as well as private drinking wells; and

23           Whereas, in February 2019, the Department of Environmental Quality executed a  
24 court-approved consent order with a PFAS discharger which, among other things, required the  
25 PFAS discharger to provide reverse osmosis drinking water systems for any party with a  
26 contaminated well with concentrations of certain PFAS above 10 ppt or combined concentrations  
27 of certain PFAS above 70 ppt, and for public buildings such as schools or government buildings,  
28 required that reverse osmosis systems must be provided at each drinking fountain and sink or  
29 through another equally effective system approved by the Department; and

30           Whereas, current technologies to remove PFAS from finished drinking water could  
31 cost water utilities tens of millions of dollars, and absent statutory relief, these costs would  
32 ultimately be passed along to ratepayers and result in substantial increases to water rates; and

33           Whereas, costs to remove PFAS from finished drinking water should properly be  
34 borne by persons found to be responsible for the discharge or release of PFAS that contaminates  
35 a water source for a public water supply; Now, therefore,  
36 The General Assembly of North Carolina enacts:

37           **SECTION 1.** G.S. 143-215.2A reads as rewritten:

38           "**§ 143-215.2A. Relief for contaminated private drinking water wells.**supplies.

39           (a) The Secretary ~~shall, upon direction of the Governor, shall~~ order any person who the  
40 Secretary finds responsible for the discharge or release of industrial waste that includes per- and  
41 poly-fluoroalkyl substances (PFAS), including the chemical known as "GenX" (CAS registry  
42 number 62037-80-3 or 13252-13-6), into the air, groundwater, surface water, or onto the land  
43 that results in contamination of a private drinking water well, as that term is defined in  
44 G.S. 87-85, to establish permanent replacement water supplies for affected parties. ~~For purposes~~  
45 ~~of this section, the terms (i) "contamination" means an exceedance of a standard established by~~  
46 ~~the Environmental Management Commission for groundwater, surface water, or air quality, or~~  
47 ~~an exceedance of a health advisory level established by the United States Environmental~~  
48 ~~Protection Agency, for any chemical classified as a PFAS, including GenX; and (ii) "affected~~  
49 ~~party" means a household, business, school, or public building with a well contaminated with~~  
50 ~~PFAS, including GenX, as a result of the discharge or release of industrial waste.~~Orders issued  
51 pursuant to this subsection shall be subject to all of the following conditions:

1           ~~(b)~~(1) If the Secretary orders a person responsible for the discharge or release of a  
2 PFAS, including GenX, that results in contamination of a private drinking  
3 water well to establish a permanent replacement water supply for an affected  
4 party with such a well pursuant to ~~subsection (a) of this section, this~~  
5 subsection, preference shall be given to permanent replacement water supplies  
6 by connection to public water supplies; provided that (i) an affected party may  
7 elect to receive a filtration system in lieu of a connection to public water  
8 supplies and (ii) if the Department determines that connection to a public  
9 water supply to a particular affected party would not be cost-effective, the  
10 Department shall authorize provision of a permanent replacement water  
11 supply to that affected party through installation of a filtration system. For  
12 affected parties for which filtration systems are installed, the person  
13 responsible shall be liable for any periodic required maintenance of the  
14 filtration system. An order issued by the Secretary pursuant to this subsection  
15 ~~(a) of this section~~ shall include a deadline by which the responsible person  
16 must establish the permanent replacement water supply for the affected party  
17 or parties subject to the order.

18           ~~(e)~~(2) An order issued by the Secretary pursuant to this subsection ~~(a) of this section~~  
19 shall be delivered by registered or certified mail, or by any means authorized  
20 by G.S. 1A-1, Rule 4, to the person ordered to establish the permanent  
21 replacement water supply and shall include detailed findings of fact and  
22 conclusions in support of the order. A person to whom such order is issued  
23 may commence a contested case by filing a petition under G.S. 150B-23  
24 within 30 days after receipt of notice of the order. If the person does not file a  
25 petition within the required time, the Secretary's decision is final and is not  
26 subject to review.

27           ~~(d)~~(3) ~~A person~~ All persons required to establish a permanent replacement water  
28 supply pursuant to this section-subsection shall be jointly and severally liable  
29 for all necessary costs associated with establishment of the permanent  
30 replacement water supply. The remedy under this section-subsection is in  
31 addition to those provided by existing statutory and common law. Nothing in  
32 this section-subsection shall limit or diminish any rights of contribution for  
33 costs incurred herein.

34           ~~(e)~~(4) Nothing in this section-subsection shall be construed to (i) require an eligible  
35 affected party to connect to a public water supply or receive a filtration system  
36 or (ii) obviate the need for other federal, State, and local permits and  
37 approvals.

38           ~~(f)~~(5) All State entities and local governments shall expedite any permits and  
39 approvals that may be required for the establishment of permanent  
40 replacement water supplies required pursuant to this section-subsection.

41           (b) The Secretary shall order any person who the Secretary finds responsible for the  
42 discharge or release of industrial waste that includes per- and poly-fluoroalkyl substances  
43 (PFAS), including the chemical known as "GenX" (CAS registry number 62037-80-3 or  
44 13252-13-6), into the air, groundwater, surface water, or onto the land that results in  
45 contamination of a water source supplying a public water system to pay any actual and necessary  
46 costs incurred by a public water system to remove, correct, or abate any adverse effects upon the  
47 water supply resulting from the contamination for which the person is responsible. Such costs  
48 shall include costs to procure, implement, maintain, and operate technology to reduce PFAS  
49 concentrations in finished drinking water to the maximum extent that is technically feasible given  
50 currently available technologies in order to prevent danger to the public from consuming

contaminated drinking water. Orders issued pursuant to this subsection shall be subject to all of the following conditions:

(1) An order issued by the Secretary pursuant to this subsection shall be delivered by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4, to the person ordered to pay costs incurred by a public water system to remove, correct, or abate any adverse effects upon the water supply resulting from the contamination for which the person is responsible and shall include detailed findings of fact and conclusions in support of the order. A person to whom such order is issued may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after receipt of notice of the order. If the person does not file a petition within the required time, the Secretary's decision is final and is not subject to review.

(2) A person required to pay costs incurred by a public water system to remove, correct, or abate any adverse effects upon the water supply resulting from the contamination for which the person is responsible pursuant to this subsection shall be jointly and severally liable for all actual and necessary costs. The remedy under this subsection is in addition to those provided by existing statutory and common law. Nothing in this subsection shall limit or diminish any rights of contribution for costs incurred herein.

(c) A public water system shall reimburse ratepayers of the system through a reduction in future rates charged if (i) the public water system has previously expended funds to remove, correct, or abate any adverse effects upon its water supply resulting from PFAS contamination from a person the Secretary finds responsible for the discharge or release of the PFAS under an order issued pursuant to subsection (b) of this section; (ii) the amount of funds expended by the public water system for that purpose has been included in rates charged to its ratepayers; and (iii) the funds expended by the public water system are subsequently reimbursed by the person responsible for the contamination as the result of an order issued pursuant to subsection (b) of this section.

(d) Liabilities for discharges of PFAS to waters of the State established under this section shall not apply to discharges from a publicly owned treatment works occurring as a result of pass through from the indirect discharge of PFAS by an industrial user. The terms "indirect discharge," "industrial user," "pass through," and "publicly owned treatment works" have the same meaning as in 40 C.F.R. § 403.3.

(e) For purposes of this section, the following terms shall apply:

(1) "Affected party" means a household, business, school, or public building with a well contaminated with PFAS, including GenX, as a result of the discharge or release of industrial waste.

(2) "Contamination" means quantifiable concentrations of an individual PFAS compound in exceedance of 10 parts per trillion (ppt) or combined quantifiable concentrations of any PFAS compounds in exceedance of 70 ppt, as measured by a laboratory method certified by the United States Environmental Protection Agency or approved by the Department, in water which is delivered to any user of a public water system.

(3) "PFAS" means compounds including, but not limited to, all of the following:

<u>Common Name</u>	<u>Chemical Name</u>	<u>CASN</u>	<u>Chemical Formula</u>
<u>PFMOAA</u>	<u>Perfluoro- 2-methoxyacetic acid</u>	<u>674-13-5</u>	<u>C3HF5O3</u>
<u>PMPA</u>	<u>Perfluoro-2- methoxypropanoic acid</u>	<u>13140-29-9</u>	<u>C4HF7O3</u>
<u>PFMOPrA</u>	<u>Perfluoro-3- methoxypropanoic acid</u>	<u>377-73-1</u>	<u>C4HF7O3</u>
<u>PFO2HXA</u>	<u>Perfluoro(3,5-dioxahexanoic) acid</u>	<u>39492-88-1</u>	<u>C4HF7O4</u>
<u>PEPA</u>	<u>2,3,3,3-Tetrafluoro- 2-(pentafluoroethoxy) propanoic acid</u>	<u>267239- 61-2</u>	<u>C5HF9O3</u>

1	<u>PFMOBA</u>	<u>Perfluoro-4- methoxybutanoic acid</u>	<u>8630 90- 89-5</u>	<u>C5HF9O3</u>
2	<u>PFO3OA</u>	<u>Perfluoro(3,5,7-trioxaoctanoic) acid</u>	<u>39492-89-2</u>	<u>C5HF9O5</u>
3	<u>PFO4DA</u>	<u>Perfluoro(3,5,7,9-tetraoxadecanoic</u>	<u>39492-90-5</u>	<u>C6HF11O6</u>
4		<u>acid</u>		
5	<u>PFESA-BP1/</u>	<u>Nafion Byproduct 1</u>	<u>66796-30-3;</u>	<u>C7HF13O5S</u>
6	<u>Nafion BP #1</u>		<u>29311-67-9</u>	
7	<u>PFESA-BP2/</u>	<u>Nafion Byproduct 2</u>	<u>749836-20-2</u>	<u>C7H2F14O5S</u>
8	<u>Nafion BP #2</u>			
9	<u>PFECA-G</u>	<u>Hexanoic acid, 2,2,3,3,4,4,5,5,6,6-</u>	<u>174767-10-3;</u>	<u>C7HF13O3</u>
10		<u>decafluoro-6- (trifluoromethoxy)-;</u>	<u>801212-59-9</u>	
11		<u>Butanoic acid, 2,2,3,3,4,4- hexafluoro-4-</u>		
12		<u>[1,2,2,2- tetrafluoro-1- (trifluoromethyl)</u>		
13		<u>ethoxy]-</u>		
14	<u>TAFN4/</u>	<u>Perfluoro(3,5,7,9,11-</u>	<u>39492-91-6</u>	<u>C7HF13O7</u>
15	<u>PF05DA</u>	<u>pentadecanoic) acid</u>		
16				
17	<u>PFHpA</u>	<u>Perfluoroheptanoic acid</u>	<u>375-85-9</u>	<u>C7HF13O2</u>
18				
19	<u>HFPO-DA/</u>	<u>2,3,3,3-Tetrafluoro-2 (1,1,2,2,3,3,3-</u>	<u>13252-13-6</u>	<u>C6HF11O3</u>
20	<u>PFPrOPrA/</u>	<u>heptafluoropropoxy)-propanoic acid)</u>		
21	<u>"GenX".</u>			

(4) "Public water system" has the same meaning as provided in G.S. 130A-313(10), except that for purposes of this section, the term shall also include any water collection, treatment, or storage facility that is part of a publicly owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3, whether or not the POTW provides water to the public for human consumption through pipes or other constructed conveyances."

**SECTION 2.** This act is effective when it becomes law.