State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
401 East State Street
P.O. Box 402, Mail Code 401-07
Trenton, New Jersey 08625-0420
Tel. (609) 292-2885 • Fax (609) 292-7695
www.nj.gov/dep

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

ADMINISTRATIVE ORDER NO. 2023-01

WHEREAS, per- and polyfluoroalkyl substances (PFAS) are man-made fluorinated alkane molecules historically used as a processing aid in the emulsion process used to create fluoropolymers, which are high-performance plastics that are resistant to harsh chemicals and high temperatures, and are also found in aqueous film forming foams, surfactants, and stain-resistant coatings, and are used in metal plating and finishing among many other things; and

WHEREAS, PFAS are extremely persistent in the environment and soluble and mobile in water, and have therefore been commonly referred to as 'forever chemicals'

WHEREAS, due to their persistence and weight, PFAS may settle at the bottoms of tanks, pits, or depressions and be present long after PFAS-containing chemicals were used; and

WHEREAS, PFAS are developmental toxicants, liver toxicants, immune system toxicants. and are probable carcinogens that bioaccumulate in animal and human tissue; and

WHEREAS, pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1, et seq., and other state and federal authorities, the Department of Environmental Protection ("Department") is charged with restoring, enhancing, and maintaining the waters of the State, which include the ocean and its estuaries to the seaward limit of the State's jurisdiction, and all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State; and

WHEREAS, due to the risks that PFAS pose to public health and safety and the environment, the Department has and must continue to proactively evaluate and reduce potential sources PFAS, including, but not limited to, evaluating the presence of PFAS in wastewater discharges and considering requirements for the reduction of PFAS in such discharges; and

WHEREAS, on March 17, 2021, the Department required all industrial dischargers to surface water, and significant indirect users ("SIU"), as defined in N.J.A.C. 7:14A-1.2, permitted by the Department to complete a "PFAS Source Evaluation and Reductions Requirements Survey" ("Survey") to evaluate whether their use of products or production of materials containing PFAS results in the inclusion of PFAS in effluent or wastewater produced at the permitted facility; and

WHEREAS, a discharge containing PFAS from an SIU will reach a Wastewater Treatment Plant ("WWTP") and may pass through the WWTP and discharge to surface waters; impact the quality and management of the WWTP sewage sludge or otherwise interfere with the operation of the WWTP; and

WHEREAS, on April 22, 2021, the Department directed WWTPs with approved Industrial Pretreatment Programs, referred to as Delegated Local Agencies ("DLAs"), to require each of their SIUs to complete the Survey; and

WHEREAS, on April 22, 2021, the Department notified each DLA of that it was expected to investigate probable sources of PFAS and take necessary actions to reduce or eliminate the potential PFAS sources entering the wastewater system and ultimately discharged to surface water or sludge; and

WHEREAS, on August 18, 2021, March 23, 2022, or October 5, 2022, the Department required industrial dischargers to surface water and SIUs permitted by the Department to collect samples of effluent and analyze for the presence of PFAS in its discharge(s); and

WHEREAS, the WWTPs receiving the discharge from SIUs permitted by the Department (herein referred to as "Treatment Entities") and DLAs are uniquely positioned to assist in the collection of data related to PFAS discharges within their systems; and

WHEREAS, the Department seeks PFAS data from the Treatment Entities and DLAs, including, but not limited to, effluent quality from SIUs, influent and effluent quality in the WWTP, influent and effluent quality at different points of the treatment process; sludge quality of the WWTP, and other data points collected throughout the system; and

WHEREAS, the Treatment Entities and DLAs can play a vital role in identifying sources and reducing discharges of PFAS to surface waters, or the accumulation of PFAS in sludge; and

WHEREAS, the submission and sharing of PFAS data between the Department, Treatment Entities, and DLAs will aid collective efforts to better understand the presence of PFAS within wastewater systems, locate potential sources of PFAS to wastewater systems, assess impacts of PFAS on wastewater treatment processes and sewage sludge quality, and develop solutions to reduce or eliminate sources of PFAS entering the wastewater systems or discharging into the waters of the State; and

WHEREAS, on December 5, 2022, the U.S. Environmental Protection Agency ("EPA") issued a memorandum providing guidance to states authorized to administer the National Pollutant Discharge Elimination System permitting program, which memorandum is consistent with the Department's approach for addressing PFAS discharges to surface water and obtaining comprehensive information on sources and quantities of PFAS; and

WHEREAS, the Department seeks to assure owners and operators of cooperating Treatment Entities and DLAs that their sharing of data and information as referenced herein, including data submitted to the Department, is intended to inform and aid the collective goal of reducing or eliminating the discharge of PFAS into their systems and the waters of the State, and is not intended for use in an unpermitted PFAS discharge enforcement action by the Department against the cooperating parties;

NOW THEREFORE, I, Shawn M. LaTourette, Commissioner of the New Jersey Department of Environmental Protection, by virtue of the authority vested in me pursuant to N.J.S.A. 13:1D-1, et seq., N.J.S.A. 58:10A et seq., N.J.S.A. 58:11-49, et seq., and N.J.S.A. 58:11A-1, et seq., do hereby ORDER and DIRECT the following:

1. For purposes of this order, PFAS is defined as those substances identified in the draft EPA Method 1633.

2. Where a Treatment Entity or DLA provides PFAS data from its system to the Department in the form and manner prescribed by the Department to assist in the collective effort to identify, reduce or eliminate sources of PFAS discharged into the wastewater systems operated by Treatment Entities or DLAs, the Department shall:
    a. Deem such data as disclosed to the Department as part of the NJPDES permit application and compliance process under N.J.A.C. 7:14A; and
    b. Consider such PFAS data to have been within the reasonable contemplation of the Department as part of the Treatment Entity's or DLA's NJPDES permit application process; and,
    c. Consider the Treatment Entity's or DLA's discharge of PFAS protected by the permit shield afforded pursuant to 33 USC § 1342(k) unless it is required by the Department to be reported in their Discharge Monitoring Report.

3. Based on the foregoing findings, the Department will not take an enforcement action for an unpermitted discharge against any Treatment Entity or DLA based upon PFAS data submitted to the Department solely pursuant to this Order.

4. This Order shall take effect immediately and shall be retroactive to January 1, 2021. Any PFAS data previously submitted by a Treatment Entity or DLA consistent with the terms of this Order shall be treated in the same manner and with the same protection as data submitted after the effective date of this Order.

5. This Order shall not apply to any PFAS data submitted pursuant to a current or future requirement in a Treatment Entity's or DLA's NJPDES permit.

This Order shall terminate five (5) years from the date of issuance unless otherwise rescinded in whole or in part by me.

Dated: January 17, 2023

_____
Shawn M. LaTourette
Commissioner