

LEGAL UPDATES

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Services

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PFAS

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EPA Indicates Increased Scrutiny for PFAS in Recent Regulatory Steps

Lately, there have been numerous major developments related to increased regulation of polyfluoroalkyl substances (PFAS).

First, on January 14, 2021, on the eve of President Biden's inauguration, the Environmental Protection Agency (EPA) issued an advance notice of proposed rulemaking, seeking comment on whether perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) should be regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). This will likely lead to the designation of PFOA and PFOS as "hazardous substances" under CERCLA and RCRA. Such a designation will likely lead to EPA and state agencies taking more aggressive action to investigate and identify new sites where per- and polyfluoroalkyl substances (PFAS) may be a concern. The EPA may also review the status of existing sites where PFAS concerns were not addressed in previous investigations or response actions and to potentially pursue response actions at such sites. At this moment, though, there is only the interim policy that EPA provided to assist in addressing PFOA and PFOS groundwater contamination. The comment period on the advance notice just closed and we anticipate a proposed rulemaking in the near future.

Second, the EPA reissued the final regulatory determinations for PFOA and PFOS under the Safe Drinking Water Act (SDWA), which was published in the Federal Register on March 3, 2021. This determination will begin a ~2-year process to regulate PFOA and PFOS as hazardous substances under the SDWA and will allow EPA to propose national drinking water standards (maximum contaminant levels) for both compounds. This will also allow EPA to require cleanup of some PFOA and PFOS where it is found in potential drinking water sources. The current suggested maximum concentration is 70 parts per trillion (ppt) for both compounds based on EPA guidance.

Lastly, on March 11, 2021, EPA published the proposed Fifth Unregulated Contaminant Monitoring Rule, which requires data to be collected regarding the presence of 29 PFAS compounds in drinking water. The proposal seeks 12 months of data collected by various public water systems from January 2023 to December 2025. EPA scheduled two virtual stakeholder meetings on April 6, 2021, and April 7, 2021, and the comment period will be open for 60 days.

In addition to the regulatory steps that EPA has taken, Michael Regan's recent confirmation as Administrator of the EPA also suggests PFAS rulemaking in the near future. A former secretary of the North Carolina Department of Environmental Quality (NC DEQ), Regan is no stranger to PFAS. Regan was the secretary of the NC DEQ when it sued chemical company Chemours for allegedly discharging PFAS into the Cape Fear River in eastern North Carolina. Regan's prior experiences with PFAS, coupled with the Biden Administration's pledge to prioritizing PFAS, will likely result in new regulations sooner rather than later.

Additionally, the draft proposal of the CLEAN Future Act from the House Committee on Energy and Commerce, in its proposed Title VI on Environmental Justice, includes establishing a grant program under the SDWA to aid water utilities in paying capital costs associated with treatment for PFAS.

PFAS background

PFAS are synthetic chemicals used in a number of industrial processes and in the manufacturing of certain consumer goods because of their fire resistance and their ability to repel oil, stains, grease and water. Regulators are concerned about these compounds' persistence in the environment, especially in drinking water, and have nicknamed the PFAS chemicals generally "forever chemicals."

To date, EPA has added 172 PFAS chemicals to the Toxic Release Inventory, which requires reporting the manufacture, processing and use of these substances if the amount is more than 100 lb. However, there are approximately 3,500 different compounds under the umbrella of PFAS, and the available data regarding their chemical properties and toxicity vary greatly. The most well-known compounds, and considered to be of greatest concern, are long-chain PFAS, PFOA and PFOS. EPA has taken the position that long-term exposure to these chemicals may result in birth defects, cancer, liver effects, immune system effects, thyroid effects and other health issues.

Monitoring the regulatory trends in PFAS

PFAS regulation is moving quickly under the Biden Administration. Additionally, states have already begun setting their own limits and PFAS regulations and will continue to do so as the public eye remains on PFAS.

Since 2019, when EPA issued its Per- and Polyfluoroalkyl Substances (PFAS) Action Plan, EPA has been developing the facts and legal authority necessary to officially regulate PFAS. The Environmental

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Team at Husch Blackwell has been closely monitoring this trend, offering client assistance and publishing relevant details: PFAS: A new source for regulatory concern. Additionally, members of Husch Blackwell Environmental Team recently presented an Emerging Issues: PFAS Assessment and Mitigation webinar for the Illinois Manufacturers' Association at the Annual Environmental Conference. You can find a copy of this recording [here](#). Prior to that, the Environmental Team presented a webinar in 2019 that offered legal and technical updates on expected PFAS developments as well as technical approaches to addressing PFAS in the environment. Husch Blackwell's Environmental Team has the knowledge and expertise to help clients respond to agency concerns with respect to new or existing contaminated sites and/or areas of concern related to drinking water.

Contact us

For more information about how EPA and the states are addressing PFAS and how it may affect your business, please contact Jason A. Flower, Coty Hopinks-Baul, Daniel Fanning, Leah Kaiser or your Husch Blackwell attorney.