



Environmental Update

October 2021

U.S. EPA Unveils Whole-of-Government PFAS Strategic Roadmap

Key Notes:

- The U.S. Environmental Protection Agency recently released its PFAS Strategic Roadmap, outlining a broad range of PFAS-related actions based on strategies to increase research investments, restrict the release of PFAS into the environment and accelerate remediation of PFAS contamination.
- PFAS manufacturers will need to comply with a new TSCA national testing strategy, released in October 2021, to generate for EPA toxicity data and information on categories of PFAS.
- Environmental justice is a backbone of the Strategic Roadmap, and EPA plans to use the initiative to evaluate how PFAS may disproportionately affect communities with environmental justice concerns.

On October 18, 2021, the U.S. Environmental Protection Agency (EPA) released its [PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024](#) ("Strategic Roadmap"), which highlights its commitment to taking a broad range of PFAS-related actions for the remainder of the first Biden administration. The Strategic Roadmap is based on three central directives – the three Rs: increasing investments in research, pursuing a comprehensive approach to restrict PFAS releases into the environment and accelerating remediation of PFAS contamination.

PFAS (per- and poly-fluoroalkyl substances) are widely used, long-lasting "forever chemicals" that have received growing local, state and federal attention over the past several years. Many states have taken piecemeal actions to address PFAS use, restrict discharges and require remediation, while EPA first issued a comprehensive PFAS Action Plan in 2019 (updated in 2020).

With the release of the Strategic Roadmap, the Biden administration and EPA Administrator Michael Regan are signaling a concerted, whole-of-government approach to PFAS by advancing "bold and concrete" actions to address the full lifecycle of PFAS. These initiatives will be implemented under several federal laws, including the Safe Water Drinking Act (SDWA); Clean Water Act (CWA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Clean Air Act (CAA); and Toxic Substances Control Act (TSCA).

In addition to EPA, seven other agencies will be addressing PFAS through the Strategic Roadmap: the White House Council on Environmental Quality; the Departments of Defense, Agriculture, Homeland Security, and Health and Human Services; Food and Drug Administration; and Federal Aviation Administration. The scope of the agencies involved further highlights the breadth of industries that may be affected by the holistic federal effort.

Expected Regulatory Updates

The Strategic Roadmap covers a wide range of proposed actions across key environmental statutes including:

- **SDWA.** EPA plans to formally propose new drinking water standards for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) by the fall of 2022, with final action on the standards to follow by the fall of 2023.
- **CERCLA.** PFOA and PFOS will be designated as hazardous substances, with a proposal expected in the spring of 2022 and a final rule in the summer of 2023.
- **CWA.** In 2022, EPA would propose effluent limitations guidelines for PFAS in certain industrial categories

including organic chemicals, plastics and synthetic fibers; metal finishing; and electroplating. EPA would also establish primary drinking water standards for PFOS and PFOA by the fall of 2023, while continuing to evaluate standards for additional PFAS.

- **TSCA.** EPA already published a [National PFAS Testing Strategy](#) in October 2021, which would require companies in a variety of industries to perform PFAS testing pursuant to TSCA and provide the data to EPA to further inform its evaluation of PFAS toxicity and risks. The data could then be used for additional research, monitoring and rulemaking actions.
- **CAA.** EPA will continue to build the technical foundation to address PFAS air emissions to inform future actions, including stack emissions and ambient air monitoring, mitigation technologies, fate and transport modeling, and additional regulatory and non-regulatory mitigation plans.

Potential Impacts: Heightened Risks of Litigation and Uncertainty for Businesses

Based on the current and proposed EPA (as well as state) actions to address PFAS, the regulated community should begin (or continue) to evaluate ongoing and historical PFAS production, use and disposal. PFAS may be implicated in product research and development, production, shipping, storage, use and disposal. Specific industries identified in the Strategic Roadmap include chemical manufacturers and importers; organic chemicals, plastics and synthetic fibers; metal finishing; electroplating; electrical and electronic components; textile mills and carpet manufacturing; landfills; leather tanning and finishing; plastics molding and forming; paint formulating; pulp, paper and paperboard; and airports (identified as potentially subject to discharge restrictions enforced through new effluent limitations guidelines).

The trend of PFAS litigation is well established and continues to evolve, including individual private actions; class actions; multidistrict litigation; state attorney general and environmental agency actions for tort, product liability, environmental and natural resource damages; and other causes of action. Additional toxicity and risk evaluations and new regulations present a plethora of new opportunities for increased litigation.

As regulations are developed and implemented, shareholders of publicly traded companies will continue to ask about PFAS risks and opportunities to mitigate potential liabilities. Having a strong understanding of past and present touchpoints with PFAS will help with informed strategic company decisions.

The current administration is placing great emphasis on addressing environmental justice throughout the country, and the Strategic Roadmap specifically highlights environmental justice with respect to PFAS in the environment. As more PFAS studies are finalized, and more data becomes publicly available (for example through Toxic Release Inventory reporting for PFAS that began in July 2021), the potential for citizen suits and other forms of litigation will continue to increase.

We will continue to closely monitor and evaluate PFAS developments throughout the country.

FOR MORE INFORMATION

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