



Environmental Update

January 2020

PFAS Regulatory & Legislative Actions Update

Key Notes:

- The “National Defense Authorization Act” for 2020 was signed into law at the end of 2019, adding certain PFAS to the EPA Toxic Release Inventory, greatly limiting and ultimately banning PFAS-containing firefighting foam at DOD facilities, and creating many new PFAS restrictions and requirements.
- In January 2020, the comprehensive federal “PFAS Action Act” passed in the House, but likely faces significant obstacles in the Senate.
- Ohio EPA will begin implementing its December 2019 PFAS Action Plan in early 2020 to sample 1,500 public water systems and increase public education of PFAS in the environment.

In February 2019, the United States Environmental Protection Agency (U.S. EPA) issued a long-awaited [federal PFAS Action Plan](#) with a multi-pronged approach to addressing PFAS in water, waste, remediation activities, reporting and toxicity evaluations. Many states are taking their own actions to add per- and polyfluoroalkyl substances (“PFAS”) to various legislative and regulatory programs, and to sample for PFAS in drinking water supplies, including Ohio which issued the [Ohio EPA and Health Department PFAS Action Plan](#) in December 2019.

The fast pace and extensive scope of new PFAS regulatory and legislative actions at the state and federal levels last year continued right up to the last days of 2019, and the initial actions in early 2020 signal that 2020 will be another busy year for PFAS.

The following is a snapshot of several of the most recent PFAS developments and forthcoming actions.

PFAS Included in 2020 National Defense Authorization Act

The National Defense Authorization Act (NDAA) for Fiscal Year 2020, signed into law on December 20, 2019, included many new PFAS-related restrictions and obligations for the U.S. EPA and the Department of Defense (“DOD”).

The 2020 NDAA adds a total of 14 PFAS to the list of chemicals subject to U.S. EPA Toxic Release Inventory (“TRI”) reporting, beginning with the TRI report that is due by July 1, 2021 (for calendar year 2020). The TRI program requires entities in various categories to disclose, on an annual basis, where listed chemicals are manufactured, used, stored and released into the environment. The NDAA also includes criteria for the U.S. EPA to use in order to add additional PFAS. In January 2020, U.S. EPA applied that criteria and added 146 additional PFAS to the list, bringing the total to 160 PFAS subject to TRI. The addition of these chemicals to the TRI program (with obligations to report 100 pounds or more of each listed PFAS) represents a noteworthy milestone, as this additional data will provide information that may result in identifying regulatory gaps and enforcement targets for EPA and state agencies to focus on in the future.

Although the final NDAA did not contain certain PFAS provisions that were the subject of contentious debate in previous drafts – including listing certain PFAS as CERCLA

“hazardous substances” and establishing drinking water standards under the Safe Drinking Water Act – the NDAA has many critical PFAS aspects in addition to the new TRI requirements. Many of the NDAA’s PFAS provisions focus on new restrictions placed on the Department of Defense, such as immediately prohibiting use of firefighting foam with PFAS in training exercises; phasing out use of PFAS in all firefighting foam by October 1, 2024; storage and disposal of PFAS waste from DOD facilities pursuant to Resource Conservation and Recovery (RCRA) standards; and various provisions aimed at cleanup of PFAS-contaminated DOD sites, of which many such sites have already been identified. The NDAA represents a significant legislative step in the movement to limit exposure to PFAS and remediate PFAS sites. The NDAA contains many other areas of PFAS regulation that are beyond this update but worthy of exploration.

House Passes the PFAS Action Act of 2019

Following passage of the NDAA at the end of 2019, the U.S. House passed [H.R. 535, the PFAS Action Act](#), on January 10, 2020. The bill, if passed in the Senate and signed by the President, would complement the NDAA provisions but contains extensive additional provisions that did not make it into the NDAA.

Unlike the NDAA, the PFAS Action Act lists two well-known PFAS – PFOA and PFOS – to the list of CERCLA “hazardous substances,” which could result in significant cleanup obligations of those PFAS under Superfund. The bill also requires EPA to establish Maximum Contaminant Levels (“MCLs”) for PFOA and PFOS in drinking water within two years and sets deadlines for the EPA to consider adding MCLs for more PFAS.

In addition to these important new requirements, the PFAS Action Act would amend several other laws pertaining to water discharges, supplies, waterbodies (Clean Water Act), air emissions (Clean Air Act), site remediation (waste and cleanup laws - CERCLA and (RCRA), reporting and data collection (EPCRA) and toxic substance regulation (TSCA). Although the House passed the bill by a vote of 247-159, the road to enactment is less than certain, with the Senate

indicating the bill will not pass as drafted, and possible veto if it reaches President Trump’s desk.

Ohio Implementing PFAS Action Plan

The Ohio EPA and Health Department PFAS Action Plan (December 2019) called for comprehensive sampling of 1,500 public water systems (meaning water supply systems serving at least 15 service connections used year-round by residents or regularly serving at least 25 year-round residents) for six PFAS, as well as assistance to private water systems (i.e., non-public water systems), PFAS educational information to the public, and establishing drinking water action levels.

In mid-January 2020, Ohio EPA indicated it was making final adjustments to its Action Plan and would very soon begin sampling public water systems. Owners of the public water systems will be notified prior to sampling, which will be performed by a combination of Ohio EPA representatives and state contractors. The results of the sampling will be provided to the public on a rolling basis as the data is generated and validated, and will be posted to the [State’s PFAS website](#). The State will endeavor to sample all 1,500 public water systems by the end of 2020. The results will provide substantial information as to the extent of PFAS in public water systems, which provide drinking water to around 90% of Ohio’s population, and where and to what extent remedial measures may be needed.

2020 PFAS Outlook

PFAS, sometimes referred to as “forever chemicals” because of their strong chemical makeup and persistence in the environment, will remain front and center with U.S. EPA, DOD and nearly every state as additional investigation, remediation and regulatory/legislative action proceed in earnest in 2020. Thompson Hine will continue to closely monitor these and other PFAS developments and advise our clients on the legal requirements and best practices related to PFAS matter.

FOR MORE INFORMATION

For more information, please view our previous PFAS alerts [here](#) or contact:

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