



Environmental Update

January 2024

PFAS Year in Review: EPA Issues Second PFAS Strategic Roadmap Progress Report

In December 2023, the United States Environmental Protection Agency (EPA) released its [PFAS Strategic Roadmap: Second Annual Progress Report](#) (PFAS Progress Report), touting the extensive actions it took during the year to address per- and poly-fluoroalkyl substances (PFAS) in the environment, chemicals and products. EPA first issued its PFAS Strategic Roadmap in 2021 and has now issued two annual reports summarizing the progress it has made in furtherance of its “whole-of-government” approach to addressing PFAS. The PFAS Strategic Roadmap covers EPA’s “three R’s” approach to PFAS – Restrict, Remediate and Research. The PFAS Progress Report highlights the fact that EPA considers addressing PFAS and the agency’s goals of advancing Environmental Justice (EJ) to be closely linked, and its use of billions of dollars of federal funding toward achieving those ends. In 2023, EPA also signaled a clear focus on PFAS enforcement by listing “addressing exposure to PFAS” as one of the six National Enforcement and Compliance Initiatives” for fiscal years 2024-2027.

While 2024 will undoubtedly be an extremely active year for EPA in its implementation of the PFAS Strategic Roadmap, the foundation for these ongoing efforts was greatly strengthened by the building blocks EPA laid in 2023. In this Thompson Hine environmental alert, we summarize many of the key points of EPA’s PFAS Progress Report, including actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Clean Water Act (CWA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and ongoing

efforts in the areas of toxicity research and environmental justice. As EPA states in the PFAS Progress Report:

Federal and state regulations, state legislative action, and increased public awareness—coupled with unprecedented federal investments enabled by the Bipartisan Infrastructure Law (BIL)—are protecting public health, catalyzing new economic opportunities, driving innovation, creating jobs, and advancing environmental justice across the nation.

Here is a summary of EPA’s actions and the primary developments contained within the PFAS Progress Report by statute or area of interest:

CERCLA

- Proposed a rule listing two PFAS compounds – PFOS and PFOA – as CERCLA hazardous substances, which is expected to be finalized in early 2024. When finalized, the rule will require responsible parties to report releases of these PFAS and to investigate and remediate contaminated sites across the country.
- Held listening sessions regarding its proposed CERCLA enforcement discretion policy, which would provide guidance on how EPA may make decisions to mandate cleanup action by certain parties while forgoing enforcement against others such as municipal water treatment entities and municipal landfills.
- Updated its Regional Screening Level and Regional Removal Management Level tables to include risk-based values for 14 PFAS compounds.

CWA

- Proposed a rule setting national drinking water standards, or “maximum contaminant levels” (MCLs), for six PFAS compounds: PFOS, PFOA, PFNA, HFPO-DA (GenX chemicals), PFHxS and PFBS.
- Conducting nationwide drinking water sampling for 29 PFAS under the fifth Unregulated Contaminant Monitoring Rule (UCMR 5) and released initial UCMR 5 monitoring data in August 2023. EPA plans to continue to update UCMR results on a quarterly basis for the next three years.
- Began using \$10 billion in Bipartisan Infrastructure Law (BIL) funding to address PFAS and other emerging contaminants in water, with a particular focus on small or disadvantaged communities as part of President Biden’s Environmental Justice program, the Justice40 Initiative.
- Issued the 15th Effluent Limitations Guidelines (ELGs) in January 2023, which updates plans to set technology-based standards for industrial PFAS dischargers.
- In cooperation with the Department of Defense, continued work to develop EPA Method 1633, which will be used to test for 40 PFAS in wastewater, surface water, groundwater, soil, biosolids, sediments, landfill leachate and fish tissue. EPA plans to start the rulemaking in 2024 to codify Method 1633 under the CWA.

TSCA and EPCRA

- Promulgated a final TSCA rule in October 2023 requiring manufacturers and importers of certain PFAS in any year since 2011 to report extensive information on PFAS uses, production volumes, disposal, exposures and hazards, which must be submitted by May 2025.
- Expanded efforts under its National PFAS Testing Strategy, which EPA is using to obtain information about PFAS categories to further research it will use establish additional regulations and policies to restrict and remediate PFAS.
- Issued its second and third orders under the PFAS Testing Strategy to require manufacturers to test chemicals used in plastic manufacturing and GenX chemicals. EPA will likely issue additional orders in 2024.
- Reviewed prior PFAS use decisions and identified approximately 150 PFAS that had been reviewed under the TSCA new chemicals program but where the

protectiveness requirements had not yet been extended to all future manufacturers and processors.

- Proposed a rule that would prevent parties from starting or resuming the manufacture or processing of around 300 inactive PFAS without undertaking a full notice, review and, possibly, risk management process.
- Issued a final rule under the EPCRA Toxic Release Inventory (TRI) program that eliminated the *de minimis* concentrations exemption for PFAS TRI reporting.

RCRA

- Proposed (in 2021) two rules under RCRA. The first rule would designate certain PFAS as “hazardous constituents” which authorize EPA to require investigation and cleanup at permitted hazardous waste facilities. The second proposed rule clarifies that PFAS and other emerging contaminants can be remediated as RCRA corrective action.

CAA

- Proposed a rule under the Air Emissions Reporting Rule that would require additional data collection from facilities emitting PFAS, which will help enable refined air quality and exposure modeling. EPA expects to finalize this rule by the middle of 2024.

Toxicity and Risk Evaluations

- Published more than 40 peer-reviewed scientific journal articles on PFAS, including topics such as PFAS measurement, human exposure to PFAS, human health and ecological effects of PFAS, treatment of PFAS in water, and PFAS destruction and disposal.
- Added more PFAS information to various databases such as the Drinking Water Treatability Database, the ECOTOX Knowledgebase, and the CompTox Chemicals Dashboard.
- Issued a final assessment under the Integrated Risk Information Systems (IRIS) program for PFHxA, and draft IRIS assessments for PFDA and PFHxS.
- Released human health toxicity values for PFPrA and lithium bis(trifluoromethylsulfonyl) azanide (commonly called HQ-115), both of which have been detected in surface water and wastewater near PFAS manufacturing facilities.

Environmental Justice

- Emphasized its efforts to address PFAS in small or disadvantaged communities as part of EPA's broader EJ efforts.
- Linked the PFAS Analytic Tool and EJSCREEN, EPA's environmental justice screening and mapping tool.
- Held public listening sessions in each of the 10 EPA regions and with EPA's Tribal partners, and reiterated its plans to integrate recommendations from the National Environmental Justice Advisory Council into future policy, infrastructure and communications initiatives.

Conclusion

In 2024, as many critical federal regulations are proposed and finalized, policies are created and continue to be implemented, and more knowledge is learned about the nature and extent of PFAS in the environment and their potential impacts to humans and the environment, we should expect EPA to continue its aggressive, whole-of-government approach to PFAS. Thompson Hine will continue to monitor these varied PFAS developments, host webinars, and assist clients in navigating the challenges and opportunities that arise from these actions.

FOR MORE INFORMATION

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