



Environmental Update

October 2025

The Future of EPA's CERCLA PFAS Hazardous Substance Designation

Key Notes:

- On September 17, the EPA announced its commitment to regulating PFOA and PFOS under CERCLA and maintaining the 2024 final CERCLA hazardous substance rule.
- DOJ moved to lift the abeyance on the U.S. Chamber of Commerce 2024 lawsuit challenging the CERCLA rule, signaling its intent to continue to defend the rule.
- The EPA outlined a new framework to provide greater regulatory certainty and consistency for future CERCLA hazardous substance designations, including how it will consider the costs and impacts of designations on manufacturers, passive receivers, consumers, and the broader economy.
- The PFOA/PFOS hazardous substance designations continue to raise significant concerns that entities that did not generate the chemicals but instead received them in products or waste, such as wastewater utilities and landfills ("passive receivers") will be subject to CERCLA joint and several liability.
- Congress continues to consider bills to exempt passive receivers from CERCLA liability.

Overview

On September 17, the U.S. Environmental Protection Agency (EPA) [announced](#) that it intends to maintain and defend the final 2024 rule designating two per- and polyfluoroalkyl substances (PFAS) compounds, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The EPA's decision follows months of stays in the pending litigation challenging the

final CERCLA rule and growing uncertainty surrounding whether the Trump administration would maintain the substances' CERCLA designation.

Background on CERCLA and PFAS Designation

CERCLA, also known as Superfund, facilitates the cleanup of sites contaminated with hazardous substances and generally assigns joint and several liability to responsible parties for associated costs. Section 102(a) of CERCLA authorizes the EPA to designate additional hazardous substances beyond those already listed in the statute.

During the Biden administration, the EPA began the process to designate PFOA and PFOS – two of the most widely studied PFAS – as hazardous substances under CERCLA. The EPA proposed a rule to classify PFOS and PFOA as hazardous in 2022, citing mounting evidence of the environmental persistence and health risks associated with these particular PFAS compounds. The designation would trigger reporting requirements and potential liability for parties responsible for releases of PFOA and PFOS. The EPA issued its final rule, ["Designation of Perfluorooctanoic Acid \(PFOA\) and Perfluorooctanesulfonic Acid \(PFOS\) as CERCLA Hazardous Substances,"](#) on May 8, 2024, with an effective date of July 8, 2024.

Litigation and Administrative Changes

In November 2024, the U.S. Chamber of Commerce filed a lawsuit to challenge the rule, alleging that the EPA's designation process under CERCLA Section 102(a) was legally and scientifically improper (*Chamber of Commerce,*

et al. v. U.S. Env'tl Protection Agency, et al., No. 24-1193 (D.C. Cir. Nov. 4, 2024)). The U.S. Department of Justice (DOJ) responded on behalf of the EPA in January 2025 and asked the court to deny the Chamber of Commerce's request to review the rule. In February 2025, the court temporarily stayed the case pending the EPA's administrative change and allowing the new leadership to review the rule. These stays were renewed multiple times throughout 2025 to continue to allow the EPA to evaluate the rule.

On September 17, [the DOJ moved on the EPA's behalf](#), requesting the court to lift the abeyance and indicating that the agency will continue to defend the July 2024 rule. The EPA's subsequent press release signals a clear intent to move forward with implementing the PFOS/PFOA designations under CERCLA, despite ongoing litigation.

EPA's Path Forward: Statutory Reform and the "Passive Receiver" Conundrum

The EPA's September 17 press release outlines plans to create a uniform framework for designating additional hazardous substances under CERCLA Section 102(a). The framework aims to provide greater regulatory certainty and consistency for future designations, including how the EPA will consider the costs and impacts of such designations on manufacturers, passive receivers, consumers, and the broader economy.

Because PFOA and PFOS are designated as hazardous substances, entities that have released or may release them into the environment face broad, retroactive, and potentially costly joint and several strict liability under CERCLA. A major concern surrounding the CERCLA designation is that "passive receiver" entities such as municipal landfills, wastewater utilities, and certain recyclers would face liability for contamination despite not manufacturing or intentionally using these chemicals.

EPA Administrator Lee Zeldin addressed the passive receiver issue directly, stating that the EPA must strike a balance between holding PFAS polluters accountable and "providing certainty for passive receivers that did not manufacture or generate those chemicals." According to

Administrator Zeldin, the EPA must to work with Congress, as the "best, most enduring solution to this issue is a statutory fix to protect passive receivers from liability."

Congress' Attempts to Address the Passive Receiver Issue

Members of Congress, including groups such as the Senate Committee on Environment and Public Works, continue to seek liability relief for passive receivers of PFOS/PFOA contamination. Congressional representatives have reintroduced House Bill 1267, [Water Systems PFAS Liability Protection Act](#), which aims to shield certain water and wastewater treatment facilities from CERCLA liability for the release of PFAS. The bipartisan legislation was [introduced](#) by Reps. Marie Gluesenkamp Perez of Washington and Celeste Maloy of Utah with the intent of preventing "water utilities and ratepayers from bearing the brunt of PFAS cleanup costs, which would disproportionately harm small and rural communities – and instead help ensure the companies that produced the chemicals are accountable, not our ratepayers."

The legislation follows the [Resource Management PFAS Liability Protection Act](#), a federal bill introduced in 2023 that intended to create certain exemptions to CERCLA liability for landfill operators and other entities.

Future Implications

The Chamber of Commerce litigation will now continue, with the courts potentially deciding the CERCLA rule's fate. Meanwhile, the rule remains in effect and the EPA maintains the authority to issue information requests, investigation demands, and cleanup of PFOA and PFOS contamination at existing and, potentially, future Superfund sites. This presents a number of challenges for industry, including how to respond to such demands and how to address requested PFOA/PFOS cleanups at sites with existing remedies that are not designed to and cannot treat these PFAS compounds.

Meanwhile, Congress will continue to propose legislative solutions to the passive receiver challenges outlined above, but past legislative fixes have not been successful and the current makeup of Congress suggests that bipartisan

solutions may be difficult to achieve. In the meantime, regulated parties should continue to track these regulatory and legislative developments and consider whether to proactively determine their PFAS profiles and potential liabilities before receiving demands from the EPA or lawsuits alleging PFAS impacts to the environment.

FOR MORE INFORMATION

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