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Potential Impacts of EPA's Draft Recommendations on PFAS

Insight — 06/03/2019

On April 25, 2019, the Environmental Protection Agency (EPA) released its Draft Interim Recommendations for Addressing Groundwater Contaminated with Perfluorooctanoic Acid and Perfluorooctane Sulfonate. Perfluorooctanoic acid and perfluorooctane sulfonate, more often referred to by their acronyms PFOA and PFOS, respectively, are two common per- and polyfluoroalkyl substances (PFAS). PFAS are a group of human-made chemicals used in a wide array of industries and products since the 1940s, including cookware, food packaging, stain- and water-repellent fabrics, fire-fighting foams, and cleaning products. Many of these substances are considered by some to be persistent in the environment and human body, meaning they do not breakdown and accumulate over time. Evidence suggest PFAS exposure can lead to adverse human health effects.

Until recently, releases of PFAS into the environment have gone largely unregulated. Currently, neither PFOA nor PFOS is listed as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and there are no enforceable federal cleanup standards in place. Due to detection of drinking sources contaminated with PFOA and PFOS, multiple state agencies began implementing their own state standards for the chemicals. Many congressional lawmakers and environmentalists have pressured EPA to implement federal regulations.

In February 2019, EPA released its PFAS Action Plan, detailing the steps EPA intends to take to address PFAS contamination. The plan includes goals to propose a Safe Drinking Water Act regulatory determination on PFOA and PFOS that could lead to establishing maximum contaminate levels, list PFOA and PFOS as hazardous substances for the purposes of CERCLA, and monitor PFAS in drinking water. EPA achieved one of its plan's first milestones with the release of the Draft Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS.

This guidance sets 70 parts per trillion as the preliminary remediation goal for PFOA and PFOS combined. The expectation to remediate to 70ppt appears to apply only to groundwater being used as a drinking water source. As drafted, it is unclear if this same level applies if the groundwater is only designated as a potential or future source of drinking water. EPA is accepting comments on the guidance **until June 6, 2019**. EPA expects to make a decision on nationwide regulations of the chemicals by the end of 2019 and any regulations will likely go into effect December 2020 at the earliest.

PFAS regulation has the potential to significantly increase environmental remediation obligations for responsible parties throughout the country. The Environmental Working Group, an environmental non-profit organization, in conjunction with Northeastern University, compiled data on public water systems, military bases, airports, industrial plants, firefighter training sites, and dump sites to identify 610 locations in 43 states with known PFAS contamination. Whether on a state or federal basis, PFAS regulations will continue to develop rapidly. Given their widespread use over multiple decades in numerous industries, if PFOA and PFOS are designated as hazardous substances under CERCLA, we anticipate an increase in EPA's identification of CERCLA sites as well as the reopening of sites previously closed. We will continue to monitor the regulatory landscape but interested parties should consider developing comments on proposed regulation. PFAS substances are extremely ubiquitous, and consequently, PFAS regulation has the potential of impacting more industries than any other environmental regulation in recent history.

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