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Developments in EPA's Plan for PFAS Regulation

Insight — November 3, 2021

On October 18, 2021, EPA Administrator Michael S. Regan announced the agency's PFAS Strategic Roadmap for years 2021 to 2024, detailing an expansive approach that will involve many EPA offices and regions in addressing the effects of per- and poly-fluoroalkyl substances (PFAS) throughout the nation.

The roadmap sets timelines by which EPA plans to take specific actions aimed at safeguarding public health, protecting the environment, and holding polluters accountable.

EPA's Roadmap includes the following notable actions, among others:

- Establish a national primary drinking water regulation for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), two common PFAS, that would set enforceable limits and require monitoring of public water supplies, while evaluating additional PFAS and groups of PFAS. **(proposed rule fall 2022, final rule fall 2023)**
- Restrict PFAS discharges from industrial sources through an Effluent Limitations Guidelines program. **(expected 2022 and ongoing)**
- Leverage National Pollutant Discharge Elimination System permitting to reduce PFAS discharges to waterways to reduce discharges of PFAS at the source. **(expected winter 2022)**
- Propose to designate certain PFAS as CERCLA hazardous substances to require reporting of PFOA and PFAS releases, enhance the availability of data, and allow agencies to recover cleanup costs. **(proposed rule expected spring 2022, final rule expected summer 2023)**
- Issue advance notice of proposed rulemaking on various PFAS under CERCLA to seek public input on whether to similarly seek CERCLA designation of other PFAS. **(expected spring 2022)**
- Build the technical foundation to address PFAS air emissions to identify sources, develop and finalize monitoring approaches for stack emissions and ambient air, develop information on cost-effective mitigation technologies, and increase understanding of the fate and transport of PFAS air emissions—to inform potential regulatory and non-regulatory mitigation options. **(expected fall 2022 and ongoing)**
- Use enforcement tools to better identify and address PFAS releases at facilities to require actions by responsible parties, to

limit future releases, and to address existing contamination.
(ongoing)

Shortly after releasing its Roadmap, Regan further announced in an October 26 letter that EPA will start a rulemaking process to propose listing four common PFAS as RCRA “hazardous constituents” under 40 CFR Part 261 Appendix VIII, a designation that will subject them to corrective action requirements at hazardous waste treatment, storage, and disposal facilities. These four PFAS include PFOA, PFOS, perfluorobutane sulfonic acid (PFBS), and GenX. This designation will help advance any longer-term process for hazardous waste listing determination under 40 CFR 261.1 I(a)(3). EPA will also initiate a second rulemaking to clarify the use of RCRA’s corrective action program to require investigation and cleanup of PFAS and other emerging contaminants.

PFAS are a group of man-made chemicals used in a wide array of consumer and industrial manufacturing and industries since the 1940s and are included in such things as cookware, food packaging, stain- and water-repellent fabrics, fire-fighting foams, and cleaning products. Many of these substances are characterized as persistent in the environment and human body, meaning they do not break down and accumulate over time. Although scientists continue to study the effects of PFAS, evidence suggests PFAS exposure can lead to adverse human health effects.

PFAS remain largely unregulated under federal waste and water law; however, the launch of the PFAS Roadmap and these RCRA rulemakings may begin to change the regulatory landscape.

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