

EPA Releases PFAS Action Plan

February 14, 2019



Tammy L. Helminski

Partner

tammy.helminski@btlaw.com

616-742-3926



Jeffrey S. Longworth

Partner

jeffrey.longworth@btlaw.com

202-408-6918

The Environmental Protection Agency has released its much anticipated PFAS Action Plan, originally slated for release last fall. EPA Acting Administrator Andrew Wheeler held a webcast press conference on Feb. 14, 2019, to announce the elements of EPA's plan. States, individuals and the regulated community have been awaiting this plan and for EPA to formally announce its nationwide action plan to address PFAS.

The main elements of EPA's PFAS Action Plan include:

Maximum Contaminant Level (MCL)

EPA is moving forward with the regulatory process for evaluating MCLs under the Safe Drinking Water Act for PFOA and PFOS, two chemicals in the PFAS family for which EPA has already set lifetime health advisory levels. It is also gathering information to determine if additional PFAS compounds should also be regulated.

Unregulated Contaminant Monitoring Rule (UCMR)

EPA will include PFAS in the next UCMR monitoring cycle, slated for pre-proposal input in 2019 and a proposed rule in 2020. While EPA collected data for six PFAS compounds under the UCMR conducted between 2013 and 2015, EPA did not state which or how many PFAS chemicals would be included or which analytical method would be used in this next UCMR. EPA uses the UCMR to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under the Safe Drinking Water Act.

Hazardous Substance

EPA is pursuing designating PFOA and PFOS as hazardous substances under CERCLA, which opens up the CERCLA statutory pathway for cleanup cost recovery.

Cleanup Levels

In addition to designation as CERCLA hazardous substances, EPA said it will develop interim groundwater cleanup recommendations for use at sites being addressed under CERCLA and at federal-led RCRA corrective action sites.

Toxic Release Inventory (TRI)

EPA is considering adding PFAS chemicals to the TRI reporting requirements.

Toxic Substances Control Act (TSCA)

EPA will use its authority under TSCA's New Chemicals Program to evaluate new uses of PFAS, including following up on its 2015 Significant New Use Rulemaking for certain long-chain PFAS.

Closing Data Gaps

EPA will also continue research into three main areas, including human health and ecological effects, fate and transport, and remediation technology.

Continued Enforcement

EPA said it will continue to enforce cleanups using the current health advisory limit of 70 ppt for PFOA plus PFOS and it will continue to support state enforcement actions.

Risk Communication

EPA is developing a "risk communication toolbox" that government partners can use with the public.

EPA's plan also includes a summary of 23 main concerns or challenges it received from stakeholder input and the EPA actions and timeframes to address each. Though this summary outlines the steps EPA is taking to get to some sort of regulatory endpoint and address concerns and challenges, it does not provide those regulatory requirements today or even in the next few months. The fractured and uncertain regulatory environment of different standards in different states will continue.

While EPA's announcement and release of its PFAS action plan help fill in some of the regulatory landscape regarding PFAS, they also leave states and regulated parties a bit in the dark regarding immediate action plans to address PFAS contamination. Hence, these issues will continue to be addressed on a site-by-site basis and state-by-state basis.

Barnes & Thornburg is experienced in this area and happy to discuss these issues further with our clients and friends.
