U.S. EPA Surges Forward with Its "PFAS Strategic Roadmap" in the First Quarter, Changing the Scope of PFAS Regulation in Several Ways

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As previously reported, U.S. EPA in April issued two major, highly-anticipated final rules regulating PFAS: (1) the first drinking water standards for six of the most prevalent PFAS compounds; and (2) the listing of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act.

While these actions are "game changers" in the scope of PFAS regulation and liability, the Agency has also been busy taking other important steps this year to implement the three "Rs" of its "PFAS Strategic Roadmap," which are to (1) invest in **research**, development, and innovation to increase understanding of PFAS exposures, toxicities, effects, and effective interventions; (2) **restrict** PFAS from entering the environment at levels that can adversely impact human health and the environment; and (3) **remediate** PFAS contamination to protect human health and ecological systems.

Continue reading the article below or watch this short video for key points and takeaways.

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- On February 8, 2024, U.S. EPA proposed listing perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorobutanesulfonic acid (PFBS), hexafluoropropylene oxide-dimer acid (HFPO–DA or GenX), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluorodecanoic acid (PFDA), perfluorohexanoic acid (PFHxA), and perfluorobutanoic acid (PFBA) (PFAS compounds) as hazardous constituents under the Resource Conservation and Recovery Act (RCRA).

  Listing these PFAS compounds as hazardous constituents is the first step to a likely future rulemaking that will subject them to RCRA's comprehensive "cradle-to-grave" hazardous waste regulations. In addition, designation as a hazardous constituent makes these PFAS compounds subject to U.S. EPA's "corrective action" requirements at permitted hazardous waste treatment, storage, and disposal (TSD) facilities, a program that authorizes the Agency (or delegated states) to require investigation and cleanup of releases of hazardous constituents from solid waste management units at TSD facilities when they close their permitted operations.

- On March 26, 2024, U.S. EPA published a Federal Register notice that it will issue a formal information request under the Clean Water Act to 400 of the nation's largest sewer authorities later this year, requiring responses to a detailed

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questionnaire about the presence of PFAS in wastewater and biosolids, including potential sources thereof, to be followed by a second, more-focused request for sampling of wastewater and biosolids and contributing sources. This information will drive new federal standards for PFAS in wastewater and biosolids, potentially leading to billions of dollars in additional capital and O&M costs required for wastewater treatment, along with new NPDES permitting obligations and potential liabilities on the sewer authorities and the industrial facilities that discharge wastewater into them. Frost Brown Todd's Environmental Practice Group will be providing additional guidance in the near future for its governmental clients who will be receiving this request.

- On April 9, 2024, U.S. EPA released its updated "Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials," which presents the most currently available information on destruction and disposal methods for PFAS. The need to identify viable, cost-effective treatment and disposal options for PFAS will increase dramatically as public water systems begin to monitor and install treatment to remove PFOA and PFOS from drinking water and as more properties undergo PFAS-related investigation and remediation. The guidance recommends that managers of PFAS-containing waste "consider the nature of the waste, location, potential for environmental release, and other factors to determine the most appropriate destruction, disposal, or storage method."

  The Agency's updated guidance also recognizes and acknowledges that information on the various destruction technologies and disposal options is incomplete. When evaluating potential liability for future releases when PFAS-containing waste is sent off-site for treatment or disposal, regulated facilities will need to carefully evaluate what method of treatment or disposal is being proposed before deciding where to send the waste.

These actions, all taken in a span of just over two months, are significantly changing the regulatory and liability landscape for PFAS

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compounds in the United States, with major impacts on thousands of businesses and local governments across the country. If you would like to discuss how these actions may impact your business or local government, please contact the authors or any member of the firm's Environmental Practice Group.

Want more PFAS coverage?

Explore the articles below tracing the EPA's evolving position and enforcement agenda for these "forever chemicals."

- ***Congress Following States' Lead to Phase Out PFAS***
- ***Seven More PFAS Added to Toxic Release Inventory (TRI) Reporting by U.S. EPA***
- ***PFOA and PFOS Are "Hazardous Substances" Under CERCLA: Key Takeaways and Questions for Real Estate Transactions***
- ***Local Sewer Authorities and Biosolids Management Companies Need to Work Together***
- ***U.S. EPA's Upcoming Information "Request" for PFAS Information and Potential Sampling Warrants Careful Review and Consultation with Legal Counsel***
- ***U.S. EPA Issues "Game Changing" Listing of PFOA and PFOS Under CERCLA***
- ***U.S. EPA Finalizes Drinking Water Limits for PFAS***

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