

EPA Releases PFAS Action Plan

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On February 14, 2019, the U.S. Environmental Protection Agency (EPA) released its much-anticipated [PFAS Action Plan](#). The Plan identifies short and long term actions EPA plans to take regarding per- and polyfluoroalkyl substances (PFAS), some of which could significantly affect compliance obligations and costs, enforcement actions, and litigation.

As part of the Plan, EPA reported that it has initiated the regulatory development process to list PFOA and PFOS as CERCLA hazardous substances. This action could dramatically expand the number of potentially responsible parties and cleanup costs at CERCLA sites. Because CERCLA sweeps in substances designated as hazardous under the other major environmental statutes, in addition to providing its own never-before-used mechanism to designate hazardous substances, EPA indicated it has already begun evaluating which federal environmental statute would best allow it to designate PFOA and PFOS as hazardous. EPA also plans to develop interim groundwater cleanup recommendations for PFOA and PFOS in 2019.

EPA's Plan also indicates it will move forward with the Safe Drinking Water Act's (SDWA) Maximum Contaminant Level (MCL) process for PFOA and PFOS by proposing a regulatory determination sometime in 2019. EPA will also evaluate whether a broader class of PFAS should be regulated in drinking water. The Plan indicates EPA also may use the full scope of federal enforcement, regulatory, and response authorities to address or prevent PFAS contamination, including, "the SDWA; RCRA sections 3004(u) and (v); 3005; 3008(h); 3013; and TSCA sections 5, 6, 7, and 8."

Although PFOA and PFOS were included in a previous round of testing pursuant to the Unregulated Contaminant Monitoring Rule (UMCR), the Action Plan indicates that additional PFAS substances will be included in the next round of UMCR monitoring.

The Plan identifies a number of additional short-term actions related to PFAS, including data collection and sharing, risk communication, development of improved testing and treatment methods, and Significant New Use Rules under the Toxic Substances Control Act. The Plan also lays out long-term actions related to PFAS, including exploring listing PFAS to the Toxics Release Inventory and evaluating information around developing effluent limitation guidelines for PFAS and ambient water quality criteria for PFAS.

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