The United States Environmental Protection Agency (EPA) recently made several announcements regarding its goals for investigating, regulating, and remediating Per- and Polyfluoroalkyl Substances (PFAS), a group of chemicals used in a variety of consumer and industrial products since the early 1940s. In the environment, PFAS can be found in soil, groundwater, surface water, and the air. PFAS are ubiquitous in the environment due to their widespread use, their ability to travel long distances, and the long length of time it takes for them to break down. Although they have been subject to study for some time under the Safe Drinking Water Act, PFAS, known as
“emerging contaminants,” are not comprehensively regulated at the federal level. EPA’s announcements demonstrate its intent to develop regulation of this category of chemicals.

Anticipated Regulation of PFAS under EPA’s Strategic Roadmap

On October 18, 2021, EPA issued a “PFAS Strategic Roadmap.” The Roadmap includes EPA’s plans for several rulemakings to regulate PFAS in consumer products and across environmental media, including the following:

- Emergency Planning and Community Right-to-Know Act and Toxic Substances Control Act Regulation
  - In 2022, EPA intends to propose rulemakings to (1) categorize PFAS on the Toxic Release Inventory list as “Chemicals of Special Concern” and remove the de minimis eligibility from supplier notification requirements for all “Chemicals of Special Concern” and (2) add additional PFAS constituents to the Toxic Release Inventory. It also intends to finalize, by the end of 2022, an already proposed rule to collect data on PFAS that has been manufactured since 2011.

- Safe Drinking Water Act Regulation
  - EPA plans to propose a rule setting national primary drinking water standards for two PFAS constituents, PFOA and PFOS, by fall 2022, with the intention of finalizing these standards by fall 2023.

- Clean Water Act Regulation
  - EPA plans to propose a rule in summer 2023 that will restrict PFAS discharges from the organic chemicals, plastics and synthetic fibers, metal finishing, and electroplating industries. EPA also plans to continue to collect data and, where supported, initiate rulemakings that will restrict PFAS discharges from additional industrial categories, including electrical and electronic components, textile mills, landfills, leather tanning and finishing, plastics molding and forming, paint formulating, pulp, paper, paperboard, and airports.

- Comprehensive Environmental Response, Compensation, and Liability Act Regulation
  - EPA intends to propose a rule designating PFOA and PFOS as hazardous substances under CERCLA in spring 2022, with the goal of finalizing the rule in summer 2023. EPA also plans to issue an Advance Notice of Proposed Rulemaking to seek public input on whether to designate additional PFAS constituents as hazardous substances.

Other Key Takeaways from the PFAS Strategic Roadmap

EPA’s Roadmap also notes its intention for enhanced review, data collection, and enforcement measures related to PFAS. Some significant efforts include: issuing
Toxic Substance Control Act (TSCA) Section 5(e) orders with rigorous safety requirements for existing PFAS constituents for which significant new use notices have been filed, engaging in additional data collection from drinking water systems, completing toxicity assessments and issuing health advisories for PFAS constituents and other emerging contaminants such as GenX, collecting and studying information on industrial PFAS discharges, developing national ambient water quality criteria for PFOA and PFAS to help states develop their own water quality standards, and developing and updating analytical methods to detect and monitor for PFAS.

Like many of EPA’s recent actions, its investigation of PFAS contamination and exposure will have an environmental justice component, focusing on collection of data and potential exposure in disadvantaged communities. Additionally, while certain of EPA’s proposed regulations will focus on PFOS and PFOA, EPA has expressed an intention to gather toxicity and risk information on and to regulate other groups of PFAS once additional data is gathered regarding those constituents. EPA will also establish a voluntary stewardship program, inviting industry participants to report PFAS releases and to reduce such releases beyond regulatory requirements.

**EPA’s Announcement on Proposed PFAS Regulation under RCRA**

On October 26, 2021, EPA built upon its PFAS Strategic Roadmap. In response to a petition from Governor Michelle Lujan Grisham of New Mexico asking EPA to address PFAS contamination under the Resource Conservation and Recovery Act (RCRA), EPA announced plans to initiate two proposed rulemakings. The first will seek to add PFOA, PFOS, PFBS and GenX to the list of RCRA Hazardous Constituents, which would result in these chemicals being regulated as hazardous waste under RCRA. The second will clarify that constituents classified as RCRA hazardous wastes, such as these four chemicals, can be cleaned up through the RCRA corrective action process.

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