

EPA ANNOUNCES A MULTIFACETED APPROACH TO REGULATING PFAS

Hodgson Russ Environmental Alert
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United States Environmental Protection Agency (EPA) Administrator Michael S. Regan recently unveiled the agency's Strategic Roadmap for regulating per- and polyfluoroalkyl substances (PFAS), a group of chemicals widely used in a number of industries due to its waterproof and stick-proof nature. Often called "forever chemicals," PFAS do not naturally degrade in the environment, and are increasingly turning up in public drinking water systems, private wells, and the food chain at large.

Citing these risks, EPA's Strategic Roadmap lays out several key actions to confront PFAS impacts. Here are five things you need to know:

1. The Roadmap focuses on three central directives: research, restrict, and remediate. EPA will invest in research and development to increase its understanding of PFAS exposures and toxicities. At the same time, it will intervene at the beginning of the PFAS lifecycle to prevent PFAS from entering air, land, and water at levels that are harmful to human health and the environment. To address past releases and exposures, EPA will broaden and accelerate the cleanup of PFAS-contaminated sites.
2. EPA will launch a national PFAS testing strategy to evaluate the human health and ecological impacts of PFAS. It will use this testing strategy to identify important gaps in existing toxicity data and to select certain PFAS for additional studies. Using its authority under Section 4 of the Toxic Substances Control Act, EPA will require PFAS manufacturers to conduct and fund these studies. EPA plans to issue the first round of test orders by the end of 2021.
3. EPA will establish an enforceable national drinking water standard for PFOA and PFOS, two types of PFAS. Once finalized, this standard will allow EPA to directly regulate and enforce the levels of PFOA and PFOS found in drinking water systems across the country. EPA plans to release a proposed regulation in fall 2022 and expects to finalize it by fall 2023.

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4. EPA will also declare PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly known as the Federal Superfund Statute. This designation will require facilities across the country to report on PFOA and PFOS releases that meet or exceed levels designated by EPA. It will also allow EPA or other agencies to recoup the costs associated with the cleanup of PFAS-contaminated sites through CERCLA-based cost recovery actions. EPA will also seek public input on whether to designate other PFAS as hazardous substances.

5. To get upstream of the problem, EPA will propose monitoring requirements at facilities where PFAS are expected to be present in wastewater and storm water discharges. EPA will also use the National Pollutant Discharge Elimination System (NPDES) permit program to reduce discharges of PFAS into bodies of water. This is expected to result in discharge permits to have a number of potential PFAS-related requirements, including:
 1. conditions that require the permit holder to eliminate or substitute a PFAS-containing product when a reasonable alternative is available,
 2. require enhanced public notification and engagement with downstream communities and public water systems,
 3. require pretreatment programs to include source control and best management practices to protect wastewater treatment plant discharges and biosolid applications, and
 4. require best management practices to address PFAS-containing firefighting foams for storm water permits. EPA will also issue new guidance to state permitting agencies to address PFAS in their permitting programs.

This announcement by Administrator Regan builds on calls for greater federal action on PFAS matters. Many states have already taken direct action to address PFAS concerns, whether through the passage of heightened drinking water standards, specific guidance, and new regulatory requirements in state remedial programs. For example, last year, New York adopted drinking water standards that set maximum contaminant levels (“MCL”) of 10 ppt for PFOA and PFOS, among the lowest in the nation. And earlier this month, the Department of Environmental Conservation released proposed ground and surface water guidance values for Emerging Compounds for PFOA (6.7 ppt) and PFOS (2.6 ppt). As the federal and state regulatory requirements expand, businesses and property owners will need to evaluate applicable impacts and mitigation strategies.

Hodgson Russ will continue to monitor the implementation of the Strategic Roadmap initiatives. If you have questions related to the Roadmap, or navigating any other environmental-related issue, please contact [Michael Hecker](#) (716.848.1599) or anyone else on the Hodgson Russ [Environmental](#) team, and we would be happy to help.