

EPA Announces Sweeping PFAS Strategic Roadmap along with Intent to Regulate Some PFAS under RCRA

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On October 18, 2021, EPA announced its PFAS Strategic Roadmap: EPA's Commitments to Action 2021 – 2024. The action plan expands on its goals published in EPA's 2019 PFAS Action Plan, focusing on three central directives – investing in research, pursuing a comprehensive approach to prevent PFAS from entering air, land, and water at adverse levels, and to broaden and accelerate the cleanup of existing PFAS contamination. EPA has set forth various key actions to take place within the initial term of the Biden administration, with certain noteworthy provisions outlined below:

- As part of its Strategic Roadmap in October 2021, EPA released its National Testing Strategy, which outlines EPA's testing and data sharing requirements across industries to inform its evaluation of PFAS toxicity and risks for future monitoring and rulemaking.
- Establish a national primary drinking water regulation for PFOA and PFOS, including enforceable limits and monitoring requirements for public water supplies. **(proposed rule fall 2022, final rule fall 2023)**
- Restrict PFAS discharges from certain categories of industrial wastewater sources through the Effluent Limitations Guidelines program, including establishing national technology-based regulatory limits. **(expected 2022 and ongoing)**
- Use National Pollutant Discharge Elimination System permitting to reduce PFAS discharges to waterways and obtain data through monitoring sources of PFAS and quantity of PFAS discharged by these sources. **(expected winter 2022)**
- Designate certain PFAS as CERCLA hazardous substances. **(proposed rule expected spring 2022, final rule expected summer 2023)**
- Address PFAS air emissions by identifying sources and finalizing monitoring approaches for stack emissions and ambient air, and developing information on cost-effective mitigation technologies to inform potential regulatory and non-regulatory mitigation options. **(expected fall 2022 and ongoing)**

Days after its announcement of the PFAS Strategic Roadmap, on October 26, 2021, EPA announced its intent to act upon a petition from the Governor of New Mexico to regulate certain PFAS compounds under the Resource Conservation and Recovery Act (RCRA), further demonstrating EPA's intent to take action through a multi-faceted

approach. EPA's announcement indicates that it will classify the PFAS compounds PFOA, PFOS, PFBS, and GenX as hazardous constituents under RCRA. If EPA then regulates waste containing these compounds as hazardous waste, these compounds would become hazardous substances under CERCLA. While no timeline was provided in EPA's announcement, it appears from the Strategic Roadmap that EPA plans to regulate these compounds under CERCLA in Spring 2022.

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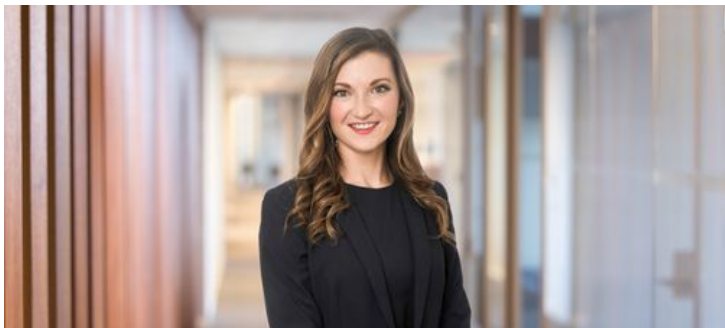
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