

EPA's First Steps in Regulating PFAS



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On October 18, 2021, the U.S. Environmental Protection Agency (EPA) announced [a PFAS Strategic Roadmap](#), which lays out the agency's approach to addressing per- and polyfluoroalkyl substances (PFAS). PFAS are a class of chemicals that are characterized as "forever chemicals" due to their inability to break down in the environment. The PFAS Strategic Roadmap, [announced by EPA Administrator Michael Regan](#), is a comprehensive strategy that outlines definitive actions set to be carried out over the next three years to address the presence of these chemicals.

What are PFAS?

PFAS, which have come under stricter scrutiny in recent years, refer generally to more than 4,000 man-man

chemicals that have been manufactured since the 1940s. Exposure to these chemicals has been linked to a variety of health problems, including thyroid disease, weakened immune systems and various types of cancer. The [Centers for Disease Control and Prevention](#) (CDC) highlights how ubiquitous PFAS are in commercial use, listing out “clothing, furniture, adhesives, food packaging, heat-resistant non-stick cooking surfaces, and the insulation of electrical wire” as a sampling of places where PFAS are common. The CDC also states that PFAS are a concern because their presence can bioaccumulate, or build up, in fish and wildlife and the chemicals can move through soil and contaminate drinking water sources.

What are the EPA’s next steps in regulating PFAS?

The EPA’s PFAS Strategic Roadmap establishes several rapidly approaching deadlines for industry, specifically including new testing requirements. The EPA plans to use common characteristics to classify an initial set of PFAS into 20 subcategories, and then require manufacturers to test chemicals from each subcategory, potentially as soon as the end of 2021. This [National PFAS Testing Strategy](#) utilizes the EPA’s broad authority under the Toxic Substances Control Act (TSCA) [Section 4](#) to establish testing requirements for manufacturers or processors of chemical substances and/or mixtures, with such manufacturers and processors being responsible for testing costs. [EPA Administrator Regan](#) highlighted the significance of this action in his remarks announcing the EPA’s PFAS roadmap, [signaling](#) that “the national strategy... demonstrates strong, forceful action from the EPA...a willingness to use all our authorities, tools, and talent to tackle PFAS pollution.”

In carrying out the EPA’s PFAS Strategic Roadmap, President Biden requested more than \$10 billion in grant funding to address emerging contaminants including PFAS through his [Build Back Better Agenda](#). The Department of Defense (DoD) is also working quickly to conduct PFAS cleanup assessments at nearly [700 DoD and National Guard locations](#) where PFAS was often a constituent of firefighting foam. The [DoD has been at the forefront](#) of mitigation and cleanup measures focusing on PFAS detection, treatment, and destruction, spending over \$150 million in investments and \$70 million to develop PFAS-free replacement firefighting foam.

What are the implications of the EPA’s actions?

The implications of the EPA’s action are significant. This is the first of many planned the EPA measures to regulate PFAS. Since 2016, the EPA has recommended that PFAS levels in drinking water not exceed [70 parts per trillion](#), but this level was not enforceable because the EPA did not establish the standard in a formal rulemaking process. In the fall of 2022, the EPA plans to change that by establishing a national primary drinking water regulation for two specific PFAS chemicals (perfluorooctanoic acid or PFOA, and perfluorooctanesulfonic acid, or PFOS) that will create enforceable limits and monitoring requirements under the Safe Drinking Water Act for public water supplies. The EPA has not yet indicated whether the 70 parts per trillion limit will be the standard, as some states have set lower advisory levels and there is ongoing scientific debate about whether that limit is appropriately protective.

There have been many lawsuits filed across the country in recent years by community groups, states, cities, and individuals alleging environmental contamination from PFAS. Notably, the Southern Environmental Law Center filed an action on behalf of Cape Fear River Watch and the North Carolina Department of Environmental Quality (headed at the time by current-EPA administrator Michael Regan) against The Chemours Company (formerly a DuPont plant), which agreed, via a [consent order](#), to pay a \$13 million fine. It remains to be seen whether Administrator Regan will take this same aggressive approach to potential polluters, but it appears that the EPA is addressing PFAS pollution and regulation in a robust manner.

PFAS remediation and strategies

The EPA's actions may result in some of the lowest levels ever established for a contaminant in the environment. These levels represent a significant challenge for those who have used PFAS in manufacturing processes, who have used or are using firefighting foam, and who oversee water treatment and landfills because PFOA and PFOS have been found at low levels in many settings.

As the EPA and numerous state environmental agencies address the complex issues surrounding testing, regulatory standards, and remediation goals and technologies for PFAS, experience in crafting remedial strategies will be critical in navigating what will be new, and likely conflicting, requirements across the nation.

For questions regarding this Client Alert, please contact Lippes Mathias' Environment & Energy Team Practice Leader, Ian Shavitz at ishavitz@lippes.com or Senior Associate, Christina Bonanni at cbonanni@lippes.com.

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