

**FEBRUARY 15, 2019**

For more information,
contact:

Adam Sowatzka
+1 404 572 3508
asowatzka@kslaw.com

Peter Hsiao
+1 213 443 4379
p hsiao@kslaw.com

Cynthia AM Stroman
+1 202 626 2381
cstroman@kslaw.com

Brian Stansbury
+1 202 626 9118
bstansbury@kslaw.com

John Fortuna
+1 404 572 2828
jfortuna@kslaw.com

King & Spalding

Atlanta
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Tel: +1 404 572 4600

Los Angeles
633 West Fifth Street
Suite 1700
Los Angeles, CA 90071
Tel: +1 213 443 4355

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Suite 200
Washington, DC 20006-4707
Tel: +1 202 237 0500

EPA Announces First-Ever Comprehensive Nationwide PFAS Action Plan

On February 14, 2019, the United States Environmental Protection Agency (“EPA”) published its long-awaited “action plan” intended to address potential risks posed by Per- and Polyfluoroalkyl substances (“PFAS”).

PFAS are a class of biologically and environmentally persistent compounds that have been manufactured and used in a wide variety of industries since the 1940s. These compounds are now ubiquitous and may be found in places such as food that comes in contact with PFAS-containing materials, commercial household products, workplaces, and drinking water.

EPA’s Action Plan follows growing public concern about the potential health effects of PFAS, as well as increasing interest from Congress and state regulators. The Action Plan identifies several specific regulatory actions EPA is evaluating:

- **Safe Drinking Water Act Regulation.** EPA will move forward with the Maximum Contaminant Level (“MCL”) process outlined in the Safe Drinking Water Act for PFOA and PFOS—two of the most well-known and prevalent PFAS chemicals. By the end of 2019, EPA will “propose a regulatory determination” for the two chemicals. Although the plan does not include a specific commitment to set limits for these chemicals in drinking water, EPA’s Office of Water has stated that the agency intends to set standards.

In addition, EPA will propose including PFAS in nationwide drinking water monitoring under the Unregulated Contaminant Monitoring Program.

- **Hazardous Substances Listing Under CERCLA.** EPA’s Action Plan will include ongoing efforts to list PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), more commonly known as “Superfund.” This would extend CERCLA order and cost recovery



authorities to address communities affected by PFOA and PFOS contamination. EPA will also issue interim groundwater cleanup recommendations for contaminated sites.

- **Toxics Release Inventory.** EPA will also consider PFAS chemicals for listing in the Toxics Release Inventory to help the agency identify where these chemicals are being released.

If completed, the actions identified in EPA’s plan could have broad implications for the regulated community. For example, once an MCL is established under the Safe Drinking Water Act, EPA may issue administrative orders, impose penalties, and take other enforcement actions if PFAS levels in a public water system exceed the MCL. Clients who own or operate public water systems should therefore pay close attention to the PFAS MCL process to be best prepared for potential regulatory liabilities due to the widespread existence of PFAS in many public water sources.

Similarly, designating PFAS as hazardous substances under CERCLA would enable EPA to use CERCLA authorities to address a release or threatened release of PFOA and PFOS in some circumstances. Yet EPA has not issued PFAS-specific clean-up standards, meaning that clients could be exposed to CERCLA liability with no identifiable standard to mitigate risk.

Clients in affected industries are encouraged to monitor EPA’s rulemakings closely and to participate actively in the public comment process. Clients are also encouraged to evaluate their use of PFAS-containing compounds, as increased awareness and regulatory scrutiny of these compounds, public concern over their possible health effects, and the potential for future PFAS-related litigation could materially affect a range of businesses and concerns.

King & Spalding has significant experience across the country in administrative and environmental matters, including the defense of citizen suits and enforcement actions under CERCLA, the Safe Drinking Water Act, and other laws. We also have substantial experience developing comments for individual businesses and trade associations regarding proposed regulations. If you have questions about how EPA’s PFAS Action Plan may affect you or your business, please contact our lawyers noted in the contact section on the first page. In 2019, for the fourth time, *Law360* recognized King & Spalding’s Environmental Health and Safety practice as Practice Group of the Year.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,000 lawyers in 20 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”

ABU DHABI	CHICAGO	HOUSTON	NEW YORK	SILICON VALLEY
ATLANTA	DUBAI	LONDON	PARIS	SINGAPORE
AUSTIN	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
CHARLOTTE	GENEVA	MOSCOW	SAN FRANCISCO	WASHINGTON, D.C.