

**OCTOBER 21, 2021**

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EPA's PFAS Strategic Roadmap Sets Broad and Ambitious Goals

Near- and Longer-Term Objectives Expected to Impact Wide Range of Industries

On October 18, 2021, the Environmental Protection Agency (EPA) released its PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024. For the first time under the Biden Administration, the Roadmap expands the policies of the Agency's 2019 Action Plan and accelerates its timeline with distinct objectives and benchmarks between 2021 and 2024. In no uncertain terms, the Agency intends to "leverage the full range of statutory authorities" through a range of key actions that take direct steps toward the regulation of PFAS under the Toxic Substances Control Act (TSCA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Safe Drinking Water Act (SDWA), and Clean Water Act (CWA). EPA's whole-of-agency strategy focuses on objectives to address three main goals: Research, Restrict, Remediate.

Who will be affected by the plan? In a word, everyone. It will impact manufacturers of PFAS, companies that utilize PFAS in their products (metal finishing, paper making, carpets and textiles), wastewater and drinking water utilities, airports and other facilities that utilize Aqueous Film Forming Form (AFFF), lending and financial institutions with industrial clients, private equity firms purchasing and selling companies with current or past PFAS use, and manufacturers and importers of products that inadvertently have PFAS in their goods.

Key Short-Term Objectives With Imminent Impact

Although there are many objectives to the plan, we wanted to highlight a few of the key objectives:

- Research – The Office of Chemical Safety and Pollution Prevention has already published a national PFAS testing strategy and by the end of 2021 expects to issue the first round of test orders under TSCA § 4 requiring companies to conduct and fund studies of 24 PFAS. Also before the end of 2021, EPA expects to issue the Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) final rule. As proposed, UCMR 5 would undertake nationwide monitoring for 29 PFAS for regulation under the



SDWA. Because information serves as the foundation underpinning the Roadmap’s goals, these and the other Research objectives aim to achieve an exponential expansion of data and public knowledge about PFAS presence and effects.

- **Restrict** – In Spring 2022, EPA intends to propose enhanced reporting of information required under TSCA by designating PFAS on the TRI list as “Chemicals of Special Concern” and removing certain notification exemptions. This objective will substantially expand the number of companies required to report and notify PFAS under TRI, providing EPA and the public with a broader range of targets for restriction under permits and other regulations.
- **Remediate** – In Spring 2022, EPA plans to propose designation of PFOA and PFOS as hazardous substances under CERCLA, with the intent to finalize the designation by Summer 2023. Long expected, this designation will launch a series of actions under CERCLA, including sampling and response activities, potential reopening of Superfund sites. Designation will also trigger for any facility to report PFOS and PFOA releases over reportable quantities, and it will also give states more authority for regulation and enforcement.

Research Goal – Additional Objectives

EPA’s approach to addressing PFAS begins with expanding information on existing levels of PFAS in the environment through reporting and monitoring, identifying PFAS risks and effects on human health and the environment, and developing technologies to reduce potential impacts.

Objectives with Near-Term Potential Impact

- Categorization of PFAS for hazard assessment and removal technologies in Winter 2021.
- Preparation of a draft total adsorbable fluorine analytical method for wastewater.
- Categorization of PFAS for hazard assessment and removal technologies in Winter 2021.
- Publication in the next few months of the final toxicity assessment for GenX chemicals (hexafluoropropylene oxide dimer acid and its ammonium salt).

What to Expect Later in 2022

- The first national study of PFAS in fish tissue in U.S. lakes to understand which PFAS are present in fish tissue and identify locations such presence is concentrated.
- Completion and publication by Fall 2022 of a multi-laboratory validation of the analytical method for environmental media developed in collaboration with the Department of Defense (DOD), followed by promulgation under the CWA.
- Continuing activity to create the technical infrastructure for monitoring, mitigation, and tracking fate and transport of PFAS air emissions, aiming to evaluate mitigation options under the CAA by Fall 2022.

What to Expect in 2023 and Beyond

- Finalization of the risk assessment for PFOA and PFOS in biosolids by Winter 2024.
- Development of toxicity assessments for PFBA, PFHxA, PFHxS, PFNA, and PFDA.
- Work by the Office of Research and Development to develop and validate methods to detect and measure PFAS in the environment.
- Completion of analytical methods for monitoring drinking water and recommendations regarding aquatic life and human health criteria for PFOA and PFOS by the end of 2024.



Restrict Goal – Additional Objectives

In addition to further research and development on PFAS presence and effects, EPA has established objectives focused on preventing upstream PFAS from entering the environment and supply chains.

Objectives with Near-Term Potential Impact

- EPA plans to issue health advisories for GenX and PFBS in Spring 2022.
- Continuing scrutiny of new PFAS, including voluntary and other efforts to eliminate low volume exemptions to TSCA Section 5 review.
- Leveraging of existing NPDES permits to incorporate monitoring, limitations and other practices for effluent wastewater and stormwater discharges at facilities where PFAS are suspected, as well as new guidance to state permitting authorities to address new PFAS in new permits.

What to Expect Later in 2022 and Beyond

- More “significant new use” designations for abandoned uses and new PFAS in Summer 2022.
- Finalization of the TSCA Section 8 PFAS reporting rule by the end of 2022.
- Issuance of a proposed National Primary Drinking Water Regulation for PFOA and PFOS in Fall 2022 (to be finalized in Fall 2023).
- Decision-making on Effluent Limitations Guidelines (ELGs) for industrial discharges under the proposed PFAS Action Act of 2021 will begin in Fall of 2022 and continue through the end of 2024.

Remediate Goal – Additional Objectives

Building on advancements in the Research component discussed above, the Roadmap anticipates an acceleration in voluntary and regulated cleanup efforts for downstream, existing PFAS contamination.

Objective with Near-Term Potential Impact

- Publication in Spring 2002 of an Advanced Notice of Proposed Rulemaking to seek public input on designation of PFAS (supplementing the earlier designation of PFOS and PFOA) as hazardous substances under CERCLA.
- Using enforcement actions to address past and continuing PFAS releases.

What to Expect in 2023 and Beyond

- Interim guidance on destruction and disposal of PFAS and certain identified non-consumer PFAS-containing materials by Fall 2023.

As part of the PFAS Strategic Roadmap’s comprehensive approach, EPA also plans to engage with the public in assessing impacts on affected communities, disseminate information on PFAS and risks, and annually provide a public progress report. As with many recently announced plans and strategies, EPA aims to view the Roadmap’s process and actions through an environmental justice lens to ensure equitable benefits for disadvantaged communities.

Also, while the Roadmap focuses on regulatory actions, the information and activities will likely drive new and increased litigation, which could come swiftly in multiple areas. For one, litigants will likely seek to use the drinking water standards in the ever-growing arena of contamination class-action suits. These suits have expanded rapidly to



include a wider group of industries and defendants and allege that the manufacture and disposal of products has contaminated drinking water sources. Similarly, the designation of PFAS as hazardous substances will give plaintiffs' counsel additional grounds to pursue claims against entities, whether they manufactured PFAS or not. Claims are likely to include: (a) groundwater and perhaps soil remediation; (b) medical monitoring; and (c) lost or impaired property value. Moreover, various groups may try to invoke these new standards to bring citizen suits for civil penalties.

King & Spalding's Environmental Health & Safety (EHS) has over thirty EHS lawyers on the team and many have been working on significant PFAS issues since the late 1990s and early 2000s. Given our past experience in PFAS matters, our team is uniquely suited to provide strategic advice regarding how the Roadmap might impact your business and operations. Please contact the authors listed above to discuss how we can help.

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