February 27, 2019

EPA Releases PFAS Action Plan; State Efforts in the Northeast Well Underway

On February 14, the U.S. Environmental Protection Agency (EPA) released its long-awaited Per- and Polyfluoroalkyl Substances (PFAS) Action Plan with a focus on the potential impacts of PFAS compounds in the environment. The EPA's Action Plan presents a framework for future federal regulatory initiatives, but many states in the Northeast have already taken steps to regulate these substances.

PFAS are a family of chemicals. Their widespread product applications range from nonstick cookware and electronics to medical garments and firefighting foam. These chemicals are persistent in the environment. They don't break down easily, and they can accumulate over time. PFAS compounds may be present at sites throughout the country and can present remediation challenges.

Federal Initiatives

The EPA's PFAS Action Plan describes long- and short-term actions that include the following:

- **Drinking Water**: The EPA is moving forward with the maximum contaminant level (MCL) process outlined in the Safe Drinking Water Act (SDWA) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonate (PFOS). By the end of 2019, the EPA advises it will propose a regulatory determination, the next step in the SDWA process for establishing an MCL. This would be the first time a new MCL has been established since the passage of the SDWA in 1996. Over the next two years, the EPA intends to propose nationwide monitoring for other PFAS compounds in drinking water.
- **Cleanup**: The EPA has initiated the regulatory development process for listing PFOA and PFOS as CERCLA hazardous substances and advises it will develop interim groundwater cleanup recommendations for sites contaminated with PFOA and PFOS.
- **Monitoring**: The EPA will propose to include PFAS in nationwide drinking water monitoring under the next Unregulated Contaminant Monitoring Rule program.
- **Toxics**: The EPA will consider listing PFAS chemicals as part of the Toxics Release Inventory Program under the Toxic Substances Control Act. This listing reflects the agency's interest in identifying where these chemicals are being released. The Action Plan also indicates that the EPA will publish draft toxicity assessments for five other compounds — perfluorobutanoic acid (PFBA), perfluorohexanoic acid (PFHxA), perfluorodecanoic acid (PFDA), perfluorohexane sulfonic acid PFHxS) and perfluorononanoic acid (PFNA). The EPA expects to publish these drafts in 2020.
- **Research**: The EPA advises of its commitment to the development of new analytical methods, whereby PFAS chemicals can be more readily detected in drinking water, soil and groundwater.

State Initiatives

In the absence of enforceable federal standards, many states, particularly in the Northeast, have proposed or developed their own regulatory guidance or standards relating to PFAS in drinking water and groundwater. These efforts have varied by state and reflect a range of approaches to regulating PFAS, including:

- **Connecticut**: In December 2016, the Connecticut Department of Public Health set a Drinking Water Action Level for private wells for PFAS of 70 parts per trillion (ppt). Additionally, the Connecticut Department of Energy and Environmental Protection has recommended numeric criteria for PFAS as an alternative polluting substance and alternative criteria under the Remediation Standard Regulations, §§22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.
- **Maine**: The Maine Center for Disease Control and Prevention, on December 31, 2016, set a maximum exposure guideline for drinking water of 70 ppt for PFOS and PFOA, collectively.
- **Massachusetts**: The Massachusetts Department of Environmental Protection (MA DEP) expanded the EPA Health Advisory level of 70 ppt in drinking water for PFOA and PFOS to also address three additional PFAS (PFHxS, PFNA and perfluoroheptanoic acid (PFHpA)). On January 28, 2019, the MA DEP announced that it will initiate a process to develop a drinking water MCL for a presently undefined group of PFAS compounds.
- **New Hampshire**: On December 31, 2018, the New Hampshire Department of Environmental Services initiated a rulemaking to set drinking water limits for four PFAS, including 38 ppt for PFOA, 70 ppt for PFOS, and 70 ppt for combined PFOA and PFOS.
- **New Jersey**: On January 16, 2018, the New Jersey Department of Environmental Protection (NJ DEP) established a permanent groundwater quality standard for PFNA of 10 ppt. Concurrent adoption of amendments to the Discharge of Petroleum and Other Hazardous Substances rules added PFNA to the List of Hazardous Substances. Additionally, in August 2018, the NJ DEP adopted an MCL of 13 ppt for PFNA. The NJ DEP has proposed but not yet adopted MCLs of 14 ppt for PFOA and 13 ppt for PFOS.
- **New York**: Effective March 3, 2017, New York began regulating PFOA and PFOS as hazardous substances. The regulation requires the proper storage of the substances, limits releases to the environment and enables the state to use its legal authority and the State Superfund program resources to advance investigations and cleanups of impacted sites. On December 18, 2018, the New York Drinking Water Quality Council recommended adoption of the nation's most stringent drinking water standards related to PFOA and PFOS, proposing that the New York State Department of Health adopt individual maximum contaminant levels of 10 ppt for PFOA and PFOS.
- **Rhode Island**: In October 2017, the Rhode Island Department of Environmental Management established a groundwater quality standard for GAA and GA groundwater of 70 ppt for combined PFOA and PFOS.
- **Vermont**: The Vermont Health Department has adopted a health advisory for drinking water of 20 ppt for the sum of PFOA, PFOS, PFHxS, PFHpA and PFNA.

The EPA's PFAS Action Plan is the latest regulatory development as federal and state agencies continue to assess potential health risks from PFAS. These efforts will impact the regulated community, including, for example, in connection with remediation efforts and due diligence for various property and corporate transactions.

Should you have any questions regarding the above, please feel free to contact any of the attorneys listed in the sidebar.

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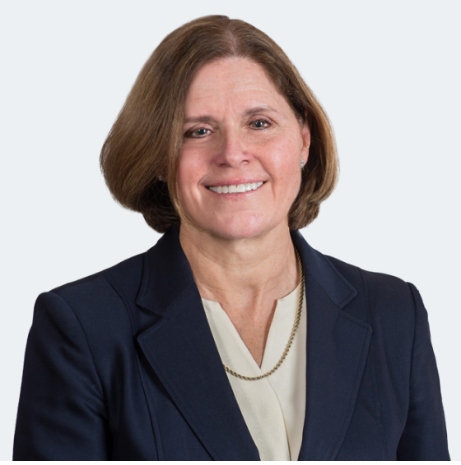

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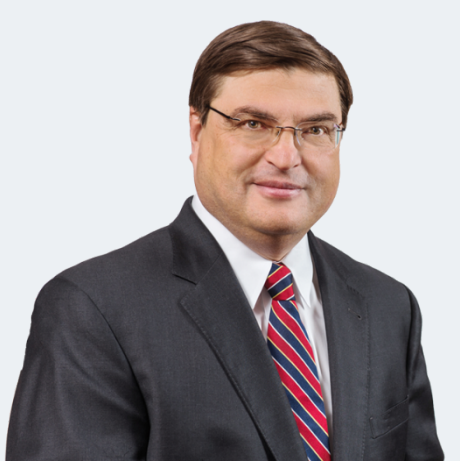

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