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Subject to President Donald Trump's executive order titled “Regulatory Freeze Pending Review”, dated January 20, 2025 (link to order), the Office of Management and Budget withdrew the EPA's proposed rule “Clean Water Act Effluent Limitations Guidelines (ELG) and Standards for PFAS Manufacturers Under the Organic Chemicals, Plastics and Synthetic Fibers (OCSPF) Point Source Category.” The proposed rule was pending White House review prior to publication in the Federal Register, and would have limited the amount of per- and polyfluoroalkyl substances (PFAS) permitted in industrial wastewater discharges to waters of the United States. This proposed rule came on the heels of significant regulatory efforts on the part of the prior administration to address PFAS under several federal programs, including the following final rules, which are now in effect:

- Limiting exposure to PFAS in drinking water: The final rule, published April 10, 2024, set the maximum contaminant levels for PFAS in drinking water to 4 parts per trillion (ppt) for perfluorooctanoic acid (PFOA) and perfluorooctanoic sulfonate (PFOS) and 10 ppt for PFNA, PFHxS and HFPO-DA (GenX). A link to this final rule can be found here.
- Designation of PFOS and PFOA under the Comprehensive Environmental Remediation, Compensation and Liability Act (CERCLA): The final rule, published July 8, 2024, designated PFOS and PFOA as hazardous substances under CERCLA, which would require releases of these substances to be reported and remediated, and raised concerns about reopeners to address these PFAS which may remain at sites addressed under Superfund. A link to this final rule can be found here.
- PFAS recordkeeping and reporting: The final rule, published October 11, 2023, requires persons that manufacture (including import) or have manufactured PFAS and PFAS-containing chemical substances in any year since January 1, 2011, to submit information to the EPA regarding PFAS uses, production volumes, byproducts, disposal, exposures and existing information on environmental or health effects under the Toxic Substances Control Act Section 8(a)(7).A link to this final rule can be found here.
- Annual PFAS reporting: Section 7321 of the National Defense Authorization Act (NDAA) for fiscal year 2020 added certain PFAS to the list of chemicals covered by the Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act to be reported annually, and it provided a framework for the addition of other PFAS TRI reporting on an annual basis. A link to this final rule can be found here. [1]

In addition to the above final rules, a proposed rule pending under the Resource Conservation and Recovery Act would add nine PFAS to the list of hazardous constituents under the Appendix VII list of constituents that are subject to RCRA corrective action and would broaden the wastes subject to corrective action requirements to include any substance satisfying certain qualitative assessments under the statutory definition of "hazardous waste." It is unclear whether the Trump administration will further advance this proposed rule in light of the regulatory freeze. If the proposed rule is finalized, corrective action would include remediation of qualifying PFAS releases even if the specific PFAS is not identified as a characteristic or listed hazardous waste. A link to this proposed rule can be found here.

Additionally, in the spring of 2024, the EPA published updated Interim Guidance on the Destruction and Disposal of PFAS, which focused on underground injection, landfilling and thermal treatment technologies, including incineration. A link to the interim guidance can be found here.

We will continue to monitor developments with respect to the Trump administration's actions relative to PFAS regulation. New EPA administrator Lee Zeldin had, as a former congressman for New York, voted in support of legislation to address PFAS,

namely an amendment to H.R. 4350, the NDAA, which would have required national regulation of PFAS, strengthened disclosure requirements for PFAS manufacturers, provided PFAS exposure training to Department of Defense (DoD) medical providers and required the DoD to comply with safe incineration standards for PFAS. Then Congressman Zeldin also voted in favor of H.R. 2467 which would have required the EPA to set drinking water standards for PFOA and PFOS within two years, designate PFOA and PFOS as hazardous substances and air pollutants, set discharge limits of industrial releases of PFAS, prohibit unsafe incineration of PFAS wastes, and require comprehensive PFAS health testing. During his confirmation hearing, in response to comments from members of Congress about environmental challenges in their states, including PFAS contamination, Zeldin said, “Working with all of you to deal with these issues in your home state is something that will be a top priority of mine.” Notwithstanding Zeldin's comments, the EPA's priorities regarding PFAS regulation remain uncertain. Several states continue to push ahead with the establishment of their own cleanup standards and guidelines. A link to our running table of PFAS regulations can be found here.

[1] Note that the EPA subsequently issued a clarification to this final rule, stating that any PFAS added to the TRI under the NDAA are considered “chemicals of special concern,” meaning that companies must report releases of these PFAS even at very low quantities, with no de minimis exemption, and must also immediately notify downstream customers when their products contain these PFAS, starting on the effective date of the addition to the TRI.

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