

**BLOGS**

Environmental Protection Agency (EPA)

EPA Adds Five PFAS Compounds to its List of Regional Removal Management Levels and Regional Screening Levels

On May 18, 2022, the United States Environmental Protection Agency (“EPA”) announced that it has added five per- and polyfluoroalkyl (PFAS) compounds to its Regional Removal Management Levels (RMLs) and Regional Screening Levels (RSLs), a set of non-enforceable standards used to evaluate whether further action at a site is necessary. The RSLs and RMLs now include a total of six PFAS chemicals. The additions come as a part of EPA’s PFAS Roadmap launched in 2020. The PFAS Roadmap, developed by the EPA Council on PFAS, focuses around three central directives: (1) Research; (2) Restrict; and (3) Remediate.

PFAS compounds, also known as “forever chemicals,” are a group of man-made compounds whose potential presence in residential soil, industrial soil, and tap water have drawn heightened attention from legislators and businesses alike. EPA established RSLs and RMLs to assess potential human health risks from these forever chemicals. They are risk-based values that help EPA determine if further investigation or actions are needed to meet its public health goals.

Recently, EPA updated the RSLs and RMLs to include: hexafluoropropylene oxide dimer acid and its ammonium salt (HFPO-DA, also referred to as GenX); perfluorooctanesulfonic acid (PFOS); perfluorooctanoic acid (PFOA); perfluorononanoic acid (PFNA); and perfluorohexanesulfonic acid (PFHxS). EPA added the first PFAS substance, PFBS or perfluorobutanesulfonic acid, to the RSL and Regional RMLs lists in 2014 and updated it in 2021 when EPA released its updated toxicity assessment for PFBS. EPA updates its RSLs and Regional RMLs twice a year.

RMLs, RSLs, and Remediation

RMLs and RSLs are risk-based values used for site screening and sometimes as initial cleanup goals. While unenforceable, the values help EPA determine if further investigation or actions are needed to protect public health, such as, sampling, assessing risks, or taking further action.

RMLs are levels used to define areas, contaminants, and conditions that may warrant immediate intervention under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), such as providing hot spot remediation, excavation of soil, or alternative drinking water.

Related People

Allyson Cunningham

Partner

Kansas City

816.460.5616

allyson.cunningham@lathropgpm.com



Conversely, RSLs are used to identify contaminated air, tap water, or soil at a site that may warrant further investigation. Where chemical concentrations are found to exceed an RSL, then further evaluation of the potential risks by site contaminants may be deemed necessary. RSLs also may provide long-term targets to use during the analysis of different remedial alternatives when identifying initial cleanup goals at a site.

EPA has yet to officially designate any PFAS as a CERCLA hazardous substance or RCRA hazardous waste. In the interim, both state and federal regulators are expected to rely on RSLs to drive decision-making at contaminated sites.

EPA's RML and RSL Trajectory

Given the rapidly evolving nature of the science around PFAS compounds, it is possible that the initial risk-based levels in the RSLs and RMLs could change in the future, including becoming more conservative. Recently, the EPA has embraced the Minimal Risk Levels from the Agency for Toxic Substances and Disease Registry (ATSDR) for PFAS. This has resulted in them adopting a stricter standard when addressing potential exposures. EPA's RSL calculations are based on reference doses that are 10 times more stringent for PFOS and seven times more stringent for PFOA than the 70 parts per trillion standard on which the EPA had previously based their screening levels. It is also expected EPA will add additional PFAS chemicals as new risk assessments are performed.

EPA's New PFAS Health Advisory Levels

In addition to identifying RSLs and RMLs, on June 15, 2022, EPA issued its new health advisory levels (HALs) for four commonly used PFAS: PFOA (.004 ppt), PFOS (.02 ppt), GenX (10 ppt), and PFBS (2,000 ppt) as a part of its PFAS Strategic Roadmap. Though the HALs are non-enforceable and non-regulatory levels, many states and tribes use the HALs to determine what levels of contaminants to allow in drinking water. The updated HALs may complicate the use of the levels as guidelines because they are set at extremely low levels beyond the testing capability of commercial laboratories. Further complicating matters, EPA has already begun to use the existing HALs as support for setting clean up levels in remediation sites. The prior reliance on HALs, and the confusion from implementation of remedial clean-up based on the prior HALs, is indicative of challenges to come for those remediating PFAS contamination.

What's Next for PFAS Compounds

The EPA's decision to add five new PFAS compounds effectively reverses its decision to exclude RMLs from its 2019 Interim Recommendations to Address Groundwater Contaminated with Perfluorooctanoic Acid and Perfluorooctanesulfonate which had previously excluded RMLs. The significantly lower HALs pose a challenge for the regulated community, signaling that clean-up standards will likely be at levels much lower than previously identified and below a laboratory detection threshold. In the near future, PFOA and PFOS are expected to be designated as hazardous substances under CERCLA which would greatly expand potential liability for businesses involved with investigation or remediation project sites where PFAS may have potentially been used or manufactured.