

**LEGAL UPDATES**

EPA Responds to Petition for PFAS Rulemaking

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EPA announced plans to initiate two rulemakings involving PFAS, one that would list four PFAS compounds as Hazardous Constituents under the Resource Conservation and Recovery Act (RCRA), the federal hazardous waste law, and another that clarifies EPA's regulations by stating that the RCRA Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the broad statutory definition of hazardous waste. EPA also released its final human health toxicity assessment for GenX PFAS chemicals, the lowest of any PFAS, which could lead to stringent health guidance standards for the GenX chemicals.

Listing PFAS Compounds as Hazardous Constituents and RCRA's Corrective Action Program

EPA announced it will begin the process to propose adding four different PFAS compounds to the list of hazardous constituents under RCRA. RCRA authorizes EPA to "regulate hazardous wastes from cradle to grave" to ensure that at each stage of their lifecycle, hazardous wastes are safely handled, processed, and disposed. To begin the listing process, EPA will need to evaluate existing data on each of the compounds and establish a sufficient record to support the proposed rule. The PFAS compounds proposed to be added are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), and GenX.

EPA uses the RCRA list of hazardous constituents to determine whether wastes containing the constituents should be considered hazardous wastes. Under RCRA there are two types of wastes, characteristic and listed. EPA's proposed rulemaking is the first step in a two-step process that would lead to a hazardous waste listing. When a waste contains a hazardous constituent, EPA can propose to list the waste containing that constituent as a hazardous waste if it presents a substantial hazard to human health and the environment when improperly managed. EPA could choose to focus on waste streams from certain industrial processes or sectors it deems to present a risk of containing these PFAS. Because of the lengthy process to evaluate hazardous constituents and list hazardous wastes, a hazardous waste designation for PFAS will likely take time to develop.

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EPA can however require corrective action for hazardous constituents at treatment, storage, and disposal facilities, or TSDFs.

The second rulemaking would clarify EPA's regulations, stating that the RCRA Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the broad statutory definition of hazardous waste, as defined under RCRA section 1004(5). EPA intends for the rulemaking to clarify that emerging contaminants such as PFAS can be cleaned up through the RCRA corrective action process.

EPA Releases Updated Risk Assessment for GenX

GenX are fluoropolymers that are part of the PFAS chemical class and made without the use of perfluorooctanoic acid (PFOA). GenX compounds were originally approved by EPA as a substitute for PFOA because the agency believed they had better health and environmental impacts.

On October 25, EPA released the final human health toxicity assessment for hexafluoropropylene oxide (HFPO) dimer acid and its ammonium salt (referred to as "GenX chemicals"), which set a lower reference dose than was proposed in 2018. The assessment found that the risk of adverse health effects from GenX result from lower exposure levels than other PFAS compounds previously assessed by EPA. For example, the GenX chronic reference dose is 100 times lower than for PFBS.

EPA is also reevaluating toxicity information for PFOA and PFOS which were assessed by the agency in 2016 as well as developing new health assessments for five more PFAS compounds: perfluorodecanoic acid (PFDA), perfluorononanoic acid (PFNA), perfluorohexanoic acid (PFHxA), perfluorohexanesulfonic acid (PFHxS), and perfluorobutanoic acid (PFBA).

EPA's Office of Water will use the GenX assessment and other PFAS compound assessments to develop non-enforceable national drinking water advisory levels by spring of 2022.

Health advisory reference doses are also used as a metric to develop regulatory standards; in risk assessments under laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); in the Clean Water Act to assess the potential risk of pollutants in biosolids; and in the Resource Conservation and Recovery Act (RCRA) to develop cleanup levels for contaminated soil and groundwater. Reference doses are also used in state and local policymaking.

EPA Action on PFAS Looking Forward

EPA continues to follow the commitments set out in its PFAS Strategic Roadmap announced October 18th, 2021, which includes the release of the GenX final toxicity report. EPA's listing of four PFAS compounds as RCRA Hazardous Constituents, while not explicitly mentioning in the [PFAS roadmap](#), follows the roadmap's plan to initiate actions under multiple environmental authorities, including RCRA.

For more information, please contact [AllyCunningham](#), [Matt Walker](#) or your regular Lathrop GPM attorney.