Biden Administration Unveils Strategic Roadmap to Address PFAS

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Earlier this week, the Biden Administration announced a monumental plan to address impacts stemming from per- and polyfluoroalkyl compounds (PFAS).[1] While the announcement details the ongoing and future efforts of eight federal agencies, the biggest news of Monday's announcement was the unveiling of Environmental Protection Agency's (EPA) "PFAS Strategic Roadmap." The Roadmap sets self-imposed timeframes to complete rulemaking and research efforts for PFAS in a variety of environmental media, including air, land and water.[2] Because EPA adhered to most of its internal deadlines under its 2019 PFAS Action Plan, we expect the Roadmap will be a fairly accurate timeline of future EPA actions.

Remediation: In a long-anticipated move, EPA is proposing to designate PFOA and PFOS compounds as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with a final rule expected in Summer 2023. The EPA will also request input regarding designating other compounds such as precursors to PFAS and other subgroups of PFAS as hazardous substances. Such a designation could broadly increase potential liability across multiple industry sectors by allowing the EPA and other agencies to require cleanups and recoup PFAS-related clean-up costs and allow cost recovery among private responsible parties. Facilities would also be required to report PFAS releases that meet or exceed the limits assigned to these substances. The proposed rulemaking is expected to be available for public comment in Spring 2022.

Drinking Water: The Roadmap moves to propose a rule that establishes enforceable limits on PFOA and PFOS in drinking water by Fall of 2022 and finalize that rule by Fall 2023, which would complete a process initiated earlier this year. Although the EPA currently maintains recommended levels for PFAS in drinking water, no enforceable maximum contaminant levels have been established for any PFAS at the federal level. EPA also intends to continue testing for PFAS under a federal regulatory testing program for public water systems that may lead to drinking water standards for other PFAS in the future.

Chemical Reporting: In order to eliminate an exemption, EPA proposes to add PFAS to the "chemicals of special concern" list, which would remove the *de minimis* eligibility from the Toxic Release Inventory's (TRI) supplier notification requirement. EPA further plans to expand the types of PFAS that must be reported through the TRI. Both actions are expected by 2022. EPA also proposed to finalize an expansive one-time

reporting rule before January 1, 2023, and significantly increase its review of new types and uses of PFAS under the Toxic Substances Control Act.

Wastewater Limits and Water Quality: The Roadmap makes clear that controlling wastewater discharges of PFAS is a priority. EPA announced plans to establish new water quality criteria for PFOA and PFOS, including aquatic life criteria (Winter 2022), and human health criteria (Fall 2024), which are used to develop water quality standards and limits in wastewater discharge permits. Presently, no federal standards exist, and only a few states like Michigan and Minnesota have begun developing water quality criteria for PFAS. Additionally, EPA intends to address PFAS discharges through National Pollutant Discharge Elimination System (NPDES) permits by requiring certain dischargers to monitor for PFAS or implement Best Management Practices, and develop new state-level guidance recommending PFAS monitoring in state issued NPDES permits. Finally, the EPA will finalize a method for measuring PFAS compounds in other environmental media such as soils and wastewater by Fall 2022.

Air Monitoring: EPA plans to conduct further studies of PFAS air emissions, which may lead to listing of some PFAS as Hazardous Air Pollutants under the Clean Air Act and subjecting sources to emission controls. EPA intends to evaluate mitigation options by Fall 2022.

Research: EPA is proposing to publish toxicity assessments evaluating the health effects of GenX, a well-known short chain replacement compound by Fall 2021, and publish a health advisory for GenX by Spring 2022.

Other agency efforts announced include:

- The Department of Defense to conduct PFAS cleanup assessments at nearly 700 installations.
- The Food and Drug Administration to expand its testing of food in order to estimate potential dietary exposure to PFAS.
- The Department of Agriculture to support research on PFAS in the food system.
- The Department of Homeland Security to investigate and remediate PFAS at its facilities.
- The Department of Health and Human Services to review "the rapidly evolving science" surrounding PFAS exposure.
- The Federal Aviation Administration to conduct research on the use of firefighting foam containing PFAS.

It will be imperative for manufacturers and companies that could be affected by new PFAS regulations to stay informed on these proposals and agency efforts. In the Roadmap, EPA made a point of expressing its intent to hold polluters accountable, "ensuring that they assume responsibility for remediation efforts and prevent any future releases," particularly in environmental justice areas.

Lathrop GPM is following this and other PFAS legislative developments as attention over PFAS continues to grow. Follow the PFAS Playbook for further developments.

[1] Press Release, The White House, *Fact Sheet: Biden-Harris Administration Launches Plan to Combat PFAS Pollution* (Oct 18, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/18/fact-sheet-biden-harris-administration-launches-plan-to-combat-pfas-pollution/.

[2] EPA, *PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024*, Oct. 2021, https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.