A Year of Changes Under EPA's PFAS Strategic Roadmap

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On November 17, 2022, the US Environmental Protection Agency (EPA) released "A Year of Progress Under EPA's PFAS Strategic Roadmap," which summarizes its actions since the PFAS Strategic Roadmap was released in October 2021. The PFAS Strategic Roadmap set forth the EPA's timelines for its plans to study and regulate per- and poly-fluoroalkyl substances (PFAS), a vast group of man-made chemicals found in many consumer products, sometimes known as "forever chemicals," due to their durability. They have been the focus of government scrutiny in recent years due to growing concerns about their impact on environmental and human health.

The three primary goals of the EPA's Strategic Roadmap are: 1) to research the effects of PFAS on human health and ecological systems, as well as effective interventions; 2) to restrict and prevent PFAS from entering air, land and water through a comprehensive approach; and 3) to broaden and accelerate remediation efforts to clean up existing PFAS contamination. These stated goals mean that manufacturers and other businesses using PFAS can expect to see more requirements for testing and reporting PFAS usage; new designations of PFAS as hazardous substances and new health advisories; stricter permitting, regulation and enforcement measures; and demands to contribute financially to environmental remediation efforts. Manufacturers should be well informed about recent EPA actions to best protect their businesses from individual and state actions.

Here are a few key EPA actions that have taken place or are expected within the next year, which will affect many industries.

Stricter Requirements for Testing and Reporting

+ **National PFAS Testing Strategy**. In October 2021, The EPA announced the National PFAS Testing Strategy in order to direct research and set policies and regulatory actions to restrict and remediate PFAS.
+ **Toxic Substances Control Act testing orders issued**. In June 2022, the EPA issued the first in a series of Toxic Substances Control Act (TSCA) test orders, requiring five companies to conduct and submit testing on two of the most widely used PFAS, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The EPA had previously issued requests to three PFAS manufacturers in January 2022 for information on their current and past PFAS production and management and disposal practices at 24 facilities.
+ **Additional reporting rules to be proposed**. The EPA also plans to propose additional rules to require public reporting on how PFAS are used and released, as well as a rule to remove certain exemptions from PFAS reporting under the Toxics Release Inventory program. In addition, the EPA will propose a Significant New Use Rule to prevent discontinued use of certain PFAS from reentering the marketplace without EPA review.

New Designations as Hazardous Substances and New Health Advisories

+ **Two PFAS to be designated as CERCLA hazardous substances**. In September 2022, the EPA proposed to designate PFAS and PFOA as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as "Superfund." Companies who continue to manufacture and sell products containing PFOA and PFOS will be required to monitor and publicly report releases of the chemicals to the government, and any past or present users may be held responsible for cleanup efforts.
+ **PFAS removed from approved, safer ingredients lists**. Additionally, the EPA issued an open letter regarding

PFAS contamination in fluorinated pesticide and chemical packaging, took steps to remove 12 PFAS from the current list of approved inert ingredients in pesticide products, and removed several PFAS from the Safer Chemicals Ingredients List.

+ **Drinking water health advisories**. The EPA released drinking water health advisories for four PFAS in June 2022.These include perfluorobutane sulfonic acid and its potassium salt (PFBS), hexafluoropropylene oxide (HFPO) dimer acid, and its ammonium salt ("GenX" chemicals). These advisories indicate the level of drinking water contamination in which adverse health effects are not expected to occur.
+ **Finalized Rule for monitoring drinking water nationwide**. In December 2021, the US Environmental Protection Agency (EPA) finalized the Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) to establish nationwide monitoring for 29 PFAS in drinking water. The rule requires participating drinking water systems to collect samples from 2023–2025 and report final results through 2026.
+ **PFAS risk in biosolids to be identified**. The EPA will release a complete a full risk assessment on PFOA and PFOS in biosolids for release in 2024, and a draft of the biosolids risk-assessment screening framework will be released in late 2022. This risk assessment will estimate high-end exposures for a wide range of chemical contaminants due to use and disposal of biosolids.

Changes in Discharge Permitting and Remediation Efforts

+ **Clean Water Act permitting pressure**. In April, the EPA released a memo to EPA's Regional offices to encourage permitting authorities to proactively use the Clean Water Act to reduce discharges of PFAS at the source and to obtain more comprehensive monitoring information from potential sources. The EPA plans to send a memo to state permitting authorities, enabling them to put pressure on businesses using or manufacturing products containing PFOA and PFOS. The EPA has also announced two new rulemaking actions under the Resource Conservation and Recovery Act to hold businesses and manufacturers accountable for discharges of PFAS. The EPA expects to propose both rules in 2023.
+ **Updated guidelines for upstream discharges**. The EPA will soon release its final Effluent Limitation Guidelines Plan 15, regarding industrial PFAS discharges. The EPA will also release new guidance to states on leveraging National Pollutant Discharge Elimination System permits and pretreatment programs to increase monitoring of PFAS dischargers. This will enable states to collect data from manufacturers on PFAS discharges and to take steps to restrict PFAS usage.
+ **Distribution of $10 billion for investments under the Bipartisan Infrastructure Law**. EPA began distributing $10 billion in funding provided by Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act) to address PFAS in drinking water and waste water, and to clean up Superfund and brownfields sites.
+ **Administrative order requires manufacturer to participate in remediation efforts**. In November 2022, the EPA issued an administrative order on consent to a manufacturer to offer to sample and provide treatment for PFAS contamination in drinking water near one of its facilities in Illinois.

New Science, New standards and Regulations

Since the PFAS Strategic Roadmap was released a year ago, the EPA has issued new scientific studies and new regulatory standards. The Administration's "Whole-of-Government Effort" means that businesses can expect to be subject to new regulations from multiple government agencies. As the scientific knowledge of the effects of PFAS changes and standards change, businesses will be forced to adapt to new usage restrictions, and potentially face consequences for non-compliance to standards that did not previously exist.

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