EPA Seeks Input On Potential New Hazard Designations

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On April 12, 2023, the US Environmental Protection Agency (EPA) released an Advanced Notice of Proposed Rulemaking (ANPRM) in which EPA seeks public input whether certain per- and polyfluoroalkyl substances (PFAS) should be designated “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

In September 2022, EPA proposed rulemaking to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as “hazardous substances” under CERCLA. The public comment period ended November 7, and EPA is currently reviewing those comments. It is expected that EPA will finalize the rulemaking in the next few months.

In this ANPRM, EPA seeks input on whether it should also designate perfluorobutane sulfonic acid (PFBS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA), (sometimes referred to as GenX), perfluorobutanoic acid (PFBA), perfluorohexanoic acid (PFHxA) and perfluorodecanoic acid (PFDA) as “hazardous substances” pursuant to CERCLA. If finalized, EPA will be able to force entities that have released “hazardous substances” on land or in water to pay for the costs of remediation. Those costs not only include cleanup costs, but also damages to natural resources and certain health assessments and effects. Further, CERCLA imposes strict liability on current and past owners of a facility, those that generated or disposed of hazardous substances, and those that transported hazardous waste.

In its ANPRM, EPA also seeks input concerning whether PFAS chemicals can or should be regulated as a group or category of chemicals. This is an important issue on which to comment, as studies have shown that not all PFAS behave similarly. In fact, studies demonstrate that certain PFAS, including fluoropolymers, are non-toxic, not bioavailable, non-water soluble and non-mobile molecules, and have been deemed to have no significant environmental and human health impacts.

EPA will accept comments for 60 days following publication of the ANPRM at Regulations.gov, under Docket ID No. EPA-HQ-OLEM-2022-0922. It is critically important for those industries who rely on PFAS and for which there are no suitable alternatives to submit comments before the deadline.

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