

EPA's New PFAS Strategic Roadmap Could Present Potholes for the Unprepared

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The Biden administration has not hidden the ball on its environmental priorities, and has been very clear that tackling PFAS, a family of chemical compounds sometimes referred to as “forever chemicals” was near the top of the list. On Monday, October 18, 2021, EPA published a new PFAS Strategic Roadmap that clarifies how deep and how wide this effort will be. Experts have expected EPA to promulgate drinking water standards for at least some PFAS compounds during Biden’s first term in office, and the roadmap confirms the agency’s intent to publish a proposed rule by next fall, with a final rule by 2023. But the roadmap lays out numerous other regulatory goals related to PFAS that EPA intends to tackle in the next three years. Among the more notable goals outlined in the roadmap, EPA intends to:

- Increase the reporting responsibilities for importers and manufacturers of PFAS compounds under the Toxic Substances Control Act (TSCA);
- Publish guidelines to limit PFAS discharges from industrial sources and leverage National Pollution Discharge Elimination System (NPDES) permits to reduce discharges of PFAS to regulated waters;
- Publish final recommended ambient water quality criteria for PFAS to assist local regulators with developing new standards;
- Propose the designation of specific PFAS compounds as CERCLA hazardous substances (proposed rule expected spring of 2022);
- Continue to advance the science assessing human health risks around PFAS compounds, methods to detect and measure PFAS in the environment, and technologies for drinking water and wastewater treatment;
- Use enforcement tools to address PFAS releases at facilities and address existing contamination.

Any one of these goals would be significant, and represent a substantial increase in regulation on certain sectors. The implementation of drinking water standards alone will likely increase the costs of drinking water

treatment and source water protection for providers in many areas of the country, while effective treatment technologies are still being developed. It would be difficult to overstate the significance of designating some PFAS compounds as CERCLA (aka, Superfund) hazardous substances. A cottage industry has already developed around litigation with major PFAS manufacturers and users (such as the U.S. military) in the absence of clear, uniform PFAS standards. Regulating the chemicals under CERCLA would potentially subject those manufacturers and users, and innumerable other actors that transported or disposed of materials containing PFAS, to strict liability for cleanup. With many PFAS chemicals ubiquitous in the environment, defining the Superfund sites these actors may be responsible for is likely to take significant effort. This uncertainty will have implications for commercial real estate transactions in areas with PFAS impacts as well.

The Strategic Roadmap is just a snapshot of the work EPA has underway or in the pipeline, and is short on the details necessary to fully understand the burdens and benefits this effort may entail. For businesses that have ever touched, or been touched by, PFAS compounds, now is a good time to start looking into potential liabilities and mitigation strategies, before new regulations force the issue.