

EPA RETAINS PFOA AND PFOS AS CERCLA HAZARDOUS SUBSTANCES

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On September 17, 2025, EPA announced its decision to preserve the [rule](#) designating perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS") as "Hazardous Substances" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("PFAS CERCLA Rule"). In a relatively short [motion](#) filed by EPA in the suit brought by the US Chamber of Commerce challenging the listings, EPA stated that "EPA has completed its review and has decided to keep the Rule."

EPA also submitted a [press release](#) regarding the PFAS CERCLA Rule, in which Administrator Zeldin stated: "When it comes to PFOA and PFOS contamination, holding polluters accountable while providing certainty for passive receivers that did not manufacture or generate those chemicals continues to be an ongoing challenge." He further said that EPA "will need new statutory language from Congress to fully address our concerns with passive receiver liability," confirming that EPA will support some version of the legislation that is currently being considered in Congress to exempt passive receivers such as municipal water systems, agricultural operations, and others.

HOW DOES THIS DECISION AFFECT YOUR BUSINESS?

Now that EPA has issued a clear declaration of their intent to retain the listings, businesses need to retrench and ensure that they are appropriately managing their compliance. There are numerous ways this designation may affect your business, including:

PHASE I ENVIRONMENTAL SITE ASSESSMENTS ("PHASE I ESAS")

PFOA and PFOS must now be evaluated in Phase I ESAs in order to satisfy [All Appropriate Inquiries](#). Including these substances in Phase I ESA reports will alter the way that PFAS risk is assessed and underwritten in real estate transactions, and it may impact the availability of environmental insurance coverage. For additional information, please review [BCLP's Insight](#) that addresses these issues in further detail.

POTENTIALLY RESPONSIBLE PARTIES ("PRPS")

Current or former owners or operators of a facility may be jointly and severally liable for the investigation and remediation of CERCLA Hazardous Substances. For example, EPA could order your business to address historic or ongoing PFOA or PFOS releases as a PRP (including re-opener liability as noted below). Even if your business is not named as a PRP, it could be subject to contribution claims by various entities seeking to allocate some portion of their cleanup costs, associated with remediating PFOA or PFOS. In addition, PRPs that include current or former facility owners or operators, generators, arrangers, and transporters, now face potential liability arising from the disposal of PFOA and PFOS materials.

SITE REOPENERS OR MODIFICATIONS

Depending on the terms of any prior settlements or closure documents, sites that have been remediated and/or closed through a regulatory process may be subject to “reopening” to address PFOA and PFOS contamination. Moreover, sites that are currently undergoing an investigation or remediation process may now be required to investigate and address PFOA and PFOS impacts.

REPORTING REQUIREMENTS

Under the Emergency Planning and Community Right-to-Know Act (“EPCRA”), any person in charge of a vessel or a facility must immediately report releases of PFOA and PFOS to various entities, including the National Response Center, if they exceed the reportable quantity threshold. The reportable quantity for each of these PFAS compounds is one pound within a 24-hour period, which is significantly lower than the typical range of 100-5,000 pounds for reportable quantities for other Hazardous Substances. EPA has developed some [helpful information](#) discussing this requirement.

HAZARDOUS MATERIALS TRANSPORTATION ACT (“HMTA”)

The Department of Transportation must list and regulate PFOA and PFOS as Hazardous Materials under [HMTA](#). This could impact how these substances are transported by your business and relevant requirements such as training, placarding, and packaging.

TRANSFER REQUIREMENTS FOR GOVERNMENT-OWNED PROPERTY

Federal agencies that transfer or sell their property will be required to provide information about the storage, release, or disposal of PFOA or PFOS, pursuant to [CERCLA § 120\(h\)](#). If deemed appropriate, an agency will issue a covenant verifying that it has cleaned up any existing contamination or will take the necessary actions to do so in the future.

ENFORCEMENT PROVISIONS

Administrator Zeldin of the EPA recently [stated](#) the following: “When it comes to PFOA and PFOS contamination, holding polluters accountable while providing certainty for passive receivers that

did not manufacture or generate those chemicals continues to be an ongoing challenge ... EPA intends to do what we can based on our existing authority, but we will need new statutory language from Congress to fully address our concerns with passive receiver liability.”

In April of 2024, EPA issued an advisory guidance [memorandum](#) discussing how EPA intends to enforce the PFAS CERCLA provisions. In short, EPA has indicated that it “does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly owned airports and local fire departments, and farms where biosolids are applied to the land.”

As of the date of this publication, it is unclear how EPA will enforce the PFAS CERCLA Rule. Unless and until Congress enacts legislation to create one, there is no blanket exemption for enforcement, and as a result, EPA still has the authority to investigate and order remedial action at all types of facilities. In addition, even if legislative action is taken, it is uncertain whether it will insulate passive receivers from CERCLA contribution claims by entities other than EPA, in addition to direct enforcement.

CONCLUSION

After much speculation about whether EPA would retain or revoke the CERCLA listing, there is a clear answer from the agency, and it is now up to the courts to decide whether the listing will stand. In the meantime, the listings are in effect and have significant impacts on industries who have historically interacted with these chemicals.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by the PFAS CERCLA Rule, please contact Tom Lee, Bryan Keyt, Erin Brooks, John Kindschuh, or any other member of our PFAS team at BCLP.

RELATED CAPABILITIES

- PFAS

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