

Insights

COURT UPHOLDS HAZARDOUS SUBSTANCE CLASSIFICATION FOR PFOA AND PFOS UNDER CERCLA

Aug 20, 2026

On August 18, 2026, three judges on the U.S. District Court of Appeals for the District of Columbia (“the Court”) denied a petition to overturn the United States Environmental Protection Agency’s (“EPA”) May 2024 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 this case, seven interest groups representing industries that use, transport, or discharge PFOA and PFOS petitioned to overturn the PFAS CERCLA Rule. Petitioners advanced three challenges to the hazardous designation:

1. EPA misinterpreted the term “may present substantial danger” in CERCLA’s definition of a Hazardous Substance;
2. EPA’s cost-benefit analysis provided insufficient notice to the parties; and
3. EPA’s cost-benefit analysis and decision to regulate in the face of uncertainty were arbitrary and capricious.

Ultimately, the Court denied the petition on numerous grounds, including a textual review of the statute and by finding that EPA adequately determined the costs and benefits of the PFAS CERCLA Rule. In conclusion, the Court affirmed that “EPA made a reasoned decision on the record” before it designated PFOA and PFOS as Hazardous Substances under CERCLA. In designating a Hazardous Substance under CERCLA, EPA needs only find there is a possibility the released substance may present a substantial danger to public health.

Accordingly, the PFAS CERCLA Rule remains in effect while the industry groups decide whether to appeal this decision to the U.S. Supreme Court.

BCLP has developed helpful resources to assist businesses navigate and manage compliance with the PFAS CERCLA Rule in prior publications. For additional information regarding how this decision affects the PFAS CERCLA Rule, please contact Erin Brooks, Christian Bromley, Daron Ravenborg, John Kindschuh, or any member of the PFAS team.

Related Capabilities

- PFAS

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