



## 2021 PFAS Strategic Roadmap Outlines EPA's Whole-of-Agency Approach to Addressing "Forever Chemicals" through 2024 and Beyond

On October 18, 2021, the U.S. Environmental Protection Agency (EPA) released its comprehensive strategy for addressing per- and polyfluoroalkyl substances (PFAS), "PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024" (Roadmap). PFAS are a large group of manmade chemicals that have been widely used in various consumer, commercial, and industrial applications since the around 1940s and more recently have been discovered in environmental media (e.g., groundwater), as well as in plants, animals, and humans. PFAS do not tend to break down naturally, and evidence suggests that exposure to PFAS can lead to adverse health effects. As such, the EPA Council on PFAS, established by EPA Administrator Michael S. Regan in April 2021, developed the Roadmap to "pursue a rigorous scientific agenda to better characterize toxicities, understand exposure pathways, and identify new methods to avert and remediate PFAS pollution."<sup>1</sup>

The Roadmap highlights EPA's "whole-of-agency" approach, that includes proposed actions across program offices, as well as the PFAS "lifecycle" (i.e., activities that occur prior to PFAS entering the environment, such as manufacturing). EPA's "Key Actions" illustrate this approach and are informed by one or more of the Roadmap's three central directives: (1) Research; (2) Restrict; and (3) Remediate. A selection of the Roadmap's Key Actions is summarized below.

### Office of Water

- Establish a National Primary Drinking Water Regulation (NPDWR) for PFOA and PFOS – In March 2021, EPA published the Fourth Regulatory Determinations, which included a final determination to regulate PFOA and PFOS in drinking water. EPA expects to issue a proposed NPDWR for PFOA and PFOS in fall 2022. A final regulation is anticipated in fall 2023.
- Reduce PFAS Discharges through NPDES Permitting – EPA is seeking to use existing NPDES authorities to reduce PFAS discharges at the source. Proposals include monitoring requirements at facilities where PFAS are expected or suspected to be present in wastewater and stormwater discharges and issuing new state permitting guidance. These proposals are expected winter 2022.
- Restrict PFAS Discharges from Industrial Sources through a Multi-Faceted Effluent Limitations Guidelines (ELG) Program – By 2024, EPA plans to make significant progress in its ELG regulatory work by addressing PFAS from specific industrial sources. As examples, EPA intends to: (1) Develop rules to restrict PFAS discharges from industrial categories, where existing data support it (e.g., plastics and synthetic fibers); (2) Study facilities where EPA has preliminary data on PFAS discharges (e.g., electronic components); and (3) Complete data reviews for industrial categories for which there is little known information on PFAS discharges (e.g., plastics molding and forming).
- Finalize Risk Assessment for PFOA and PFOS in Biosolids – By winter 2024, EPA intends to complete a risk assessment to determine whether to regulate PFOA and PFOS in biosolids.

### Office of Air and Radiation

- Build Technical Foundation to Address PFAS Air Emissions – No PFAS compounds are currently listed as hazardous air pollutants (HAPs), but EPA is building the technical foundation to inform future decisions, e.g., identifying sources of PFAS air emissions; developing and finalizing monitoring approaches for measuring stack emissions and ambient concentrations of PFAS; and developing information on cost-effective mitigation technologies. EPA expects to evaluate mitigation options, including listing certain PFAS as HAPs and/or pursuing other regulatory and non-regulatory approaches, by fall 2022.

OCTOBER 28, 2021

### CONTACT

**MATTHEW C. WOOD**  
*mwood@babstcalland.com*  
412.394.6583

**MACKENZIE M. MOYER**  
*mmoyer@babstcalland.com*  
412.394.6578

**Pittsburgh, PA**  
Two Gateway Center  
603 Stanwix Street  
Sixth Floor  
Pittsburgh, PA 15222  
412.394.5400

**BABSTCALLAND.COM**

<sup>1</sup> PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024, 6.

## **Office of Land Emergency and Management**

- Designate PFOA and PFOS as CERCLA Hazardous Substances – EPA intends to publish a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances in spring 2022 (with a final rule expected summer 2023). These designations would require facilities to report PFOA and PFOS releases above applicable reportable quantities and allow EPA to use additional enforcement and cost recovery authority, including potentially “reopening” previously remediated Superfund sites.
- Issue Advance Notice of Proposed Rulemaking (ANPR) for Various PFAS under CERCLA – EPA expects to issue an ANPR in spring 2022 to propose designating other PFAS as hazardous substances under CERCLA and to seek input on designating precursors, additional PFAS, and groups or subgroups of PFAS.

## **Office of Chemical Safety and Pollution Prevention**

- Develop National PFAS Testing Strategy – EPA is developing a national PFAS testing strategy to address data gaps regarding PFAS toxicity and better understand potential hazards from categories of PFAS (most PFAS have little or no toxicity data). EPA intends to use its TSCA authority to require PFAS manufacturers to fund and conduct additional studies, with the first round of test orders on selected PFAS expected to be issued by the end of 2021.

## **Cross-Program Actions, Public Engagement, and Other Developments**

In addition to individual programmatic actions, EPA’s “whole-of-agency” approach includes collaboration between EPA offices, utilizing enforcement tools from multiple environmental authorities (e.g., RCRA, CERCLA, the Clean Water Act, and TSCA), to identify and address past and ongoing PFAS releases from various sources. These tools include, among other things, conducting inspections, collecting data, and issuing information requests, as well as addressing or limiting future releases, and likely will expand in the coming years. At the recommendation of the National Environmental Justice Advisory Council, EPA will also directly engage with communities in all EPA Regions to understand the impacts of PFAS contamination on their lives – experiences EPA will rely on to inform the actions summarized in the Roadmap. Similarly, EPA has identified developing meaningful educational materials as an important tool to assist the broader public in understanding PFAS and their potential risks. To keep stakeholders informed, EPA will report annually on its progress implementing the Roadmap’s actions.

Recent developments indicate that EPA aims to move swiftly to accomplish its goals. One week after releasing the Roadmap, EPA announced that it had finalized a human health toxicity assessment for GenX chemicals (a subset of PFAS), which the agency identified in the Roadmap as a fall 2021 goal. The finalized assessment represents a preliminary step toward developing health advisory levels (HALs) for GenX under the Safe Drinking Water Act, an action that EPA expects to complete in spring 2022. Although HALs are informational in nature (i.e., they are non-regulatory and non-enforceable), their development could be an interim step toward EPA establishing NPDWRs for GenX chemicals.

On October 26, 2021, in response to a petition from New Mexico Governor Michelle Lujan Grisham, EPA Administrator Regan announced that EPA plans to initiate two rulemakings to address PFAS. Under the first rulemaking, EPA will propose adding four PFAS as RCRA Hazardous Constituents, PFOA, PFOS, PFBS, and GenX, making them subject to corrective action requirements (such a designation would also inform future efforts to regulate PFAS as a listed hazardous waste). The second proposed rulemaking, related to the first, will clarify in applicable regulations that emerging contaminants such as PFAS (that meet the statutory definition of hazardous waste) can be cleaned up via the RCRA corrective action process. EPA Administrator Regan specifically highlighted these proposed rulemakings as part of EPA’s broader strategy to address PFAS contamination.

## **Conclusion**

The Roadmap represents EPA’s broadest strategy to address PFAS since the agency released its 2019 PFAS Action Plan. That is, it sets specific timeframes to accomplish a range of identified actions that span multiple EPA offices, various statutory and regulatory programs, and the “lifecycle” of PFAS. Moreover, as many of EPA’s actions represent preliminary or interim steps in their respective regulatory processes, and as EPA continues to gather data on PFAS, stakeholders likely can expect the Roadmap to evolve over time as EPA accomplishes its goals (e.g., EPA may add new, future actions).

Despite the speed at which EPA and the Biden administration appear to be moving to address PFAS, many states have developed (or are currently developing) their own applicable regulations. For example, in recent years, New Jersey set maximum contaminant levels (MCLs) in drinking water for PFOA, PFOS, and PFNA, and designated all three compounds as hazardous substances under state law. In Pennsylvania, the Department of Environmental Protection is in the process of proposing MCLs in drinking water for PFOA and PFOS. In short, while EPA implements its strategy over the coming months and years, relevant parties in many states have been (or will be) operating under applicable state regulations. The Roadmap and related materials are available on EPA’s website [here](#).

Babst Calland will continue to track EPA’s proposed actions (and other developments, e.g., at the state level) and are available to assist you with PFAS-related matters. For more information for this or other remediation matters, please contact Matthew C. Wood at (412) 394-6583 or [mwood@babstcalland.com](mailto:mwood@babstcalland.com), Mackenzie Moyer at (412) 394-6578 or [mmoyer@babstcalland.com](mailto:mmoyer@babstcalland.com), or any of our other [environmental attorneys](#).

---

PITTSBURGH, PA | CHARLESTON, WV | SEWELL, NJ | STATE COLLEGE, PA | WASHINGTON, DC

Babst Calland was founded in 1986 and has represented environmental, energy and corporate clients since its inception. Our attorneys concentrate on the current and emerging needs of clients in a variety of industry sectors, with focused legal practices in construction, corporate and commercial, creditors' rights and insolvency, emerging technologies, employment and labor, energy and natural resources, environmental, land use, litigation, public sector, real estate and transportation safety. For more information about Babst Calland and our practices, locations or attorneys, visit [babstcalland.com](#).

This communication was sent by Babst Calland, headquartered at Two Gateway Center, Pittsburgh, PA 15222.

This communication is privately distributed by Babst, Calland, Clements and Zomnir, P.C., for the general information of its clients, friends and readers and may be considered a commercial electronic mail message under applicable regulations. It is not designed to be, nor should it be considered or used as, the sole source of analyzing and resolving legal problems. If you have, or think you may have, a legal problem or issue relating to any of the matters discussed, consult legal counsel.

This communication may be considered advertising in some jurisdictions. To update your subscription preferences and contact information, please [click here](#). If you no longer wish to receive this communication, please [reply here](#). To unsubscribe from all future Babst Calland marketing communications, please [reply here](#).

©2021 Babst, Calland, Clements and Zomnir, P.C. All Rights Reserved.