



U.S. EPA Releases Second Annual Progress Report Updating its PFAS Strategic Roadmap, Highlighting Progress, Delays, and Future Actions

On December 14, 2023, the U.S. Environmental Protection Agency (EPA) released its Second Annual [Progress Report](#) to its 2021 [PFAS Strategic Roadmap](#), summarizing updates on the agency's actions and goals to address per- and polyfluoroalkyl substances, also known as PFAS. Although beyond the scope of this *Alert*, it is notable that many of EPA's actions and proposed actions described below have faced opposition by various parties.

PFAS, which have garnered increased attention from state and federal regulators over the last few years, are a group of thousands of manmade chemicals that have been widely used for decades in various consumer, commercial, and industrial applications. Some of the most common PFAS applications include manufacturing water-, stain-, and heat-resistant products and as ingredients in aqueous film forming foams (AFFF) used to extinguish certain kinds of chemical fires.

The 2021 Roadmap highlights EPA's "whole-of-agency" approach to PFAS, which, with the two Progress Reports, includes proposed actions across multiple program offices focusing on the PFAS "lifecycle," i.e., manufacturing, processing, distribution in commerce, use, and disposal, as well as addressing PFAS in the environment. Informing EPA's focus on the PFAS lifecycle are the 2021 Roadmap's three central directives: (1) Research; (2) Restrict; and (3) Remediate. Some of the major highlights from the Second Progress Report include:

1. In January 2023, EPA released its 15th Effluent Limitations Guidelines (ELG) Plan for setting technology-based standards to address PFAS discharges by industry. Among other things, EPA announced in the ELG Plan that it will be pursuing a rulemaking to address discharges from landfills and implementing a study of influent from Publicly Owned Treatment Works to identify industries that warrant PFAS ELGs. This rulemaking has not been proposed yet.
2. On March 29, 2023, EPA published a [proposed rule](#) to regulate six PFAS under the Safe Drinking Water Act. This proposed rule would establish enforceable individual maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), the two most common and well-studied PFAS (4 parts per trillion each) and a hazard index MCL for mixtures containing one or more of four other PFAS. Subject to an implementation period, this proposed rule would require public water systems to monitor for each of the six PFAS, notify the public of exceedances, and take action to reduce PFAS exceedances in drinking water. This rule is currently targeted to be finalized in Q1 2024.
3. On October 11, 2023, EPA published a [final rule](#) setting reporting and recordkeeping requirements under the Toxic Substances Control Act (TSCA) for PFAS. The final rule requires those who manufacture (or import) or have manufactured (or imported) PFAS or PFAS-containing articles since January 1, 2011, to report certain information on their PFAS uses, production volumes, disposal, exposures, and hazards.
4. On October 31, 2023, EPA published a [final rule](#) adding increased reporting requirements for PFAS under the Emergency Planning and Community Right-to-Know-Act's Toxics Release Inventory (TRI) and the Pollution Prevention Act. This final rule designates all PFAS listed, or to be listed, on the TRI as "chemicals of special concern" that are no longer eligible for a de minimis exemption that allows facilities to exclude small concentrations of chemicals in mixtures or other trade name products from release and waste management calculations. EPA also eliminated a de minimis exemption from Supplier Notification Requirements that exempted suppliers from providing notifications for chemicals of special concern present in mixtures or trade name products at concentrations below 1% of the mixture (or 0.1% for carcinogens). This rule became effective on November 30, 2023, and will apply to the reporting year beginning on January 1, 2024.

DECEMBER 22, 2023

CONTACT

MATTHEW C. WOOD

mwood@babstcalland.com

412.394.6583

Pittsburgh, PA

Two Gateway Center

603 Stanwix Street

Sixth Floor

Pittsburgh, PA 15222

412.394.5400

BABSTCALLAND.COM

Some of EPA's actions, e.g., PFAS MCLs for drinking water, have been delayed beyond their originally anticipated timelines. This includes EPA's proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which would provide EPA and other CERCLA-delegated agencies additional authority to clean up PFOA and PFOS in the environment. Such authority includes: (1) responding to PFOA/PFOS releases without making an imminent and substantial danger finding; (2) requiring potentially responsible parties (PRPs) to clean up PFOA/PFOS contamination; and (3) recovering cleanup costs from PRPs (private parties could also recover cleanup costs from other PRPs if they meet certain requirements). The final rule was originally set to be published in 2023 but is currently targeted to be finalized in Q1 2024.

EPA is also developing proposed rulemakings to regulate PFAS under the Resource Conservation and Recovery Act (RCRA) that would designate four PFAS as "hazardous constituents" subject to RCRA corrective action and revise RCRA regulations to address PFAS that are not regulatory "hazardous wastes," but otherwise meet the definition of "hazardous waste" under RCRA section 1004(5), 42 U.S.C. § 6903(5). More information on the development of these proposed rules is available [here](#) and [here](#).

Other actions touted by EPA include releasing its [PFAS Analytic Tools](#), which provide data and resources regarding PFAS manufacturing, releases, and other information, and investment in research and analysis to better understand and inform decisions regarding PFAS. EPA noted that its researchers published more than 40 papers on PFAS, presenting new information on measuring PFAS, analyzing human health and ecological effects of PFAS, and other topics. One of the questions common to certain stakeholders is how to properly dispose of PFAS waste. At the time of writing, EPA planned to update its "Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products" by December 2023. EPA reiterated in the Second Progress Report that continued research, sampling, and coordination between governments, industry, academia, and communities is necessary to better understand the PFAS lifecycle.

Broadly, the 2021 Roadmap and its two Progress Reports highlight the breadth of EPA's actions and goals to address PFAS and regulatory actions and enforcement measures should be expected to increase as EPA and stakeholders learn more about PFAS. Understandably, these EPA documents do not account for specific actions that states have taken or plan to take to address PFAS, including developing their own drinking water MCLs and cleanup standards, banning the use of PFAS-containing AFFF, and/or banning the use of PFAS in other products. Given the differences between how states and the federal government have addressed PFAS, it will continue to be important for affected parties to understand their potentially separate obligations under federal and state law.

As the federal government and states continue to take action to address PFAS across many program areas, Babst Calland attorneys will track these developments and are available to assist you with PFAS-related matters. For more information on this development or related matters, please contact Matthew C. Wood at (412) 394-6583 or mwood@babstcalland.com, or any of our other [environmental attorneys](#). For additional resources and more information on other PFAS developments, please visit Babst Calland's *PFAS Perspectives* page, [here](#).

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | 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 aerospace, construction, corporate and commercial, emerging technologies, employment and labor, energy and natural resources, environmental, litigation, public sector, real estate, land use and zoning, pipeline and hazardous materials safety, and transportation technology and energy. 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](#).

©2023 Babst, Calland, Clements and Zomnir, P.C. All Rights Reserved.