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EPA Will Retain PFOA and PFOS CERCLA Hazardous Substance Designation

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On September 17, 2025, EPA **announced** that it will retain the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substance designation for PFOA and PFOS, two PFAS compounds. The **final rule** designating PFOA and PFOS (and their salts and structural isomers) as hazardous substances under CERCLA became effective on July 8, 2024. Substances designated as hazardous under CERCLA are subject to release reporting requirements, specific spill rules, release tracking requirements, and additional reporting mandates under other environmental statutes. Further, EPA may require potentially responsible parties – PRPs – to clean up or pay for the cleanup of hazardous substances. In conjunction with EPA’s announcement, the U.S. Department of Justice submitted a **filing** in *Chamber of Commerce of the United States of America v. EPA*, No. 24-1193 (D.C. Cir.) (ongoing litigation, currently in abeyance, challenging the CERCLA designation of PFOA and PFOS), asking the court to lift the abeyance and propose an amended briefing schedule.

Prior to its 2024 PFOA and PFOS designation, EPA’s CERCLA hazardous substance list was comprised solely of substances designated under other environmental statutes (e.g., Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and the Toxic Substances Control Act). EPA’s 2024 designation of PFOA and PFOS represented the first time the Agency used its authority under CERCLA Section 102(a) to list

specific hazardous substances that were not designated under another environmental statute. In this week’s announcement, EPA stated its intention to initiate a rulemaking to “establish a uniform framework governing designation of hazardous substances under section 102(a) of CERCLA moving forward.” Such a “Framework Rule” would establish a uniform approach to guide future CERCLA hazardous substance designation, including EPA’s method for considering the costs of proposed designation.

EPA further stated that it will prioritize holding polluters accountable while still providing certainty for passive receivers (such as water utilities) that did not manufacture or generate PFOA or PFOS, and that it believes new statutory language will be necessary to fully address concerns regarding passive receiver liability. This statement is aligned with EPA’s PFAS strategy, **issued** on April 28, 2025, which expressly acknowledged the Agency’s intention to protect passive receivers of PFAS. EPA noted at the time that it intended to work with Congress and industry to establish a liability framework that operates on a “polluter pays” principle to provide greater certainty to passive receivers.

Babst Calland’s Environmental Practice Group is closely tracking EPA’s PFAS actions, and our attorneys are available to provide strategic advice on how developing PFAS regulations may affect your business. For more information or answers to questions, please contact Sloane Wildman at (202) 853-3457 or swildman@babstcalland.com or Alexandra Graf at (412) 394-6438 or agraf@babstcalland.com.