

CLIENT ALERTS

EPA to Designate PFOA and PFOS as Hazardous Substances

Client Alert

8.26.2022

Today, EPA released a Pre-Publication Notice of a Proposed Rule signed by EPA Regional Administrator Michael Regan yesterday, which will list Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS), including their salts and structural isomers, as CERCLA hazardous substances. Once published in the Federal Register, comments will be received for 60 days.

Citing in part, recent human epidemiology studies supporting EPA's recent interim updated health advisories for PFOA and PFOS, EPA indicates that the "level of evidence is more than sufficient to satisfy the CERCLA section 102(a) standard."

While these two PFAS substances are already regulated as hazardous substances under Part 201 of Michigan's Natural Resources and Environmental Protection Act (NREPA), designation of PFOA and PFOS as CERCLA hazardous substances will in addition to allowing EPA to exercise CERCLA authority in responding to PFOA and PFOS releases, will allow for CERCLA cost recovery actions under CERCLA. In addition, releases of PFA or PFOS above reportable quantities will also require reporting under the federal Emergency Planning and Community Right to know Act (EPCRA). The proposed Reportable Quantity for these substances is 1 pound or more in a 24-hour period.

EPA also indicated that they would yet in 2022 be developing an advance notice of proposed rulemaking seeking comments related to the designation of other PFAS as hazardous substances.

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