

Publications

Proposed PFAS Clean-Up Rules Announced by USEPA

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The U.S. Environmental Protection Agency (USEPA) announced on February 1, 2024, that it would publish two proposed rules regarding per- and polyfluoroalkyl substances (PFAS) that would require the investigation and clean-up of certain PFAS at facilities that manage hazardous waste (PFAS Clean-up Rules). The first proposed PFAS Clean-Up rule would designate nine specific PFAS as hazardous constituents under the Resource Conservation Recovery Act (RCRA). The second proposed rule would allow USEPA and authorized states to address a broader range of substances, including PFAS, under the RCRA cleanup program, known as RCRA Corrective Action.

The First Proposed PFAS Clean-Up Rule

If finalized, the first proposed PFAS Clean-Up Rule would add **nine PFAS** as RCRA hazardous constituents. This designation would facilitate the investigation and clean-up of these PFAS at permitted RCRA transfer, storage, and disposal facilities (TSDFs). The nine PFAS that would be designated as RCRA hazardous constituents are as follows:

1. perfluorooctanoic acid (PFOA);
2. perfluorooctanesulfonic acid (PFOS);
3. perfluorobutanesulfonic acid (PFBS);
4. hexafluoropropyleneoxide-dimer acid (HFPO-DA or GenX);
5. perfluorononanoic acid (PFNA);
6. perfluorohexanesulfonic acid (PFHxS);
7. perfluorodecanoic acid (PFDA);
8. perfluorohexanoic acid (PFHxA); and
9. perfluorobutanoic acid (PFBA).

Designation as a RCRA hazardous constituent **would not** require the cradle to grave management associated with being designated as a characteristic or listed RCRA hazardous waste. USEPA has stated, however, that designating a PFAS as a hazardous constituent is a building block for any future work to regulate PFAS as a RCRA listed

hazardous waste.

Comments on the first proposed PFAS Clean-Up Rule are due 60 days from its official publication date in the Federal Register. Read the prepublication version of the first-proposed PFAS Clean-Up Rule [here](#).

The Second Proposed PFAS Clean-Up Rule

If finalized, the second proposed PFAS Clean-Up Rule would revise the current definition of “hazardous waste” under RCRA as it applies to RCRA Corrective Action at permitted TSDFs to broaden the types of substances that USEPA has authority to investigate and clean up. The RCRA Corrective Action Program requires facilities that treat, store or dispose of hazardous wastes to investigate and clean up contaminated soil, groundwater, and surface water. The proposed revisions would clarify that USEPA has authority to require Corrective Action for releases of all substances that meet RCRA’s expansive statutory definition of “hazardous waste,” which includes emerging contaminants like PFAS.

Comments on the second proposed PFAS Clean-up Rule are due 30 days from its official publication date in the Federal Register. Read the prepublication version of the second proposed PFAS Clean-Up Rule [here](#).

Vorys actively monitors PFAS regulations and litigation. If you have questions about the proposed PFAS Clean-Up Rules, please contact your Vorys attorney or Kristin Watt (klwatt@vorys.com), Rick Schuster (rdschuster@vorys.com), Nina Webb-Lawton (niwebb@vorys.com), David Edelstein (dmedelstein@vorys.com) or Brooke Zentmeyer (bnzentmeyer@vorys.com).