



# Contaminants *Compass*

## March 2025 Edition

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“Contaminants Compass” is a monthly newsletter that provides updates, legal observations and actionable tips to navigate the evolving legal challenges of per- and polyfluoroalkyl substances (PFAS).

This edition highlights recent Environmental Protection Agency (EPA) action concerning customer-notification obligations, important litigation updates in both federal and state courts, and continued focus on the potential for PFAS in biosolids.

Look for new editions every month and feel free to reach out to the McGuireWoods team with questions regarding PFAS issues. I. What’s Happening on the PFAS Federal Regulatory Front

## I. What’s Happening in Federal PFAS Regulation

### EPA Reopens Comment Periods for Proposed Notification Rule

As reported in the [October 2024 edition of Contaminants Compass](#), the EPA under the Biden administration announced a proposed rule to clarify the timeframe for when companies must first notify customers that one of their mixtures or trade name products contains a PFAS listed on the Toxics Release Inventory (TRI). In its Jan. 17, 2025, [press release](#), the EPA explained that it is “taking this [clarification] action in response to questions from industry regarding the effective date of supplier notifications for PFAS added to TRI pursuant to the NDAA.” Stakeholders had questioned whether the supplier notification requirements begin on Jan. 1, when the PFAS are added to the statutory TRI chemical list, or upon the EPA completing a rulemaking to include the added PFAS in the Code of Federal Regulations. On Feb. 21, 2025, the EPA extended the comment deadline for the proposed rule and stated it was doing so to allow interested parties additional time to review and analyze how the proposed rule may impact parties potentially subject to it. Comments are due March 24, 2025.

## II. What's Happening on the PFAS State Legislative Front

### Litigation on CERCLA Designation of PFOA and PFOS

Last month's [Contaminants Compass](#) reported that on [Jan. 17, 2025](#), the Biden administration's EPA filed a brief defending its designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This action was in response to challenges led by the Chamber of Commerce, which contended that the EPA misinterpreted the "substantial danger" requirement and failed to consider associated costs. The EPA asserted that its factor-based approach is consistent with CERCLA's statutory framework and is essential for addressing health risks. The rule aims to shift cleanup costs to responsible parties and improve public health. Despite potential litigation costs, the EPA argued that the benefits outweighed the disadvantages, and it sought to avoid vacatur to prevent disruption.

On [Jan. 24, 2025](#), New York, Arizona, Colorado, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Washington, Wisconsin and the District of Columbia filed an amici brief supporting the EPA's hazardous substance designation of PFOA and PFOS under CERCLA. The states argue that the CERCLA designation is grounded in extensive scientific evidence, highlighting the substantial dangers these chemicals pose to public health, welfare and the environment due to their toxicity, persistence and mobility. The brief counters claims of limitless liability by emphasizing CERCLA's protections for parties not primarily responsible for contamination. The states assert that the rule will improve states' responses to PFOA and PFOS contamination and ensure accountability for cleanup costs, alleviating the burden on taxpayers. They contend that the rule benefits states and residents by increasing transparency and expanding the EPA's and states' abilities to address contamination effectively. While states have developed their own regulatory measures, the states argue that the EPA's hazardous substance designation unlocks the full range of tools available under CERCLA.

Respondent intervenors, including the Natural Resources Defense Council, Clean Cape Fear, Environmental Justice Task Force, Fight for Zero and Merrimack Citizens for Clean Water, renewed their support for the EPA's rule on [Feb. 13, 2025](#). The intervenors emphasized the health risks of PFOA and PFOS and defended the EPA's approach as consistent with CERCLA's standards. They noted that the EPA reviewed studies showing adverse health effects from exposure to these substances and found them to be mobile and persistent in the environment. They also argued that the EPA's cost analysis was rational and voluntary, meeting the Administrative Procedure Act's requirements.

On Feb. 11, 2025, the new EPA administrator, Lee Zeldin, filed a motion to hold the Chamber of Commerce and related litigation in abeyance. On [Feb. 24, 2025](#), the U.S. Circuit Court of Appeals for the D.C. Circuit granted a 60-day abeyance, providing the administration time to review and potentially revise its position concerning the CERCLA hazardous substance designation. The new administration has until April 25, 2025, to file motions to govern future proceedings in this litigation. This aligns with the administration's broader deregulatory agenda, as recent memos from the Justice Department's Environment and Natural Resources Division have directed staff to pause new lawsuits and settlements to give time for additional review.

### South Carolina District Court to Examine Link Between PFAS and Cancer

Approximately 10,000 federal personal injury lawsuits alleging injury caused by aqueous film-forming foam (AFFF) containing PFAS continue to be consolidated in an MDL overseen by Judge Richard M. Gergel in the U.S. District Court for the District of South Carolina. AFFF, also known as "firefighting foam," has been used in fighting liquid-fuel fires for decades. On Feb. 11, 2025, Gergel issued an order setting a June 6, 2025, [Science Day](#) that will include expert presentations on the alleged association of AFFF with liver and thyroid cancer. Prior to the Science Day, the parties will jointly submit to the court peer-reviewed articles on the topic of whether there is a causal relationship between PFAS in AFFF and certain diseases.

### III. What's Happening in State PFAS Legislation

#### Fishermen Urge Virginia DEQ to Pause Use of Sewage Sludge as Fertilizer

The [August 2024 edition of Contaminants Compass](#) reported on continued concerns over PFAS contamination in numerous locations allegedly due to the spreading of sewage sludge. Virginia fishermen have joined those concerns and [urged the Virginia Department of Environmental Quality \(DEQ\)](#) to pause the practice of using sewage sludge as fertilizer citing concerns over PFAS contamination from runoff. Unlike other states, such as Maine, Virginia does not have any rules banning the practice of applying sewage sludge. Other states, such as Michigan, require sewage sludge to be tested for PFAS before use on farmland. The Virginia DEQ has treatment standards for sewage sludge but does not require companies to test for PFAS.

#### About McGuireWoods

*McGuireWoods supports clients as they assess and mitigate their PFAS risk, develop and apply business operational responses to changing PFAS laws and regulations at federal and state levels, and defend litigation as it arises, including navigating and coordinating national scientific defenses in novel contexts. [Click here](#) to learn more.*

*McGuireWoods' 2025 Contaminants Compass CLE series covers topics such as regulator updates post-election, insurance and PFAS, transactions and PFAS, and more. To review past webinars, register or save the dates, click [here](#).*

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