

Examining The EPA's Forever Chemical Plans

By Juan-Carlos Rodriguez

Law360 (April 29, 2025, 9:06 PM EDT) -- The U.S. Environmental Protection Agency says it plans to clarify who is liable for forever chemical contamination and hold polluters accountable, though questions remain as to whether current standards could be loosened and how much help could be needed from Congress.

Among the 21 different forever chemical priorities released by the EPA on Monday, at least six were directed at establishing a clear regulatory, liability and enforcement framework for manufacturers' and product makers' discharges of perfluoroalkyl and polyfluoroalkyl substances, or PFAS. And other actions displayed the agency's intention to try to lessen impacts on "passive receivers" of PFAS pollution, like wastewater treatment plants.

Emily Lamond, a member at Cole Schotz PC, said the fact that the Trump administration intends to prioritize PFAS — which are also called forever chemicals because of their persistence in the human body and environment — isn't totally surprising, given the EPA's attention to the issue during President Donald Trump's first term and bipartisan focus in Congress.

"EPA regulation of PFAS is as persistent as the chemical itself — it's not going anywhere anytime soon," Lamond said. "And despite the arguably unprecedented scope and pace of government funding cutbacks in this new administration, they're not touching PFAS."

According to the EPA, it wants to "engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected."

There are a few ways the agency said it could do that, including developing effluent limitations guidelines for PFAS manufacturers and metal finishers; better using its authority under the Resource Conservation and Recovery Act; enforcing Clean Water Act and Toxic Substances Control Act standards; and resourcing and supporting investigations into violations to hold polluters accountable.

The effluent limitations guidelines stand out, because the Trump administration in January withdrew a proposed Clean Water Act rule that would have established ELGs for some PFAS, said Brian Gross, a partner at Manning Gross & Massenburg LLP.

"There was some thought that perhaps [the proposed ELGs] were dead," Gross said. "It now looks like the EPA is planning to develop at least some effluent limitation guidelines. But it says 'guidelines' — it doesn't say 'regulations.' So it's not clear to me whether there will be any strict limitations."

He also noted that the Biden-era proposed rule targeted manufacturers in the organic chemicals, plastics and synthetic fiber category to adopt the best available control technologies, whereas the EPA's Monday announcement only mentioned metal finishers.

"It tells me that they are going to do something, but it's still not clear exactly what," Gross said.

And clarifying that passive receivers aren't liable for enforcement actions could require action from Congress, according to Stephanie R. Feingold, a partner at Morgan Lewis & Bockius LLP.

"Where do you draw the line between passive receivers and everybody else?" Feingold said. "If you have a blanket carveout for categories of what have been called 'passive receivers,' there could be negative, unintended consequences for other parties that may be equally innocent or passive in a given circumstance, but potentially could be having to shoulder a larger portion of the liability than they otherwise would."

The EPA declined to comment beyond the news release.

A bipartisan group of House lawmakers in February introduced the Water Systems PFAS Liability Protection Act, a bill that would exempt public water systems, publicly or privately owned or operated treatment works, municipalities with a stormwater discharge permit, political subdivisions or special districts of a state that act as a wholesale water agency, and contractors performing the management or disposal activities for such entities from liability for PFAS contamination under the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA.

The Biden administration listed two PFAS as hazardous substances under CERCLA, raising the potential for Superfund sites to be reopened to clean up substances that weren't targeted previously.

Maria Doa, senior director of science policy at the Environmental Defense Fund, said she's concerned that the EPA's PFAS action announcement leaves wiggle room for the agency to actually weaken standards, especially with regard to standards for PFAS contamination in drinking water that were established under the Clean Water Act.

The EPA said it wants to address "the most significant compliance challenges and requests" from Congress and drinking water systems related to those regulations, but didn't expand on what it has in mind.

"We don't want to see backtracking on that," Doa said. "The science was really strong, and that rule is super important."

She said she's also worried that the Trump administration will weaken a Toxic Substances Control Act rule that requires companies to gather information about all manufactured, imported and produced PFAS-containing material in the U.S. between 2011 and 2022.

The EPA said it wants to "smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers."

But Doa said the agency is focusing on the wrong burden.

"My concern is that they're going to try to limit it much further, which will really limit this important information," she said. "So many products, whether it's clothing or carpets, for years have had PFAS in them. And the PFAS comes out and it ends up in our house dust, it ends up in the soil, it ends up in the water, it ends up in our bodies. So having that information on that part of the universe of our exposure is hugely important."

The EPA also said it wants to provide more frequent updates to its PFAS "Destruction and Disposal Guidance" by updating every year instead of the current rate of every three years. It's one of the areas where there is the most uncertainty, because there isn't currently a cheap, widely available way to destroy PFAS, Cole Schotz's Lamond said.

"There's very promising technology out there that's still in the [research and development] phase," she said. "But it's hard to figure out what's really going to actually destroy it so that when it gets discharged to a waterway, there's no remaining PFAS — and it only takes a small amount to be tagged for liability."

--Editing by Alanna Weissman and Kelly Duncan.