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EPA's PFAS Regulations Will Impact Waste Management and Environmental Cleanups

Early in April I had the privilege to speak at the Regulatory Environmental Group for Missouri (REGFORM) Missouri Hazardous Waste Seminar on the impacts evolving per- and polyfluoroalkyl substances (PFAS) regulations will have on waste management and environmental cleanups.

While the U.S. Environmental Protection Agency has changed directions on several environmental subjects since President Donald Trump took office, PFAS regulations are not yet among those. Indeed, the Biden Administration EPA's PFAS Strategic Roadmap still is posted on the EPA's website – at least for now – and the EPA has not reported in two cases the positions it will take on judicial challenges to final Biden-era PFAS regulations. Thus, although those regulations are under challenge, they are in effect, they have not been stayed, and they are having impacts in the regulated community.

The EPA's April 2024 PFAS maximum contaminant levels (MCLs) under the Safe Drinking Water Act will affect drinking water systems, of course. More broadly, they also will affect groundwater cleanups as the low MCL values become integrated into screening levels, risk analyses, and remediation levels.

For wastewater treatment systems and industrial users, PFAS regulations present a number of challenges. System operators and regulators are looking at ways to identify and reduce PFAS inputs to those systems, especially from industrial sources, and those efforts will restrict the abilities of industrial wastewater and landfill leachate sources to discharge their waters into such systems. Concerning wastewater system biosolids, in January 2025, the EPA issued a long-awaited draft risk assessment for PFAS in biosolids. The numbers deemed appropriate for land

application in the draft risk assessment were quite low. Even if the draft risk assessment is not finalized, this document will influence – and may drive – PFAS standards in wastewater management and other environmental programs. The draft risk assessment also may lead to lawsuits claiming damages to agricultural fields based on residual PFAS levels caused by historical biosolids land applications. This situation arises as Missouri's rules to land apply biosolids are undergoing review.

In February 2024, the EPA discussed a proposal to regulate PFAS under the Resource Conservation and Recovery Act, but those regulations were not issued before President Trump took office. If EPA were to issue regulations identifying PFAS as RCRA hazardous constituents or regulating PFAS as hazardous wastes, that would significantly affect how biosolids and other discarded materials containing PFAS are managed, along with the costs for doing so. Regulated entities are already investigating how they would manage their PFAS-containing materials in that instance.

In July 2024, the EPA issued a regulation identifying certain PFAS constituents as hazardous substances under the federal Superfund law, and the EPA has proposed adding more PFAS constituents to the list. These regulations already are affecting environmental remediations, and they will affect more in the future. They will affect risk and remedy evaluations, cleanup levels in soil and groundwater, remedy reopeners, contribution and third-party litigation, biosolids land application, real estate transaction environmental site assessments, and Missouri Brownfields Voluntary Cleanup Program sites, among others.

In April 2024, the EPA also issued a policy to exercise enforcement discretion and enter settlements with public and certain other entities to protect them from potentially harsh effects of Superfund claims based on the historical presence of PFAS constituents in wastewater systems, municipal landfills, biosolids land application, and other scenarios. Those policies may not be sufficient to protect those entities from Superfund claims and lawsuits, however.

Even as the federal government works on PFAS regulations across the various media and programs, many states are developing their own PFAS regulations. These state requirements affect stakeholders that have activities in those states.

All of these regulatory changes will affect a wide range of industries and are being addressed in planning. Environmental, health, and safety professionals will want to monitor the changes in PFAS regulations across the various regulatory programs and jurisdictions and strategically consider how those changes may affect their waste management practices. Many in the regulated community are evaluating their situations and undertaking planning on a confidential basis, using the rules of attorney-client privilege where they can. The bottom line right now is that sometimes there are no clear answers and planning decisions involve knowledge, anticipation, and balancing risks.

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