

Designation of PFOA and PFOS as Hazardous Substances under CERCLA

Costs & Implications

OVERVIEW



The U.S. Environmental Protection Agency (U.S. EPA) has announced that it will designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the Spring of 2024. Combined with the proposal to establish national drinking water standards for these two substances by the end of 2023, CERCLA designation will impose a significant cost on cities across the country. There are approximately 50,000 community water systems and 16,000 wastewater treatment works that could potentially be subject to CERCLA liability.

Designation of PFOA/PFOS as hazardous substances under CERCLA could subject cities to cleanup responsibility and litigation costs for contamination resulting from the operation of landfills and wastewater treatment facilities (POTWs). PFOA/PFOS have been found in the leachate from municipal landfills that can migrate to adjacent properties. Biosolids generated by POTWs may contain PFOA/PFOS which can contaminate agricultural lands on which it is applied.

At the same time, EPA is working to establish drinking water standards (maximum contaminant levels of MCLs) for PFOA and PFOS. These drinking water standards will directly influence obligations for local governments related to drinking water infrastructure and will also guide specific clean-up standards.

This document provides an overview of the issues associated with designating PFOA/PFOS as hazardous substances under CERCLA and the potential impacts on cities, water utilities and businesses. Balancing public health priorities and costs is critical when determining which policy will have the greatest impact for the greatest number of people.

WHAT ARE PFOA & PFAS?



PFOA and PFOS are members of a class of synthetic chemicals known as per- and polyfluoroalkyl substances (PFAS). These chemicals have been widely used in industrial processes, consumer products, and firefighting foams due to their unique water- and grease-resistant properties. The U.S. Environmental Protection Agency (EPA) has classified PFOA and PFOS as contaminants of emerging concern. In addition to CERCLA, the Agency has also issued a Maximum Contaminant Level proposal to regulate PFOA/PFOS in drinking water at the lowest possible level of 4 parts per trillion (PPT).

IMPACTS



CITIES & WATER UTILITIES

1 Cities and water utilities will be impacted by the CERCLA designation and the national drinking water standards as PFOA and PFOS have been detected in various water sources. The US Chamber of Commerce estimates that costs of complying with the MCLs for PFOA and PFOS could be as much as \$43.2 billion. Designation under CERCLA empowers federal and state regulatory agencies to require investigations into the extent of contamination, remediation, and potentially the provision of alternative water sources.



1

SIGNIFICANT FINANCIAL IMPACT ON CITIES & WATER UTILITIES

Cities and utilities will already face significant costs, estimated in the billions, linked to installing and operating treatment technology to comply with the EPA's new PFAS drinking water standards. Water utilities alone will already face an estimated \$3.8 billion in costs linked to installing and operating treatment technology to comply with the EPA's new PFAS drinking water standards. CERCLA will impose another \$3.5 billion estimated per year in disposal costs for the water sector. For the solid waste sector, increased costs associated with PFAS management could total approximately \$966 million to \$6.279 billion per year nationally. Consequently, cities and water utilities will face even more significant costs related to CERCLA remediation costs, disposal costs and potential legal actions.

2

IMPACT ON HOUSEHOLDS

Depending on the extent of contamination and the availability of alternative water sources, households might incur additional costs related to purchasing bottled water, installing water filtration systems, or using other mitigation measures to ensure clean water access.

Water treatment and remediation efforts required to address PFAS contamination can be expensive. If these costs are passed on to consumers, households might experience higher water bills as utilities invest in upgrading treatment systems or finding alternative water sources. Properties located in areas with known or suspected PFAS contamination could experience decreased property values due to concerns about water quality and environmental risks. This might impact homeowners' decisions regarding buying, selling, or renting properties.

3

IMPLICATIONS FOR BUSINESSES

CERCLA imposes a broad liability framework on potentially responsible parties (PRPs) for the cleanup and remediation of hazardous substance contamination. Under the CERCLA designation, businesses that have manufactured or used PFOA and PFOS may face increased regulatory scrutiny and potential liabilities and can be held financially responsible for cleaning up contamination linked to the use of these compounds.

Affected businesses might experience reputational damage and legal action from affected communities or individuals seeking compensation for health impacts.

Importantly, businesses that manage waste containing PFOA and PFOS, even if they are not primary producers or users, can also be held liable for contributing to contamination. This "indirect liability" means that businesses down the supply chain can be implicated under CERCLA if their actions are found to have led to the release or spread of these hazardous substances.

Indirect liability can result in substantial financial costs. Businesses that manage PFAS-containing waste may have to invest in improved waste tracking, storage, and disposal practices to mitigate the risk of contamination. Legal costs could arise from lawsuits, settlements, and potential collaboration with regulatory agencies to address contamination concerns.

WHAT'S NEXT?

WATER & HEALTH ADVISORY COUNCIL

Science-based policy should inform whether designating these substances as hazardous will have a meaningful impact on public health. CERCLA designation is not an efficient means to achieve cleanup of PFOA/PFOS contamination as it brings significant financial burdens for cities, water utilities and businesses.

While the designation provides a more robust legal framework for addressing potential contamination, the U.S. EPA already has existing enforcement tools to facilitate cleanup of contamination efficiently and effectively. The tool available to the EPA include Safe Drinking Water Act, Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and emergency provisions of CERCLA.

CERCLA has unintended consequences and puts local governments and water utilities at risk of legal liability associated with site remediation. Balancing the need for environmental protection and public health with the economic impact on stakeholders remains a challenge as we strive to mitigate the consequences of PFAS contamination.