EPA's CERCLA Hazardous Substance Designations for PFOA and PFOS: Case and Agency Updates
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In April 2024, the Environmental Protection Agency (EPA) finalized a rule[1] designating two per- and poly-fluoroalkyl substances (PFAS) chemicals—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)—as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the federal Superfund law. Such a designation allows the EPA to use its full authority under CERCLA to order, conduct, and recover costs related to cleanup of PFAS contamination. Specifically, the rule establishes reporting requirements for PFOA and PFOS releases, authorizes agency-directed response actions without showing imminent and substantial endangerment, and allows parties to pursue cost recovery and contribution claims for cleanup activities involving PFAS chemicals. In November 2024, industry groups challenged EPA's Final Rule in *Chamber of Commerce of the United States of America, et al. v. EPA, et al.,*[2] arguing in part that the agency wrongly applied CERCLA and failed to adequately address costs and benefits related to extending Superfund liability to PFAS contamination. This article explores issues surrounding EPA's promulgation of its Final Rule as presented by petitioners in *Chamber of Commerce v. EPA*. It then examines the current status of the rule based on case and agency updates.

Chamber of Commerce v. EPA Challenges EPA's Hazardous Substance Designations for PFOA and PFOS under CERCLA

In *Chamber of Commerce v. EPA*, petitioners highlight several issues posed by EPA's promulgation of its Final Rule and request the court to vacate the rule. For one, they contend that the EPA misinterpreted the standard for hazardous substance designations under CERCLA. Specifically, petitioners argue that the agency misinterpreted the term "may present substantial danger" under section 102(a)[3] of CERCLA by not providing "fixed boundaries" relating to EPA's discretion in designating "hazardous substances" under the rule. Petitioners assert that the

[1] "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances," 89 Fed. Reg. 39,124 (May 8, 2024).

[2] *Chamber of Commerce of the United States of America, et al. v. EPA, et al.*, No. 24-01193 (D.C. Cir.).

[3] Section 102(a) authorizes the EPA to "promulgate and revise as may be appropriate, regulations designating as hazardous substances . . . such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment . . . ." 42 U.S.C. § 9602(a).

Katherine Meek, *EPA's CERCLA Hazardous Substance Designations for PFOA and PFOS: Case and Agency Updates,* American Bar Association, Section of Environment, Energy, and Resources, *Superfund and Cost Recovery Committee Article* (November 26, 2025), *available at* https://www.americanbar.org/groups/environment_energy_resources/resources/newsletters/superfund/epas-cercla-hazardous-substance/.

EPA's mere consideration of a "non-exhaustive list of factors in an unknown manner"[4] to decide "remote possibilities of harm" does not satisfy "fixed-boundary" requirements for agency interpretation of statutory terms as established in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). Petitioners further cite CERCLA provisions mandating a higher threshold for agency designations of "hazardous substances" as compared to requirements for "pollutants or contaminants."[5] Finally, petitioners argue that the EPA's interpretation of "may present substantial danger" under the rule is inconsistent with prior agency guidance imposing concrete, quantitative thresholds for predictable and reviewable limits concerning designation of "hazardous substances."

Next, petitioners argue that the EPA employed a flawed cost analysis that did not provide an adequate notice and comment period in violation of the Administrative Procedure Act (APA). To the later point, according to petitioners, the EPA failed to disclose its Regulatory Impact Analysis (RIA), which the agency relied on to justify the promulgation of its Final Rule. As discussed by petitioners, while the RIA estimated "direct" costs of the rule (e.g., costs related to reporting releases), it only provided a qualitative discussion of the rule's "indirect" costs (e.g., future cleanup costs). According to petitioners, some of the substantive errors in the EPA's RIA include its reliance on assumptions that National Priorities List (NPL) sites would incur no new cleanup costs and that cleanups would occur only at a small subset of non-NPL sites, its failure to acknowledge cleanup costs at federal sites and impacts on small entities and certain industry sectors (e.g., waste management, recyclers, construction, and demolition), and its miscalculation of the rule's alleged offsetting benefits (e.g., identifying enhanced waste management practices exclusively as benefits while ignoring corresponding costs).

Finally, petitioners contend that the EPA acted arbitrary and capriciously by not sufficiently understanding the rule's implications. Petitioners identify several unknowns that have not yet been addressed by the agency following the promulgation of its Final Rule, including identification of site locations, remedies, methodologies for quantifying PFAS concentrations, costs associated with implementation of the rule, and the rule's wider implications on real estate transactions.

Case and Agency Updates Relating to *Chamber of Commerce v. EPA*

There have been numerous case and agency updates since the Chamber of Commerce filed its opening brief in November 2024. In January 2025, the EPA filed a brief defending the rule and

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[4] Under the rule, "EPA *may consider* such information as human health toxicity, including carcinogenicity, neurotoxicity, developmental toxicity, reproductive toxicity, and other adverse health effects…toxicity or adverse impacts to non-human organisms or ecosystems, such as adverse effects to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas…chemical properties such as combustibility, flammability, reactivity, or corrosiveness…whether a substance moves readily through the environment, and whether it persists and/or changes in the environment." *Supra* Note 1.

[5] 42 U.S.C. §§ 9601(23, 24, 33); 9604(a)(1)(B); 9607(a).

responding to petitioners' claims in *Chamber of Commerce v. EPA*. The brief defends the EPA's substantial danger finding as required for first-time hazardous substance designations, refutes the petitioners' arguments that inherent uncertainty about future response actions precludes the agency from acting, and argues that the EPA did not violate APA requirements through promulgation of its Final Rule.

In February 2025, the EPA filed a motion to hold the case in abeyance to allow the incoming Trump EPA time to review the underlying rule and determine how to proceed moving forward.[6] Later that month, the D.C. Circuit Court granted EPA's request pending the new EPA leadership's review of the rule.

In April 2025, the EPA announced that it would work with Congress to exempt passive receivers from CERCLA liability.[7] Passive receivers are those who did not introduce PFAS into the environment, such as current property owners who do and did not use PFAS, wastewater treatment plants to the extent they receive PFAS-impacted influent, waste disposal facilities when receiving PFAS-impacted household waste, and drinking water suppliers with PFAS-impacted surface- or groundwater supplies.

In September 2025, the EPA filed a motion asking the Court to lift the abeyance after it announced that it would defend and retain the rule.[8] The motion includes a declaration from a senior adviser to the EPA's Office of Land and Emergency Management (John Evans) stating that the agency would continue to "engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected." In October 2025, the D.C. Circuit Court granted EPA's motion and set a December deadline for final briefs.

Protecting so-called "passive receivers" raises significant questions, including the criteria for determining qualifying entities, scope of the protections provided, and potential consequences of enforcement actions and cost allocations on EPA-identified sites involving such entities. The EPA has signaled to Congress that it should adopt new statutory language to address concerns associated with passive receiver liability.

PFOA and PFOS contamination remain viable grounds for Superfund liability today. While litigation is ongoing and may change the PFAS federal regulatory landscape, industries across the supply chain—including in manufacturing, water treatment, and waste management—should expect enhanced scrutiny as the EPA establishes future rules expanding monitoring, reporting, and corrective action requirements for PFAS. Companies and stakeholders can take proactive

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[6] Respondent's Motion to Hold the Case in Abeyance ¶ 3.

[7] EPA Press Office, Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination (April 28, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination (last visited Oct. 13, 2025).

[8] Respondent's Motion to Govern ¶ 11.

steps now, including tracking potential releases of PFAS in their waste streams, monitoring potential PFAS contamination during environmental due diligence for transactions, and staying up to date on potential liability that may arise from real property investments.

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