

Recent PFAS Regulations and Legislation:

Why Do They Matter and How Do They Affect You

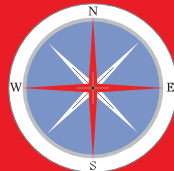
November 2024



Summary



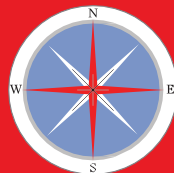
- EPA took significant PFAS actions this year.
- Near-term costs to all businesses will substantially rise.
- Costs for basic municipal services are likely to double.
 - Major changes to business operating costs.
- Federal actions will vault over state actions.
- Although major municipal governments opposed EPA's actions, EPA promulgated these rules.



Major EPA PFAS Actions



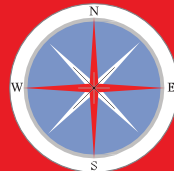
- CERCLA designations.
- Very low “safe” levels.
 - Below the level of detection
- Reporting requirements.



CERCLA: Summary



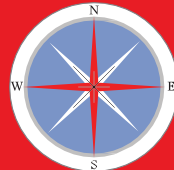
- While CERCLA makes you think of cleanups, the law's liability structure has more far-ranging implications.
- Liability management to avoid future cleanup costs will be immediate, costly, and disruptive.
- ***Superfund liability is/will change more company behavior and increase costs more than any state regulation***



Our Story Begins...



- In April, EPA added two PFAS as CERCLA hazardous substances.
 - EPA has laid out plans to designate seven more or designate many PFAS as a class.
- Under CERCLA, release of hazardous substances causes liability.
- Liability scheme - strict, joint, severable, and retroactive - means many non-PFAS producers have liabilities:
 - Businesses, Municipalities, Recovery facilities.



Imagine You are a...

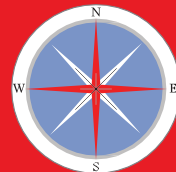


Company

- Buys water from the town's system;
- Discharges sewage and wastewater;
- Purchases raw materials for your products;
- Contracts for non-hazardous waste disposal.

Town

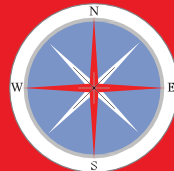
- Operates a drinking water system;
- Operates a sewage system – wastewater and sludge (“biosolids”);
- Operates or contracts for trash and recycling pickup; and,
- Serves both households and businesses.



What Do You Know?



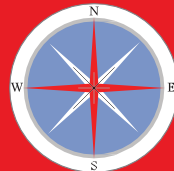
- Even though they were phased out in 2005, PFOA and PFOS are found today in:
 - “uncontaminated” sewage; drinking water; landfills; and many products,
 - Levels >10 times greater than EPA’s “safe” levels in the pending drinking water standard.
- For example, a survey of over 100 sewage plants found a mean concentration of 8 ppt in their effluent after all suspected industrial sources are removed.



Permit These Releases?



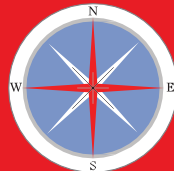
- EPA's December 2022 memo directs states to set PFAS in wastewater discharge permits.
- Mass DEP adding PFAS monitoring to state NPDES permits as they are renewed.
- EPA's rules requires states to revise their water quality standards within three years to levels impossible to meet.



Comparison of Standards



State	PFAS	Current Human Health Water Quality Standard (ng/L)	Likely Future Human Health Water Quality Standard (ng/L)	Future Value is More Stringent by a Factor of
Michigan	PFOA	420	0.004	>10,000
Michigan	PFOS	11	0.02	>10,000
New York	PFOA	6.7	0.004	>1,000
New York	PFOS	2.7	0.02	>100



Strategy to Minimize CERCLA Liability

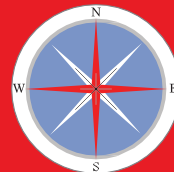


Company

- Test or divert trash to secure landfills;
- Pay significantly higher water and rates;
- Know your if raw materials contain PFAS?

Town

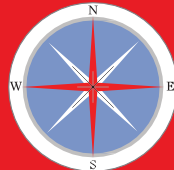
- Divert trash and biosolids to secure landfills;
- Install treatment for drinking water systems and pay for operations and maintenance;
- Refuse to take commercial trash and recyclables.
- Consider installing wastewater treatment at sewage plant.



Business Impact in this Town



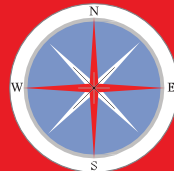
- Waste management and utility costs will soar.
- Service disruptions and requirements - testing prior to disposal.
- Businesses will be potentially liable for town's past releases:
 - Sewage discharges to water bodies;
 - Town landfills;
 - Groundwater contamination from leaky water pipes.
- Reporting rule will require businesses to identify their past uses and disposition.



Our Story is a Rerun ...and Happening Now



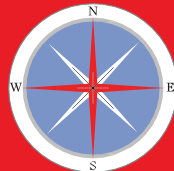
- Household trash caused crises for towns in the 1990s.
- Most common cleanup sites are old town landfills.
- Congress exempted trash from CERCLA in 2002.



Federal PFAS Reporting Rules



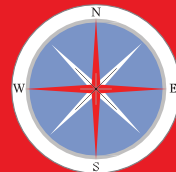
- Congress added a provision to TSCA to require a one-time reporting requirement for a manufacturer or importer of certain PFAS.
 - Report last 10 years of manufacturing, use, and disposal
- EPA defines “manufacturing” very broadly. Manufacturing includes effectively any transformation of the purchased raw material.
 - Chemical and physical transformation
 - Many PFAS products are composites of multiple, individual chemicals; changing the ratio of them constitutes “manufacturing”
- PFAS in articles and mixtures are not exempt.
- > 10,000 PFAS subject to reporting.
- EPA estimated costs between \$800 million and \$1.1 billion.



Federal PFAS Reporting Rules



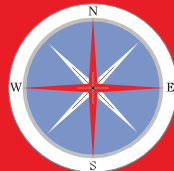
- Proposed Expansion of Toxic Release Inventory (TRI) Reporting
 - Facilities would add together all PFAS in certain “classes” to determine if amount exceeds reporting threshold.
 - Not likely to be issued before 2026 Reporting year cycle.



Future PFAS Actions



- Proposed effluent guidelines for organic chemical and synthetic fiber sector
 - Will set a floor on the costs of using FPs
- Final hazard assessments for PFHxS and PFNA
 - Inclusion in federal standards and CERCLA
- TRI expansion
 - More FPs and lower reporting thresholds
- Continued push for approval of alternatives



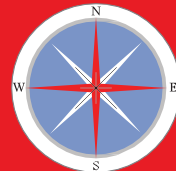
New EOs to Reduce Regulatory Cost



- ❖ Similar to Trump's 2017 EO 13771
 - Expand the two-for-one policy to a [10]-for-one version.
 - Target regulatory actions like guidance, circulars, and hazard assessments/risk evaluations, which have been used to implement stimulus packages, EJ policies, and price control initiatives.

- ❖ Cap total incremental regulatory costs at zero or below. Mandate promulgation of rules with lower net regulatory costs in 2025

- ❖ Freeze agencies' regulatory activity for a limited period
 - Likely 60 days to identify regulations to repeal.



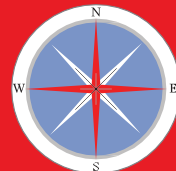
New EOs on Agency Oversight



- ❖ Reinstating Trump's 2019 EO 13891
 - Regulatory actions (e.g. guidance) must undergo OMB review.

- ❖ Revising the new Circular A-4
 - Revisions to remove focus on climate change and to increase attention to estimating social costs.

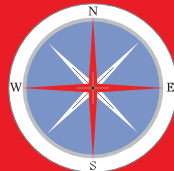
- ❖ Executive branch restructuring
 - Greater OMB role and oversight of agencies
 - New WH agencies like a Musk-led Efficiency Commission.
 - Attempt to reduce programs, sub-agencies, and offices.
 - Most significant changes would require Congressional approval



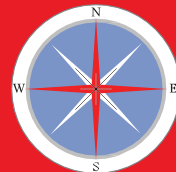
Four Competing Regulatory Priorities and Workstreams



- ❖ **Revisions to Biden Administration rules**
 - Voluntary remands could fill all of 2025-2026 capacity.
 - IJIA, IRA, and CARES policy memos and grant criteria.
- ❖ **New Statutory interpretations and regulatory policies**
 - TSCA foundational rules.
 - Benefit-cost regulation for all rules.
 - Interpretation of Loper-Bright.
- ❖ **New regulations to advance Administration's priorities**
 - Drug pricing, trade, food regulations
- ❖ **Regular pace of consent decree deadlines, statutory requirements**
 - Petitions the Biden Administration accepts in lame-duck period.



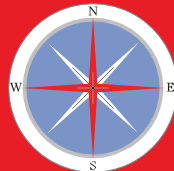
- ❖ Revise (but keep) the PFAS drinking water MCL
- ❖ Revisit CERCLA designation:
 - ❖ Trump Administration floated cleanup/management under RCRA
- ❖ Accelerated reviews of new chemicals as alternatives to current PFAS
- ❖ Revisions to TSCA reporting rule to lower burden. Expansion of TRI reporting likely limited to statutory minimum
- ❖ Delays in new IRIS assessments for PFAS
- ❖ Enforcement still expected to be active

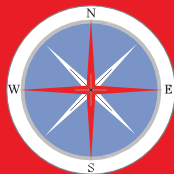


Recommendations



- Determine if you are subject to TSCA or TRI reporting requirements.
- Plan for PFAS material and liability management for your company.
 - Pay special attention to wastewater/stormwater flows and solid waste disposal
- Plan for supply chain disruptions as FP producers/users exit the market.
 - Or shift to overseas locations





Further Information

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