USEPA Releases its Policy and its Enforcement Powers to Address PFAS Contamination

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On April 19, 2024, the USEPA issued its final rule designating two per- and poly-fluoroalkyl substances (PFAS), PFOS and PFOA (collectively, PFAS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, designating two PFAs hazardous substances, USEPA issued a separate CERCLA enforcement discretion policy that provides direction on how USEPA will exercise its enforcement discretion and includes USEPA's focus on entities who have significantly contributed to the release of PFAS contamination into the environment, including manufacturers of PFAS and manufacturers that used PFAS as part of their operations.

USEPA's Enforcement Discretion and Settlement Policy Under CERCLA (Policy) explains and summarizes the challenges of PFAS contamination and how USEPA will utilize its power under CERCLA to pursue responsible parties. Notably, USEPA states it does not anticipate PFAS enforcement to be different from its enforcement of other hazardous substance contamination. However, because PFAS are so ubiquitous, USEPA laid out a set of equitable factors to pursue response actions and costs. These factors include whether the entity is a government or quasi-government actor, whether the entity performs a public service, whether the entity manufactured PFAS or used PFAS in manufacturing, and whether the entity is actively involved in the use, storage, treatment, transport or disposal of PFAS. USEPA has broad discretion to decide whether to respond to a release or threat of release under CERCLA and will make all decisions on a case-by-case basis. The Policy does indicate USEPA will direct its attention and resources to those entities that are responsible for manufacturing PFAS and/or utilizing PFAS in operations, which has caused the widespread contamination and public health challenges across the country.

Click Here to view the PFAS Enforcement Discretion and Settlement Policy Under CERCLA

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*This is intended to provide general information, not legal advice. Please contact the authors if you need specific advice.

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