

PFAS/Advanced Notice of Proposed Rulemaking: ASTSWMO Comments on EPA Query Regarding Additional CERCLA Hazardous Designations



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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) submitted June 15th comments on the United States Environmental Protection Agency’s (“EPA”) Advanced Notice of Proposed Rulemaking (“ANPRM”) titled:

Potential Future Designations of Per- and Polyfluoroalkyl Substances (PFAS) as CERCLA Hazardous Substances.

See Docket ID No. EPA-HQ-OLEM-2022-0922.

EPA has proposed to designate certain PFAS as Comprehensive Environmental, Response, and Liability Act (“CERCLA”) hazardous substances. The ANPRM seeks comments on additional PFAS that should be considered for possible CERCLA hazardous substance designation.

The ASTSWMO comments note that the organization had previously requested that EPA regulate PFAS under CERCLA. Also noted is a prior ASTSWMO Position Paper which recommended the evaluation of additional classes of PFAS for potential designation in order to:

. . . expeditiously designate as many constituents as possible as CERCLA hazardous substances and RCRA hazardous constituents.

The rationale for the organization’s request is its belief that such designation would provide federal and state regulators with greater authority when considering the development of groundwater, soil, and/or drinking water standards. Further advanced as a rationale for designation is ASTSWMO’s belief it would assist in advancing federal and state efforts to:

. . . compel responsible and potentially-responsible parties to investigate and remediate contamination nationwide, especially when private wells and public water systems are impacted.

Listed are ASTSWMO’s overall reasons for such listing:

- creating a consistent national regulatory framework for the evaluation and cleanup of contaminated sites at a federal level;
- strengthening federal and State authority to hold polluters accountable by compelling responsible and potentially responsible parties to remediate PFOA and PFOS contamination in a complete and timely fashion;

- requiring facilities to report releases of PFOA and PFOS in excess of reportable quantities, which will lead to greater transparency and identification of potential releases. This will enhance the ability of federal, Tribal Nations, State, and local authorities to obtain information regarding the location and extent of releases;
- having a positive impact on Brownfields programs, because the rule will provide clarification and consistency related to addressing PFAS during redevelopment; and
- improved knowledge and consistency, hopefully encouraging better waste handling due to potential liability.

Concern is expressed regarding what ASTSWMO characterizes as logistical challenges that CERCLA listings could pose. Those are stated to include:

- clarification on the approach for addressing PFAS at existing National Priority List (NPL) sites where PFAS may be a concern;
- clarification on addressing PFAS at NPL sites that are in the post-construction phase, where the site management has been transferred to the States, namely around the issues of:
 - who will perform and fund initial sampling to determine if an issue exists;
 - who will re-engage responsible and potentially-responsible parties;
 - whether the site will be addressed as fund lead;
 - what the implications may be when an existing remedy is not addressing PFAS, and it is determined to be an issue; and
- what the impact will be on sites that are being proposed for delisting and whether there will be a requirement for PFAS investigation;
- clarification on how enforcement discretion will be applied, and how it will be considered during decision-making processes;
- clarification on how the reportable quantity amount is calculated, and how will potentially overlapping sources be accounted for during this calculation; and
- how will reportable concentrations be considered in the release reporting/notification process.

ASTSWMO suggests EPA carefully consider how categories of PFAS are defined:

- functional groups;
- chain length; and
- toxic endpoints.

The comments also stress the need for research, communication, and improved understanding in a number of areas.

A copy of the comments can be downloaded [here](#).