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# PFAS/CERCLA: Associated General Contractors of America, Inc./National Waste & Recycling Association/Chamber File Judicial Challenge to Hazardous Substance Designation

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Three organizations filed a petition in the United States Court of Appeals for the District of Columbia challenging the United States Environmental Protection Agency's ("EPA") designation of perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS") as Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") hazardous substances. See Case No. 24-1193.

The EPA final rule being challenged is styled:

*Designation of perfluorooctanoic acid and perfluorooctanesulfonic acid as CERCLA hazardous substances, 89 Fed. Reg. 39, 124 (May 8, 2024).*

The challenge has been filed by:

- Associated General Contractors of America, Inc.
- National Waste & Recycling Association.
- Chamber of Commerce of the United States.

(Collectively "AGC").

AGC and others have expressed concern about CERCLA liability because designation of PFAS as a hazardous substance trigger certain corresponding requirements such as:

- Application of the potentially responsibility liability categories.
- Hazardous substance release reporting requirements.

The issues that AGC initially raises in its petition regarding this designation include:

1. Whether EPA failed to provide adequate notice and opportunity to comment prior to promulgating the Final Rule.
2. Whether EPA must consider cost before designated a substance as hazardous under CERCLA Section 102(a) and whether EPA appropriately considered cost in promulgating the Final Rule.

3. Whether EPA erroneously interpreted CERCLA when designating PFOA and PFAS as hazardous substances.
4. Whether EPA provided an adequate and reasonable explanation for its conclusion that PFOA and PFOS should be designated as hazardous substances.
5. Whether EPA acted arbitrarily, capriciously, and in a manner otherwise contrary to law in promulgating the Final Rule.
6. Whether EPA violated the United States Constitution by, for example, imposing retroactive liability through the Final Rule.

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