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PFAS

The actions being taken nationwide on PFAS and the legal liabilities

Agenda



1. What is PFAS?
2. U.S. EPA – PFAS Roadmap
3. U.S. EPA – Proposed CERCLA Rules
4. U.S. EPA – Proposed NPRDW
5. California Actions on PFAS
6. Court Actions and Updates on PFAS
7. Q&A

What is PFAS?

What is PFAS?

Per- and Polyfluoroalkyl

PFAS are synthetic,
manufactured chemicals

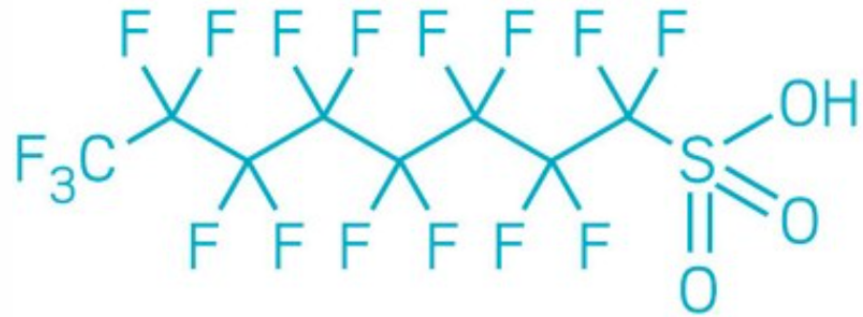
There are over 5,000
different chains of PFAS

PFAS have been used in
products for consumers
and industry since the
1940s

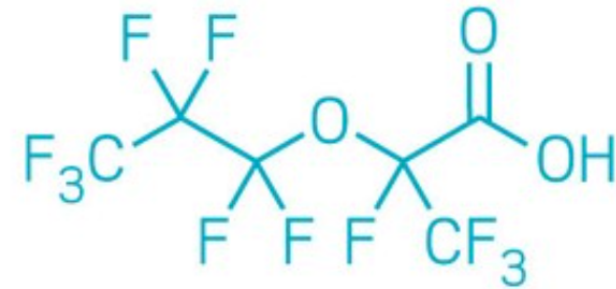
The synthetic nature of
PFAS make the nature of
the chemical difficult to
breakdown and can build
up in people, animals, and
the environment over time

Despite no longer being
developed in the U.S.,
PFAS is still imported in
products and in
manufacturing processes

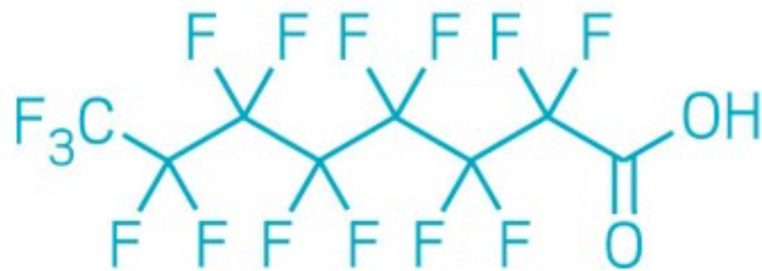
The Most Common(/Known) PFAS



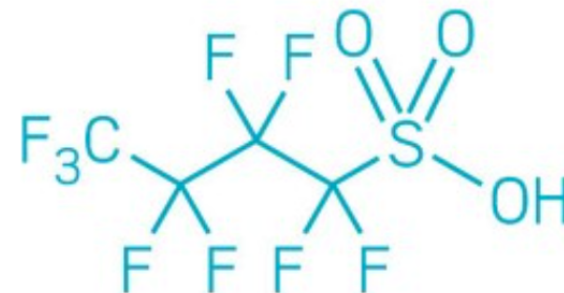
PFOS



HFPO-DA



PFOA



PFBS

U.S. EPA – PFAS Roadmap

U.S. EPA – PFAS Roadmap



EPA's PFAS Strategic Roadmap: A Year of Progress

November 2022



Consider the lifecycle of PFAS

Get upstream of the problem

Hold polluters accountable

Ensure science-based decision-making

Prioritize protection of disadvantaged communities

U.S. EPA – Proposed CERCLA Rules

Comprehensive Environmental Response, Compensation, and Liability Act – CERCLA



CERCLA aka Superfund

§ 102(a) – Permits the EPA Administrator to designate new hazardous substances

§ 107 – Defines the four categories for liability

- Current Owners/Operators
- Former Owners/Operators
- Arrangers or Generators
- Transporters

Liability = Strict, Joint and Several Liability

CERCLA – Proposed Rule 1: Fall 2022



First time the agency is designating a new hazardous substance with rulemaking process under CERCLA

Proposes to add PFOA and PFOS including their salts and structural isomers as Hazardous Substances under CERCLA

EPA Identifies Five Broad Categories of Entities Potentially Affected by this Action

- PFOA and/or PFOS manufacturers (including importers and importers of articles);
- PFOA and/or PFOS processors;
- Manufacturers of products containing PFOA and/or PFOS;
- Waste management and wastewater treatment facilities.

EPA proposes setting a one (1) pound Reporting Quantity or more in a 24-hour period

EPA states throughout the Proposed Rule that they want to ensure the taxpayers are not the ones who bare the cost of the cleanup

In the economic assessment, EPA finds the direct costs are low and state that the indirect costs are "impractical...to quantitatively assess...because of the uncertainty of such costs at this early stage in the process."

CERCLA – Advanced Proposed Rule 2: Spring/Summer 2023



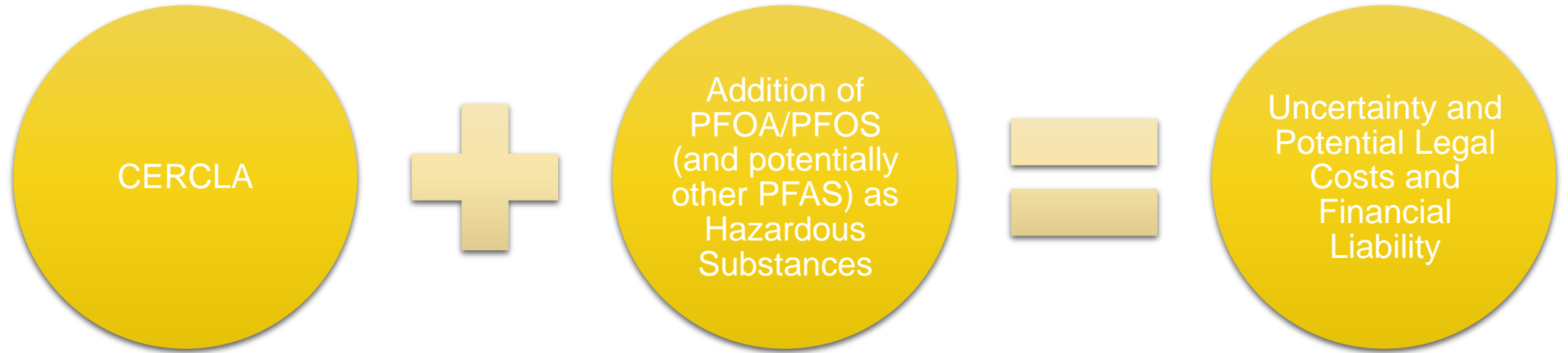
Proposes to designate seven (7) PFAS chains and their salts and structural isomers as hazardous substances under CERCLA

- PFBS
- PFHxS
- PFNA
- HFPO-DA (aka GenX))
- PFBA
- PFHxA
- PFDA

Proposes to designate the precursors to PFOA, PFOS, and the above listed PFAS chains as hazardous substances under CERCLA

Proposes to designate PFAS as a class as hazardous substances under CERCLA

What does all of this mean?



Questions and Concerns About the Proposed Rules



These proposals are coming before the science and cleanup technology are fully developed



Water and Wastewater Agencies and Municipalities are doing what they are required to do under their responsibilities and permits



This proposal is coming before the full financial ramifications are understood/acknowledged



CERCLA needs to remain a “polluter pays” law and the burden should not be shifted to taxpayers or ratepayers



The levels and methods of cleanup are not yet existing or determined

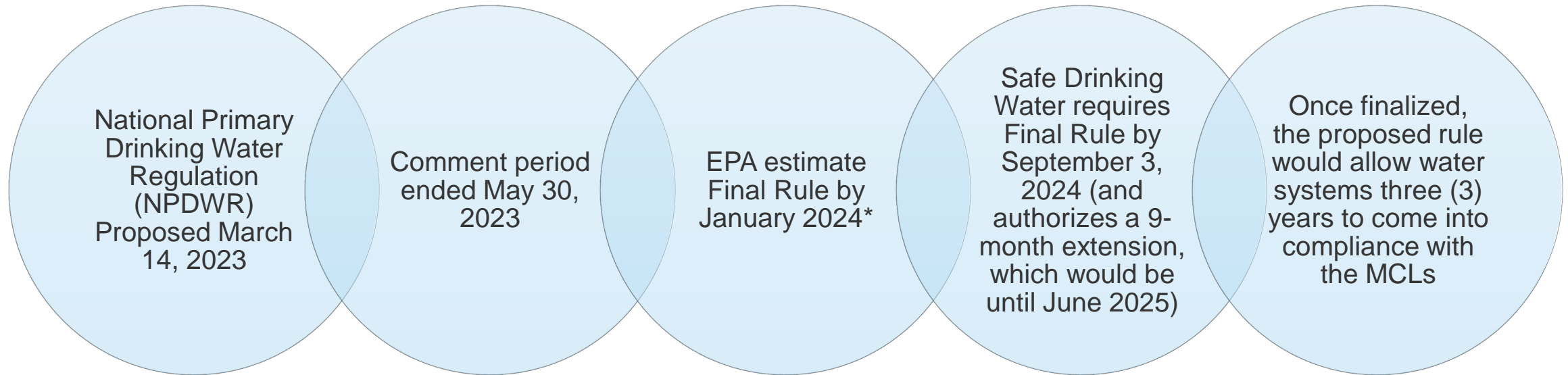


U.S. EPA – Proposed NPDWR

Maximum Contaminant Level Goal (MCLG) and Maximum Contaminant Level (MCL)



Safe Drinking Water Act – Proposed Maximum Contaminant Levels (MCLs) for 6 PFAS Chains: Timing



SDWA: MCLs for 6 PFAS Chains

EPA is proposing non-enforceable Maximum Contaminant Level Goals (MCLGs)

- PFOA and PFOS as individual chains
- PFHxS, PFNA, GenX Chemicals, and PFBS as a mixture

EPA is proposing to establish legally enforceable MCLs for these six chains

Proposed MCLs for PFOA and PFOS



EPA proposed the MCLs for PFOA and PFOS at 4 ppt and Maximum Contaminant Level Goal (MCLGs) at 0

These proposed nationwide limits are lower than any current state limits.

EPA considered MCLs of 10 ppt, 5 ppt, and 4 ppt and proposed the MCL at 4 ppt

PFOA and PFOS Limits Across States



State	PFOA Limit	PFOS Limit
California	10 ppt (Response Level)	40 ppt (Response Level)
Connecticut	16 ppt (Action Level)	10 ppt (Action Level)
Maine	20 ppt (total for 6 PFAS)	20 ppt (total for 6 PFAS)
Massachusetts	20 ppt (total for 6 PFAS)	20 ppt (total for 6 PFAS)
Michigan	8 ppt (MCL)	16 ppt (MCL)
New Hampshire	12 ppt (MCL)	15 ppt (MCL)
New Jersey	14 ppt (MCL)	13 ppt (MCL)
New York	10 ppt (MCL)	10 ppt (MCL)
Vermont	20 ppt (total for 5 PFAS)	20 ppt (total for 5 PFAS)

Proposed MCLs for GenX, PFBS, PFHxS, and PFNA



EPA proposed MCLs and MCLGs for a combination of GenX, PFBS, PFHxS, and PFNA at a Hazard Index of 1.0

This means that the concentration of these combined compounds will be used to determine whether the drinking water satisfies the MCLs

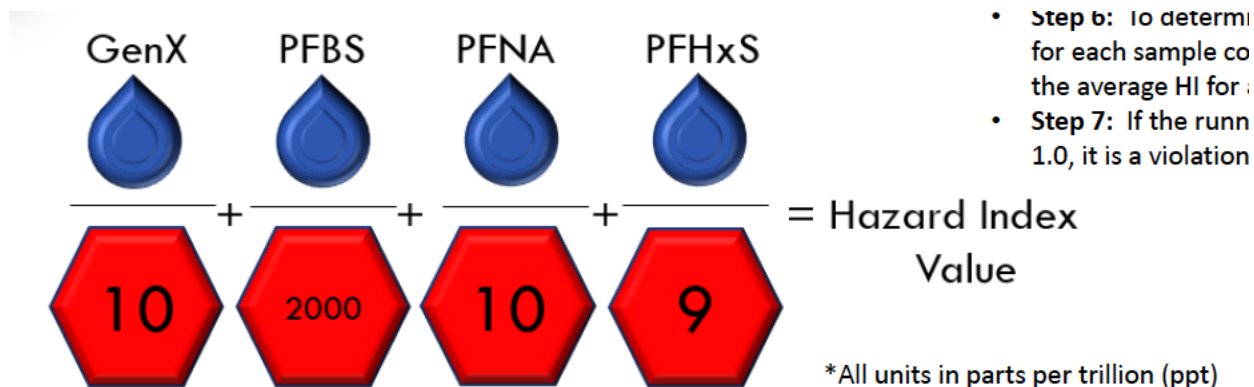
The EPA has proposed to use a hazard index for GenX, PFBS, PFHxS, and PFNA

What is the Hazard Index?

Hazard Index (HI) is a tool used to evaluate potential health risks from exposure to chemical mixtures, based on an assumption of dose additivity

This the first time EPA is using the HI for MCLs (common under CERCLA/RCRA)

The HI is made up of a sum of the fraction



Public Water System Requirements Under the Proposed NPDWR



- Three (3) years to reduce the levels of these PFAS in drinking water
- Monitor for these six (6) PFAS Chains
- Notify the public of the levels of these PFAS

Monitoring Requirements Under the Proposed Rule



Initial monitoring must be completed in the three years between the rule finalization date (anticipated end of 2023) and the MCL effective date (anticipated end of 2026).

Proposed initial monitoring requirements to establish baseline PFAS levels include any combination of:

- Two or four samples collected at PWS over one year, dependent on system population size and system type
- Use of recent, previously acquired PFAS drinking water data from UCMR 5, state-level drinking water occurrence monitoring, or other appropriate data collection program

Initial monitoring results will determine ongoing compliance monitoring requirements. Proposed ongoing compliance monitoring includes:

- Quarterly monitoring are the normal frequency for all sampling locations
- Flexibility to reduce monitoring to once or twice every three years for sampling locations where the result is below 1/3 of the MCLs

Impacts of Proposed PFAS MCLs

EPA estimated that the proposed MCLs would impact 3,400 – 6,300 public water systems serving a population of 70 – 94 million people.

EPA estimated that the proposed rule would cost between \$721 million and \$1.2 billion annually, and provide benefits from \$908 million to \$1.23 billion annually, depending on discount rates chosen.

EPA acknowledged that setting the MCLs at 10 ppt instead of 4 ppt would significantly decrease the number of water agencies that must take action to manage PFOA and PFOS.

Key Questions and Concerns About the Proposed Rule



- Timing of Effective Date
- Number of EPA approved laboratories for testing and the ability to test to the levels requested
- The rules on the disposal of the biproduct are not yet in place and leave concern for liability

California Actions on PFAS

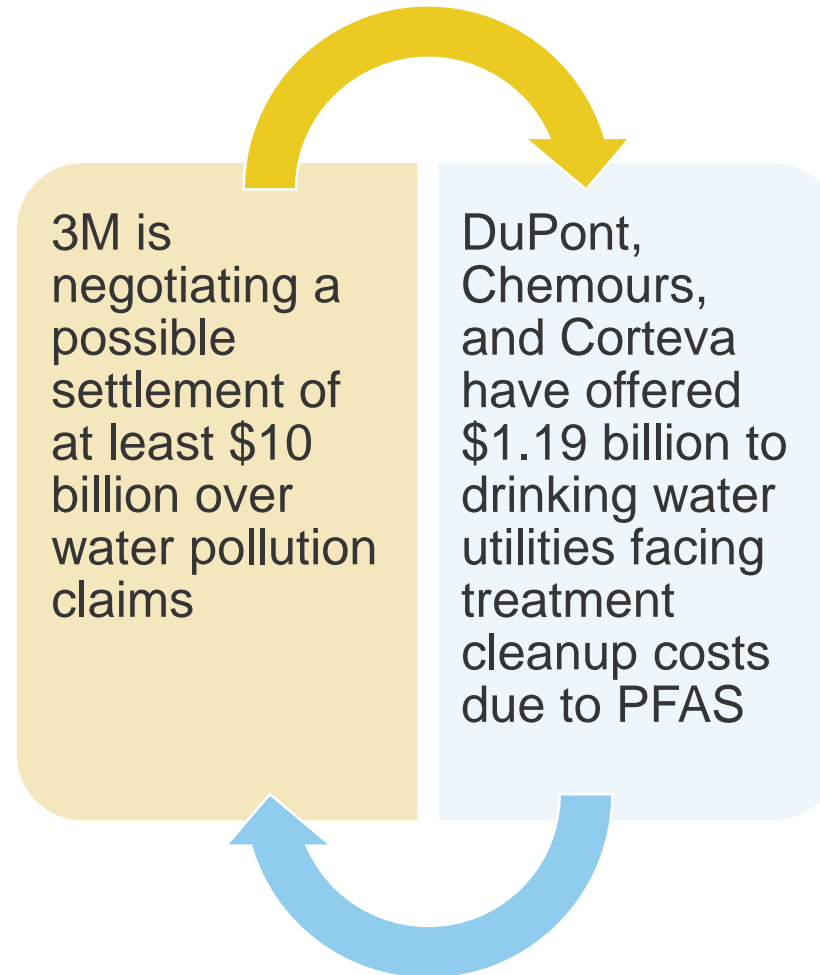
Various Actions on PFAS in California



Rule Type	Action Type	Description	Effective Date	Notes
Legislation	Product	Prohibit selling, making, or delivering cosmetics that contain two dozen toxic ingredients, including PFOA, PFOS, PFDA, and PFNA.	1/1/25	Signed into law on 9/30/20
Binding	Environment	Set levels of PFOA and PFOS at which suppliers have to notify their governing boards at 5.1 ppt and 6.5 ppt respectively.	8/1/19	
Binding	Product	Include PFOA and PFOS as chemicals of concern under Safe Drinking Water and Toxic Enforcement Act (Proposition 65) requiring anyone doing business in the state to provide warnings if they knowingly and intentionally expose any individual to the listed substances.	11/10/17	
Non-Binding Guidance	Environment	Establishes Memorandum Accounts for four water utilities that will allow for potential recovery of PFAS-related expenses such as testing and customer notification of high PFAS levels.	8/6/20	
Non-Binding Guidance	Environment	California is conducting biomonitoring studies to screen for PFAS.		
Binding	Product	Include treatments containing any perfluoroalkyl or polyfluoroalkyl substances (PFASs) for use on converted textiles or leathers as a Priority Product under the Safer Consumer Products Regulations	4/1/22	Reference Number: R-2020-04
Proposed Action	Product	Include carpets and rugs containing PFAS chemicals as a Priority Product under the Safer Consumer Products Regulations.	7/1/21	
Legislation	Legislation	Bill would prohibit the manufacture, distribution, or sale of new textile articles that contain regulated PFAS, beginning Jan. 1, 2025, with some exceptions. Sets maximum textile flourine content at 100 parts per million beginning in 2025 and 50 parts per million beginning in 2027.	1/1/25	Signed into law on 9/29/20

Court Actions and Updates on PFAS

3M, DuPont Face PFAS Liability





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Questions?

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