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EFO 2021 PFAS Outlook from a Legal Perspective

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Federal Outlook

- Biden Administration focusing on regulating PFAS
 - Michael Regan chosen as EPA Administrator
 - Regan focused on PFAS as head of North Carolina DEQ
 - Sued Chemours for discharging PFAS into the Cape Fear River
- The House passed the PFAS Action Act of 2021
 - The bill fast tracks regulation of PFAS under
 - Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA/Superfund)
 - Clean Water Act
 - Safe Drinking Water Act
 - Clean Air Act
 - Toxic Substances Control Act (TSCA)



Federal Outlook (Cont.)

- Environmental Protection Agency
 - Rule proposed on June 28, 2021 requires reporting of PFAS under TSCA in accordance with obligations set out in the National Defense Authorization Act for Fiscal Year 2020
 - Drinking water health advisory level of 70 ppt. Health advisory levels are not enforceable.
- Department of Defense
 - Phasing out use of Aqueous Film Forming Foam (AFFF)



Oklahoma Outlook

- Oklahoma Senate 2021 Session - Oklahoma PFAS Waste Act (S.B. 622)
 - Bill moved out of committee but no further action taken
 - Bill will likely be taken up again in 2022
 - Bill highlights:
 - ODEQ must promulgate rules for storing, treating, and disposing of PFAS waste
 - Financial liability for generators of PFAS waste
 - Definition of PFAS Waste
 - AFFF containing PFAS
 - Waste containing high concentrations of PFAS
 - generated at PFAS manufacturing and processing facilities
 - generated at facilities using PFAS in production of products other than PFAS
 - from remediation projects
 - any other treatment waste associated with the removal of PFAS
 - any other waste that typically contains or is expected to contain high concentrations of PFAS



Oklahoma Outlook (Cont.)

- Oklahoma Department of Environmental Quality
 - Solid Waste Management Advisory Council met in July of 2021 to discuss draft PFAS rules
 - While the draft rules focus on landfills, the language is broad enough to encompass industrial facilities with PFAS in their waste stream
 - Defines PFAS waste similarly to the proposed Oklahoma PFAS Waste Act, but removes the requirement that the waste contain high concentrations of PFAS for all categories except the final “any other waste” section



National Outlook

- State promulgated PFAS regulations as of July 2021
 - 24 states with final, interim, or proposed regulations pertaining to drinking water and ground water
 - 3 states with regulations pertaining to air
 - 31 states with other regulations pertaining to either
 - AFFF
 - Waste streams
 - Consumer notifications or consumer goods
- Several cases filed by states and individuals for property damage, personal injury, and costs of remediation





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