

**GREENWIRE**

## EPA's 'forever chemical' plan faces anger, urgency

Industry members and environmental groups alike sounded off during the agency's public comment period for a rule that would target two PFAS under Superfund law.



BY: **E.A. CRUNDEN** | 11/08/2022 01:05 PM EST



EPA headquarters. | Francis Chung/E&E News/POLITICO

**GREENWIRE** | EPA's sweeping plans to target certain "forever chemicals" under Superfund law have generated cheers from environmental groups and defiance from the chemical industry, even as the waste and water sectors continue to plead for exemptions.

**Public comments** on the contentious rule aimed at two PFAS closed Monday, shuttering a period that has seen a heated outpouring of opinions from all sides. Chemical manufacturers in particular seized on a final opportunity to pan the proposal, which would see the compounds PFOA and PFOS designated as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

In an unattributed statement, the American Chemistry Council blasted the proposed rule as an "expensive, ineffective, and unworkable" burden on its members.

"This proposal would result in potentially significant economic impacts but will not provide additional information on releases or facilitate timely cleanup of sites contaminated with the two substances," the trade organization argued.

ACC continued: "We encourage EPA to consider other available mechanisms that are more feasible and more effective to remediate PFOA and PFOS, and we look forward to engaging throughout this rulemaking process."

The CERCLA proposal aimed at the two most notorious per- and polyfluoroalkyl substances is by far the most aggressive measure EPA has eyed so far to rein in the family of thousands of chemicals, which contaminate air, water and soil nationwide. Regulators announced the proposed rule in August, while teasing that they might eventually target other PFAS beyond the two most studied compounds (*Greenwire*, Aug. 26).

Superfund law hands officials a powerful tool to seek compensation as they oversee cleanup and remediation at the country's most contaminated sites. Many proponents of the move have applauded EPA's actions as a key step toward ensuring that polluters are held accountable for widespread contamination.

But some industries feel EPA needs to be more targeted in its approach, specifically singling out the chemical companies that manufactured PFAS to begin with. The waste and water sectors have raised an increasingly anxious alarm for years over the prospect of CERCLA liability, which they worry could put municipal landfill and water utility operators on the hook for pollution (*Greenwire*, May 24).

In joint comments to EPA, the Solid Waste Association of North America (SWANA) and the National Waste & Recycling Association underscored their plea for the agency to ensure that the "polluter pays," rather than passive receivers.

EPA has said that it intends to use discretion in considering which entities it pursues over contamination. But experts maintain that only Congress can offer a true exemption for certain sectors, and industry members remain worried.

SWANA President and CEO David Biderman said in a separate statement that his group is "very concerned" about the prospect of landfills having to pay up over contamination linked to their sites.

"The mere prospect of such liability is already slowing down site cleanups and increasing costs," Biderman said. "We didn't manufacture or use PFAS, nor did we profit from it. Our landfills accepted it in the waste that we safely manage. It makes little sense to impose the draconian penalty of Superfund liability on solid waste landfills for PFAS."

The National Association of Clean Water Agencies, meanwhile, sought to have the comment period extended, with the U.S. Chamber of Commerce and other organizations making the same request.

EPA declined to extend the period, arguing that the 60 days already provided "the public an adequate amount of time based on the issues presented in the proposed rule."

The Chamber did win on another count, after it *estimated* annual costs stemming from the proposed rule to be in excess of \$700 million. Those findings swayed the Office of Management and Budget to deem the rule "economically significant," requiring EPA to conduct a regulatory impact analysis (*Greenwire*, Aug. 24). That curveball, however, has not changed the overall trajectory of the rule, or the realities looming large for industry.

Affected communities, along with public health and environmental groups, by contrast, have lathered praise on the decision while pushing EPA to do more. The Endocrine Society, an organization of scientists and health care professionals, called it "an important first step" toward tackling PFAS but said the agency should "regulate PFAS as a class of chemicals for the protection of public health and the environment."

The Great Lakes PFAS Action Network, a coalition of affected community members, similarly said the rule is "critically important" for people living in areas like Oscoda,

Mich., which is reeling from contamination.

"In Michigan, taxpayers and ratepayers have thus far had to shoulder most of the financial burden of PFAS contamination," wrote GLPAN. "It is estimated that Michigan tax- and ratepayers have paid over \$202 million dollars to identify, mitigate, and clean up PFAS contamination."

The coalition also called for a class-based decision that would bring the broader PFAS family together under a hazardous substances designation. GLPAN also signed on to a mass comment led by the Environmental Working Group that had 150 signatories pushing EPA to move swiftly in wrapping up its rulemaking (*E&E News PM*, Oct. 24).

EPA is expected to issue an advance notice of proposed rulemaking in November or December that would begin the process of possibly listing other PFAS as hazardous substances. The agency is eyeing July or August of next year for a final rule on PFOA and PFOS, although there could be delays based on factors including public comments.

Other proposed rules, meanwhile, have also left the public on edge as they wait for the agency, namely drinking water regulations for PFOA and PFOS (*Greenwire*, June 15). Officials have said they plan to propose a rule for those chemicals by the end of the year, while also evaluating additional compounds as candidates for regulation. Industry members are already gearing up to challenge those actions, with ACC and Chemours Co. having already sued over nonbinding drinking water advisories for the two chemicals (*Greenwire*, Aug. 1).



#### YOUR ACCOUNT MANAGEMENT TEAM

Tejus Gangadhar

Sr. Business Development Associate, Pro  
tgangadhar@politico.com

Aaron Czarnopys

Account Executive, Pro  
aczarnopys@politico.com