

EPA Win in ‘Forever Chemicals’ Case Creates a Regulatory Roadmap

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A recent federal court [opinion](#) upholding the classification of two “forever chemicals” as hazardous substances reveals much about the EPA’s future authority, the path from designation to liability, and the practical steps businesses should be taking now.

The US Court of Appeals for the DC Circuit [confirmed](#) the EPA’s designation of PFOA and PFOS in *Chamber of Commerce v. EPA* on Aug. 18, rejecting challenges that the agency exceeded its statutory authority and conducted a legally deficient rulemaking process.

The DC Circuit held that the requirement under the Comprehensive Environmental Response, Compensation, and Liability Act that a substance “may present substantial danger” doesn’t require the EPA to prove with certainty that harm will occur before designating a substance as hazardous.

It rejected challenges to the EPA’s cost-benefit analysis and notice-and-comment process, concluding that the agency provided sufficient notice, reasonably evaluated costs and benefits, and adequately addressed the uncertainties inherent in regulating PFOA and PFOS.

The court also rejected constitutional challenges based on nondelegation and vagueness principles, finding that CERCLA provides meaningful limits on the EPA’s authority.

Direct Consequences

The opinion notes three direct consequences of the hazardous substances designation, each existing independently of any future CERCLA cleanup action:

- Releases of more than one pound of PFOA or PFOS must be reported to federal authorities and, in some circumstances, to local authorities and the public.
- Federal agencies selling contaminated property generally must disclose the presence of hazardous substances.
- Shippers must identify and mark shipments exceeding one pound pursuant to transportation regulations.

PFOA and PFOS are two members of the broader family of perfluoroalkyl and polyfluoroalkyl substances, or PFAS, used for decades in products ranging from cookware to firefighting foam. They’re often referred to as forever chemicals because they persist in the environment and remain in the human body for long periods.

For many businesses, the immediate questions are operational: Who is responsible for making reportability determinations? How quickly can notifications be made? Are transportation practices already compliant?

Liability Remains Possible

In rejecting arguments that the EPA failed to account adequately for uncertainty, the court emphasized that cleanup liability frequently depends on a series of discretionary, site-specific decisions.

For remedial actions, that process can include site evaluation, possible National Priorities List consideration, remedial investigations, remedy selection, cost analysis, additional public comment, and ultimately determinations regarding responsible parties and available defenses.

This creates the potential for several changes in litigation tactics, including:

Evidence. The opinion recounts the EPA's findings regarding developmental, cardiovascular, immune-system, and thyroid effects — along with its classification of PFOA and PFOS as likely carcinogenic — and the International Agency for Research on Cancer's classification of PFOA as carcinogenic to humans.

Plaintiffs in PFAS cases may attempt to rely on that record in toxic tort and property damage litigation when addressing issues such as foreseeability, knowledge, or standard of care.

Defendants are likely to emphasize a different point. The designation reflects a regulatory determination that a substance may present substantial danger if released. It isn't, by itself, proof of causation in any particular case. Whether a specific exposure caused a specific injury remains a separate question.

CERCLA claims. The designation preserves the availability of CERCLA cost recovery, contribution, and abatement remedies for releases involving PFOA and PFOS. Federal and state governments, as well as qualifying private parties, may pursue recovery actions.

Those disputes, however, are likely to continue focusing on familiar issues: consistency with the National Contingency Plan, allocation among responsible parties, available defenses, and the reasonableness of claimed response costs.

Standing. The court found associational standing based on member declarations demonstrating increased project expenses associated with CERCLA compliance obligations.

Future litigants challenging PFAS-related regulations may view that discussion as a useful roadmap for establishing injury through documented compliance costs and operational impacts.

Challenging EPA's cost estimates. Companies contemplating future challenges to the EPA economic analyses should pay close attention to why the court rejected the attacks on its regulatory impact analysis.

The court reiterated that the EPA receives considerable latitude in technical economic judgments and operates within a broad zone of reasonable estimation. That standard mattered. The EPA's assumption that adding PFOA and PFOS to

ongoing cleanup efforts would create a 2% to 10% cost premium survived review. The Chamber of Commerce's alternative estimate of 5% to 100% didn't.

The court accepted the EPA's explanation that the industry's model relied heavily on industry discussions and older data, while relying on the agency's own experience with contaminated sites and the incremental nature of many cleanup costs.

The practical lesson? Record-building is crucial. Site-specific data, current remediation experience, and empirical support are likely to carry more weight than generalized industry projections.

Business To-Do List

To get ahead of near-term compliance and litigation risk, companies should take the following steps this quarter:

- Audit current and historical operations, facilities, and supply chain inputs involving PFOA or PFOS, and document volumes, uses, and disposal practices.
- Assign responsibility for release-reporting determinations and verify that reporting and transportation procedures align with current requirements.
- Review indemnification and environmental allocation provisions in existing contracts, particularly agreements executed before the 2024 designation.
- Update environmental due diligence and site assessment protocols to account expressly for PFOA and PFOS.
- Monitor state activity. The EPA acknowledged that states may use their own authorities to require investigations, site characterization, additional response measures, and cleanup on timelines that may differ from the federal process.
- For sites already undergoing remediation, assess whether PFOA and PFOS are likely to be added as contaminants of concern and evaluate the resulting effects on scope, cost, and allocation.

The designation itself was never likely to be the most significant challenge for most companies. The greater challenge is understanding where PFOA and PFOS may reside within historical operations, contracts, waste streams, and environmental records.

Viewed that way, the court's opinion is less a conclusion than a guide to the disputes and compliance decisions that are likely to follow.

The case is [US Chamber of Commerce v. EPA](#), D.C. Cir., No. 24-01193, decided 8/18/26.

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