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EPA Issues Interim Guidance on PFAS Destruction and Disposal

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On December 18, 2020, EPA released for public comment its new *Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products* (available here). Specifically, the new interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of the group of chemicals collectively referred to as per- and polyfluoroalkyl substances (PFAS) and PFAS-containing materials from non-consumer products, including aqueous film-forming foam used for firefighting.

Summary of the Guidance: The interim guidance suggests disposal and destruction options to manage PFAS and destroy or control their migration into the environment. Instead of expressly recommending technologies and techniques, the interim guidance orders presently available disposal and destruction options in terms of level of certainty.

The interim guidance lists the following technologies in order from lower uncertainty to higher uncertainty:

- interim storage
- permitted deep well injection for liquid-phase waste streams only
- permitted hazardous waste landfills
- solid waste landfills with composite liners and leachate collection and treatment systems

Recognizing the continued scientific uncertainty surrounding PFAS disposal and destruction technologies, EPA recommends 2-5 years interim storage if immediate destruction of the material is not necessary before other options such as hazardous waste combustors or other thermal treatment methods but does not prohibit incineration in all circumstances. In choosing a technology, EPA recommends balancing the uncertainty of the technology's capability to control migration of PFAS to the environment with the following factors:

- whether it is imperative to destroy or dispose of the waste immediately versus storing and waiting for uncertainties to be reduced
- cost and availability of destruction and disposal options
- type of waste materials
- concentrations of PFAS in the waste

As is clear from the interim guidance, much is still unknown, and we expect

these recommendations to change as these technologies are further studied. We may additionally see changes to EPA's PFAS approach with the transition to the Biden administration.

This interim guidance will be available for public comment until February 22, 2021.

Brief Background on PFAS and EPA's Recent Actions: PFAS are a group of man-made chemicals used in a wide array of consumer and industrial manufacturing and industries since the 1940s and are included in such things as cookware, food packaging, stain- and water-repellent fabrics, fire-fighting foams, and cleaning products. Many of these substances are characterized as persistent in the environment and human body, meaning they do not break down and accumulate over time. Although still being studied, evidence suggests PFAS exposure can lead to adverse human health effects.

Until recently, releases of PFAS into the environment have gone largely unregulated, particularly under federal law. Currently neither perfluorooctanoic acid (PFOA) nor perfluorooctanesulfonic acid (PFOS) is listed as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and there are no enforceable federal cleanup standards currently in place. Due to detection of drinking sources contaminated with PFOA and PFOS, multiple state agencies began implementing their own state standards for the chemicals. Many congressional lawmakers and environmentalists have pressured EPA to implement federal regulations.

In February 2019, EPA released its *PFAS Action Plan*, detailing the steps EPA intends to take to address PFAS contamination and signaling EPA's forthcoming focus on this class of chemicals. In EPA's *PFAS Action Plan: Program Update* for February 2020 (available here), EPA announced its collaboration with other federal partners, including the Department of Defense, on efforts to increase the agency's understanding and availability of treatment technologies for PFAS. It additionally noted its intent to publish its interim guidance on the destruction and disposal of PFAS with revisions published every three years after that as mandated under the National Defense Authorization Act for Fiscal Year 2020. This interim guidance is the first in that series.

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questions as to the application of the law to your activities, you should seek the advice of your legal counsel.