Holland & Hart

What's on Congress' PFAS Agenda?

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Federal legislative activity on PFAS is expected to pick up considerably as Congress comes closer to adjourning for the year. While it's mid-May, there are only about 70 legislative days left before the end of the year, and as always Congress has more appetite for legislating than it has time. Engaging with key committee members staff will pay dividends for what will undoubtedly be an end of year legislative rush.

The legislation attracting the most attention has not yet been introduced. Retiring Senator Carper (D-DE) Chairman of the Environment and Public Works Committee has been attempting to reach agreement with Senator Capito (R-WV), the ranking member of EPW, on broad PFAS legislation. However, that effort has been complicated by EPA's designation of two PFAS as CERCLA hazardous substances. This designation has raised concerns among local governments, and other “passive receivers” that they could face significant CERCLA liability for past actions such as, landfilling, management of sewage sludge, and composting. Senator Capito has been clear that passage of broader legislation must also include considerable protections for passive receivers from direct liability, contribution actions, and other claims. The negotiations between Senator Carper and Capito are ongoing and could result in an end of year agreement. Senator Carper has indicated he is planning to “run through the tape” to pass comprehensive legislation before the end of the current session.

Along with the Carper proposal there are multiple other bills that have been introduced and other legislation that could serve as a vehicle for PFAS policy that could impact a broad range of industries and local governments.

The key legislative proposals to watch include:

- Senate bill, **4187**. Introduced by Senate Majority Whip Dick Durbin (D - IL) and Congresswomen Betty McCollum (D-MN), who is also a senior member of the House Appropriations Committee. Their Forever Chemical Regulation and Accountability Act would, among other things, direct the phase out of “non-essential” PFAS production and require manufacturers to provide a plan to phase out PFAS in their products over the next 10 years. The National Academies of Science, Engineering, and Medicine would “provide guidance” on essential or non-essential uses of PFAS. It would also amend bankruptcy law to avoid discharge of claims related to toxic chemicals by individuals.

  This legislation is sweeping in its effect and would significantly

impact industry using PFAS that are not deemed “essential.” Impacted parties should be prepared to work with the National Academies in the event this legislation passes.

- Senator Cynthia Lummis (R-WY) in 2023 introduced five bills designed to protect passive receivers from liability under CERCLA. Lummis was part of the Carper/Capito effort last year to reach a bipartisan agreement on PFAS. These bills were introduced to protect practices and industries that accepted some form of PFAS from CERCLA cleanup liability, NRD claims, and contribution actions. The different bills protected different entities who may have used or accepted PFAS but did not manufacture it and either were responsible for disposal of PFAS or were in a critical industry. The goal of all five proposed bills is to protect downstream recipients of PFAS from liability. Senator Lummis' legislation would protect persons engaged in the production or harvesting of agricultural products, airports, and releases from fire-suppression systems.

    - **1427**– Agriculture PFAS Liability Protection Act of 2023
    - **1429** – Resource Management PFAS Liability Protection Act of 2023
    - **1430** – Water Systems PFAS Liability Protection Act
    - **1432** – Fire Suppression PFAS Liability Protection Act
    - **1433** - Airports PFAS Liability Protection

- **R. 7675:** Bipartisan legislation introduced by Representatives Chris Pappas (D-NH) and Bill Posey (R-FL) that would authorize appropriations for the PFAS R&D research until the end of FY 2029.

- **R.6805:** Introduced by Congresswomen Debbie Dingell (D-MI), Congressmen Pat Ryan (D-NY) and Brian Fitzpatrick (R-PA). Among other things the legislation would:

    - Designate PFOA and PFOS as hazardous air pollutants within 180 days and require EPA to determine whether to list other PFAS within five years.
    - Require EPA to place discharge limits on industrial releases of PFAS and provides $200 million annually for wastewater treatment.
    - Prohibit unsafe incineration of PFAS wastes and place a moratorium on the introduction of new PFAS into commerce.
    - Require comprehensive PFAS health testing.
    - Create a voluntary label for PFAS in cookware.
    - Assist schools and childcare facilities with addressing PFAS contamination in drinking water.
    - Require manufacturers to provide reference standards for

PFAS.

- Other legislation.
    - Congress is currently working on the Farm Bill which could be a vehicle to move PFAS policy. The House Agriculture Committee recently released a draft Farm Bill that includes authorization of high priority research grants directed at understanding the impact of PFAS land application of biosolids and compost, as well as the impact of structural fire-fighting foam on agriculture.
    - The Department of Defense Authorization (DoD) Bill has historically been used to bypass direct PFAS legislation impacting DoD and to direct the work of other federal agencies and also must pass before the end of the year.

Engaging Congress and the executive branch in the waning day of the current Congressional session will not be an effective strategy. Engaging right now can make the difference between policy success and failure. Like many of the major issues before Congress there is the possibility that this could slip into a post-election lame duck session, or even into next year. In any event, it is critical to meet with the relevant stakeholders to ensure a solid foundation is set for when action on PFAS is more imminent.

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