



PFAS as a hazardous substance

Jamie Wallerstedt | Remediation Division Director

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State and Federal Superfund Overview

- State Superfund - Minnesota Environmental Response, Compensation, and Liability Act (MERLA)
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
- State and federal law provides the MPCA and EPA, respectively, authority to respond to releases from facilities for hazardous substances, pollutants, and contaminants.

What is a hazardous substance?

- Under MERLA, PFAS is a hazardous substance.
- Under CERCLA, hazardous substance is defined as follows:
 - Clean Water Act (CWA) Hazardous Substances;
 - CWA Toxic Pollutants;
 - Clean Air Act Hazardous Air Pollutants;
 - Resource Conservation and Recovery Act Hazardous Wastes;
 - Toxic Substance Control Act (TSCA) imminently hazardous chemical; and
 - Any listed hazardous substance directly under CERCLA.

Overview – MERLA hazardous substances

- In the State of Minnesota, PFAS compounds are hazardous substances under MERLA, known as state Superfund.
 - Allows the state to require responsible parties to investigate and respond to releases of PFAS.
 - Allows that state itself to respond to releases of PFAS at state Superfund sites.
 - Allows the state to seek cost recovery from responsible parties.
 - Allows the state to list PFAS release sites on the State Superfund List.

Overview – CERCLA hazardous substance

- CERCLA provides authority for the EPA Administrator to designate a contaminant a hazardous substance on the basis of substantial threat to public health.
- EPA is proposing to designate PFOA and PFOS as hazardous substances directly under the CERCLA.
- This is the first time EPA is listing a hazardous substance directly under CERCLA and not by reference from another law/list.
 - Allows EPA to require responsible parties to investigate and respond to releases of PFOA/PFOS.
 - Allows EPA to address PFOA/PFOS releases at existing federal Superfund sites.
 - Allows EPA to list new federal Superfund sites based on PFOA/PFOS contamination (National Priorities List – NPL).

Overview – CERCLA hazardous substance

- PFOA and PFOS are not being designated at hazardous wastes at this time
 - A hazardous waste designation would impact disposal requirements, such as transporting, finding a permitted hazardous waste disposal facility, etc.

Management Impacts to Minnesota

- EPA's Designation of PFAS as a hazardous substance does not change disposal options
 - Many subtitle D landfills in Minnesota can legally accept PFAS-contaminated materials; however, they may choose not to accept those materials.
 - Some landfills may charge more for PFAS-contaminated materials, increasing disposal costs – these are considered operational costs, and are Settlement-eligible.
- Cities can ensure contractors are qualified and follow appropriate disposal practices for contaminated materials to reduce potential future liability.

- EPA posted the Notice of Proposed Rulemaking and closed the 60-day public comment period on November 7, 2022.
- It is anticipated that EPA will respond to the comments received.
- We have been notified that EPA is already planning to propose additional PFAS chemicals as CERCLA hazardous substances.
- EPA anticipates final rule in summer/fall of 2023.

Questions?