Bond Case Briefs

Municipal Finance Law Since 1971

PFOA and PFOS are CERCLA Hazardous Substances; Prepare Accordingly

The U.S. Environmental Protection Agency (EPA) released its Pre-Publication Notice of a Final Rule designating Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS), along with their salts and structural isomers, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. According to EPA, this designation is based on significant evidence, including epidemiological and toxicological studies, that PFOA and PFOS, when released into the environment, may present a substantial danger to public health or welfare or the environment.

Release Reporting

The rule requires releases of PFOA and PFOS that meet or exceed the reportable quantity (1 pound) within a 24-hour period to be reported to the National Response Center, state or tribal emergency response commission, and the local or Tribal emergency planning committee for the areas affected by the release. This reporting requirements applies to both continuous and non-continuous releases.

PFAS Enforcement Discretion Policy Announced

Simultaneous to the final designation of PFOA and PFOS as CERCLA hazardous substances, EPA issued a PFAS Enforcement Discretion and Settlement Policy Under CERCLA that provides direction on how EPA will exercise its enforcement discretion regarding per- and polyfluoroalkyl substances (PFAS) contamination in the environment. According to the policy, EPA "will focus on holding responsible entities who significantly contributed to the release of PFAS into the environment, including parties that manufactured PFAS or used PFAS in the manufacturing process, federal facilities, and other industrial parties."

Continue reading.

Michael Best & Friedrich LLP – Leah Hurtgen Ziemba, Todd E. Palmer, David A. Crass, Joseph Louis Olson and Eric J. Callisto

April 19 2024