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EPA Issues PFAS Enforcement Discretion Policy Addressing Environmental Cleanup Liability: Spencer Fane

On April 19, 2024, the U.S. Environmental Protection Agency (EPA) released its [PFAS Enforcement Discretion and Settlement Policy Under CERCLA](#), addressing environmental cleanup liability for per- and polyfluoroalkyl substances (PFAS). The EPA's issuance of the policy came just two days after the agency formally announced it would [list two PFAS, perfluorooctanoic acid \(PFOA\) and perfluorooctanesulfonic acid \(PFOS\)](#), as "hazardous substances" under the nation's Superfund law, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a decision with long-term consequences for site closure and contaminated site cleanup.

In light of [CERCLA's joint-and-several strict liability framework](#), the EPA's decision comes as no surprise as an attempt to mollify the impact on passive potentially responsible parties (PRPs). For many businesses, however, the EPA's policy will feel like the agency has cut off their hand, only to give them a few fingers back. Indeed, whether a company is considered passive or a major PRP for the release of PFAS into the environment, is an issue that will take years – and even decades – before the liability contours under CERCLA and the PFAS Enforcement Discretion Policy come into focus.

Entities Entitled to PFAS Enforcement Discretion

According to the EPA, the purpose of its PFAS Enforcement Discretion Policy is to "focus on holding accountable those parties that have played a significant role in releasing or exacerbating the spread of PFAS into the environment, such as those who have manufactured PFAS or used PFAS in the manufacturing process, and other industrial parties. For purposes of this policy only, these parties are referred to as major PRPs." As a result, the agency has signaled that it does not intend to seek cleanup costs or response actions from the following types of PRPs:

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