



# The Politics of the Environment and PFAS Update

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Environmental regulations have a strong political component. Environmental regulations, like other policies, are reflective of the party in power.

President Trump's Administration preferred fewer regulations and famously (or infamously depending on your viewpoint) withdrew from the Paris Climate Accord. In contrast, President Biden has expanded environmental regulations and the reach of the regulations. Early in his administration, President Biden issued an Executive Order stating climate change and environmental justice would be incorporated in all areas of the government.

This past spring, there were a flurry of final environmental regulations that reflect this view of increased regulation. The ink was barely dry on one regulation when a new one hit the printing press. The regulations were advanced rapidly because according to Thompson Reuters, “The Biden administration (was) racing to finalize a slew of major environmental regulations to help safeguard them from potential reversal should former President Donald Trump win the 2024 presidential election.”

One of those recently promulgated regulations, The Clean Water Act – Facility Response Plan is reflective of the Executive Order mentioned above. This regulation assumes increased severe weather events as a result of climate change. This climate factor requires more facilities to prepare a Facility Response Plan than would have been required without factoring in increased “weather events.” Environmental justice is mentioned more than 30 times in the final regulation.

Environmental justice has also been used to justify enforcement efforts and in some cases deny permits (and permit renewals) in certain areas of the country that have been deemed as “overburdened.”

This political component is often what adds controversy to developing regulations – they should not be so strict or they are not strict enough. As outlined below, political interests not only influence environmental regulations – but the challenge of regulations as well.

#### **Updating PFAS Regulations**

In the fall 2023 Partners, we covered the developing regulations involving per- and polyfluoroalkyl substances (PFAS). It is not hyperbole to say that these chemical compounds, which number in the thousands, are found everywhere across the globe.

The Environmental Protection Agency has recently taken several steps to regulate PFAS, part of the slew of major environmental regulations mentioned by Reuters.

First was establishing maximum contaminant levels (MCLs) for six of the PFAS chemicals under the Safe Drinking Water Act. The lowest of these MCLs is 4 parts per trillion (ppt). For perspective, a ppt is 1 second over 31,500 years.

The other final PFAS regulation is the classification of two PFAS chemicals as hazardous substances under the “Superfund Law.” This means if you have these chemicals above regulatory levels, it could result in Superfund liability. It also (potentially significantly) will affect buying and selling property, including agricultural property.

#### **PFAS Liability**

There is growing concern over the magnitude of PFAS liability, which touches nearly every business sector. Attorney Ralph DeMeo (Guilday Law) said of the PFAS liability, “There’s not enough gold in Fort Knox to pay the damages and the settlements that are gonna come out of this. There’s just literally not enough money... there is a lot of concern about bankruptcy.”

With trillions of dollars in environmental liability and the potential for bankruptcy, the domino effect could have some impact on agriculture or agricultural suppliers.

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of Partners. While we cannot predict how this will conclude – it is potentially a very big issue to monitor.

#### **PFAS Regulations Challenged**

The American Water Works Association and the Association of Metropolitan Water Agencies are challenging the PFAS in drinking water regulation. In the challenge, they state the EPA, “failed to adequately consider comments filed by the organizations and other stakeholders, and did not abide by all the requirements of the Safe Drinking Water Act during the development of the standard.” Estimates to address PFAS in drinking water are as high as \$175 billion.

The Associated General Contractors of America, Inc., National Waste and Recycling Association, and the Chamber of Commerce of the United States filed a petition in the United States Court of Appeals for the District of Columbia challenging the EPA’s designation of certain PFAS as hazardous substances. They are challenging whether the EPA appropriately considered the cost before promulgating the rule.

The Chamber estimates the annual cost for compliance with the hazardous waste designation to be \$700 to \$900 million.

One of the critics of the PFAS standards is Susan Goldhaber (American Council on Science and Health). In 2023, Ms. Goldhaber wrote, “The extraordinarily low numbers will lead to years of litigation, unnecessary consumer fear, and billions of dollars spent on low-risk compounds.”

In a perfect world, environmental regulations are developed and implemented based on sound science and without political influence. We don’t live in a perfect world so how PFAS is resolved and the fate of the many other environmental regulations that were recently passed may rest in the courts and the elections this fall – because it’s political. ■

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#### **ABOUT THE AUTHOR**

Alan Hahn has an undergraduate degree in Environmental Studies and completed a graduate program in Environmental Management. He has worked in environmental management for 45 years. He has written hundreds of blogs and articles. In addition to GreenStone Partners, his published work includes Progressive Dairy, Manure Manager, Michigan Lawyers Weekly, Detroit, Michigan Forward, and HazMat Magazine.

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