

Washington's PFAS Chemical Action Plan: Another Piece in the Regulatory Patchwork

On November 3, 2021, the Washington Department of Ecology (Ecology) published its final PFAS Chemical Action Plan (Plan), which provides a roadmap for addressing uses and releases of those chemicals in Washington State to protect human health and the environment. The Plan—Ecology's culmination of several years of webinars, public meetings, and public comments—contains recommendations intended to reduce both industrial and consumer uses and releases of PFAS into the environment. However, many of the Plan's recommendations will require further action from Ecology, other state agencies, and the Washington State Legislature, such as formal rulemaking, informal cooperation with the regulated community, new laws, and new sources of funding.

What Are PFAS?

Per- and polyfluoroalkyl substances, known as "PFAS" are a group of man-made chemicals identified by signature elemental bonds of fluorine and carbon, which are extremely strong and difficult to break down in the environment. As a result, PFAS are persistent and can withstand high temperatures and highly corrosive environments. While PFAS include the commonly known and used PFOA, PFOS, and GenX, the PFAS family of chemicals also contains more than 4,700 different compounds.

PFAS have been manufactured and used in a variety of industries around the globe, including in the United States, since the 1940s. Because of their ability to repel water and oil, PFAS are used in many different types of products, including firefighting foam known as "AFFF," stain-resistant carpets, roofing materials, coatings, food packaging, water-resistant outdoor clothing and gear, nonstick cookware, and boots, among others.

PFAS Chemical Action Plan

In the past several years, Ecology has taken a proactive approach to regulating and studying the effects of PFAS. In April 2018, Ecology released its Interim PFAS Chemical Action Plan, which contained preliminary recommended actions to address environmental issues relating to PFAS. The PFAS Advisory Committee—composed of representatives from industry and environmental stakeholders—provided input on the Interim Chemical Action Plan. After incorporating input from the Advisory Committee, Ecology issued its Draft Chemical Action Plan for public comment in October 2020. The Final Chemical Action Plan largely reflects the recommendations included in the Draft Plan, with a few changes to reflect updated agency action. For example, in between the Draft Plan and the Final Plan, Ecology has used its existing statutory authority under the Model Toxics Control Act (MTCOA) to begin developing cleanup standards for five PFAS chemicals—PFOS, PFOA, PFNA, PFHxS, and PFBS.

Ecology's Final PFAS Chemical Action Plan contains four broad categories of prospective action:

1. Ensure safe drinking water;
2. Manage environmental contamination;

3. Reduce use of PFAS in products; and
4. Evaluate waste management.

Each of these four categories is discussed separately below:

1. Ensure Safe Drinking Water

Ecology proposed three recommendations in this category:

- Identify sources of funding from state agencies, the Washington State Legislature, and water systems for mitigation of drinking water contaminated with PFAS. This step would first require the Department of Health to set drinking water standards for PFAS. In addition, the Plan mentions that associated remediation costs should be reimbursed by responsible parties under MTCA.
- Ecology and the Department of Health will provide technical support for site characterization, source investigation, and mitigation at PFAS-contaminated sites.
- Ecology and the Department of Health will continue to support biomonitoring and implementation of other health studies to better understand PFAS exposure and health outcomes.

2. Manage Environmental Contamination

To address PFAS contamination in soil, groundwater, and surface water, Ecology proposed three recommendations:

- Establish cleanup levels for soil and groundwater for five types of PFAS—PFOS, PFOA, PFNA, PFHxS, and PFBS.
- Partner with local organizations to communicate with residents in areas with PFAS-contaminated drinking water.
- Work proactively with industry, manufacturers, and businesses to eliminate releases of PFAS into the environment, including from use of firefighting foam and from manufacturing and commercial processes.

3. Reduce PFAS in Products

To reduce exposure via consumer products, Ecology proposed three recommendations:

- Evaluate safe alternatives to PFAS in certain consumer products, such as carpets and rugs, water and stain resistant treatments, and leather and textile furnishings. Ecology has signaled that, under Washington's Toxic Pollution Reporting Act Chapter 70A.350 RCW, it will request that manufacturers identify which products contain PFAS and the amount and function of PFAS in those products.
- Continue to investigate other consumer uses of PFAS, such as in water resistant clothing and gear, nonstick cookware and kitchen supplies, and personal care products, and research the availability and feasibility of safer alternatives.
- Implement other actions designed to reduce use of PFAS in products, such as gathering input from historically overburdened communities and establishing a purchasing preference policy for products free of intentionally added PFAS.

4. Evaluate Waste Management

The final category aims to address PFAS in waste through three recommendations:

- Evaluate PFAS in municipal wastewater treatment plant influent and effluent and consider implementation of additional monitoring requirements.

- Evaluate PFAS emissions from landfills by developing a sampling program at selected landfills throughout the state.
- Address data gaps regarding the risk from PFAS in biosolids that are land applied in Washington.

Implications

Even though the Chemical Action Plan does not require immediate action by Ecology and does not have an immediate effect on regulated entities, it is likely to trigger new regulatory actions that will impact the business community. Ecology is already implementing some of the Chemical Action Plan's recommendations, such as landfill leachate studies and restrictions on PFAS in food packaging. Publication of the final Plan makes additional Ecology action to achieve the Plan's recommendations more likely. Among other steps, Ecology is likely to seek cost recovery if replacement of PFAS-contaminated drinking water is necessary (particularly in light of Ecology's announcement last month that PFAS are hazardous substances under MTCA). Ecology is also pursuing additional sampling at contaminated sites, additional reporting on PFAS-containing products, and sampling of wastewater influent and effluent for PFAS.

© 2021 Perkins Coie LLP

Authors



[Meredith Weinberg](#)

Partner

MWeinberg@perkinscoie.com [206.359.3229](tel:206.359.3229)



[Katie Page](#)

Partner

KPage@perkinscoie.com [206.359.6228](tel:206.359.6228)



Jane E. Carmody

Associate

JCarmody@perkinscoie.com [206.359.3545](tel:206.359.3545)

Explore more in

[Environment, Energy & Resources](#) [Environmental Litigation](#)

Related insights

Update

[Ninth Circuit Rejects Mass-Arbitration Rules, Backs California Class Actions](#)

Update

[CFPB Finalizes Proposed Open Banking Rule on Personal Financial Data Rights](#)