

## Environmental Law &amp; Litigation

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**PFAS—The Great Reopener: USEPA Warns It May Reopen Closed Sites for PFAS Contamination**By [Mark S. Heinzelmann](#) and [Brian S. Winfield](#)

Typically, final remediation documents (no-further-action letters, response action outcomes, and the like) signal the end of remediation at a contaminated site. Upon receipt of the documents, responsible parties can often rest easy knowing that the most costly and time-consuming work is complete and they can move on to long-term operation and maintenance as necessary. But in environmental practice, it is rare for a site to achieve full and final resolution. There is always the risk (though often small) that a site might be reopened by a regulatory authority.

In September 2022, the U.S. Environmental Protection Agency (USEPA) [published](#) to the *Federal Register* a proposed rule that would designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), two per- and polyfluoroalkyl substances (PFAS), as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Upon such designation and in accordance with CERCLA's requirements, responsible parties would be required to report any releases of PFOA or PFOS above the federal reportable quantity (RQ).<sup>1</sup> The USEPA is poised to finalize the PFOA/PFOS designation in early 2024, and it has already [published](#) an advance notice of proposed rulemaking to sweep in several other specific PFAS compounds and entire categories of PFAS as CERCLA-designated hazardous substances.

Depending on several factors, the reporting of a PFAS exceedance at a new site may prompt the USEPA to require the responsible parties to perform remediation. But it seems that obligation may extend to closed sites as well. On October 27, 2023, during the annual meeting of the Association of State and Territorial Solid Waste Management Officials, the USEPA's chief of the Resource Conservation and Recovery Office's cleanup programs branch informed the crowd that the proposed PFOA and PFOS designation could eventually lead to the USEPA's [reopening closed sites](#) to address lingering PFAS contamination, but it will likely only do so on a case-by-case basis.

Given the ubiquitous nature of PFAS, the risk of a PFAS-driven reopener is not entirely remote. And for many responsible parties, the prospect of the USEPA reopening a closed site will be daunting. But in light of the significant costs that might be associated with a PFAS reopener, responsible parties that are aware of PFAS contamination (or even the potential for such contamination) at their closed site should consider preemptively developing a strategy to respond to the USEPA's reopener attempts. Forethought and planning can pay dividends and will ensure that the responsible parties are not caught flat-footed when the USEPA (or a state regulator, such as the N.J. Department of Environmental Protection) comes knocking.

If you have any questions about PFAS or the USEPA's authority to reopen closed sites, please contact the authors of this article.

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<sup>1</sup> The proposed RQ for PFOA and PFOS is one pound or more in a 24-hour period. See <https://www.govinfo.gov/content/pkg/FR-2022-09-06/pdf/2022-18657.pdf>.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

**MARK S. HEINZELMANN**

Counsel

**T: 973.422.2946**

[mheinzelmann@lowenstein.com](mailto:mheinzelmann@lowenstein.com)

**BRIAN S. WINFIELD**

Staff Attorney

**T: 862.926.2284**

[bwinfield@lowenstein.com](mailto:bwinfield@lowenstein.com)

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