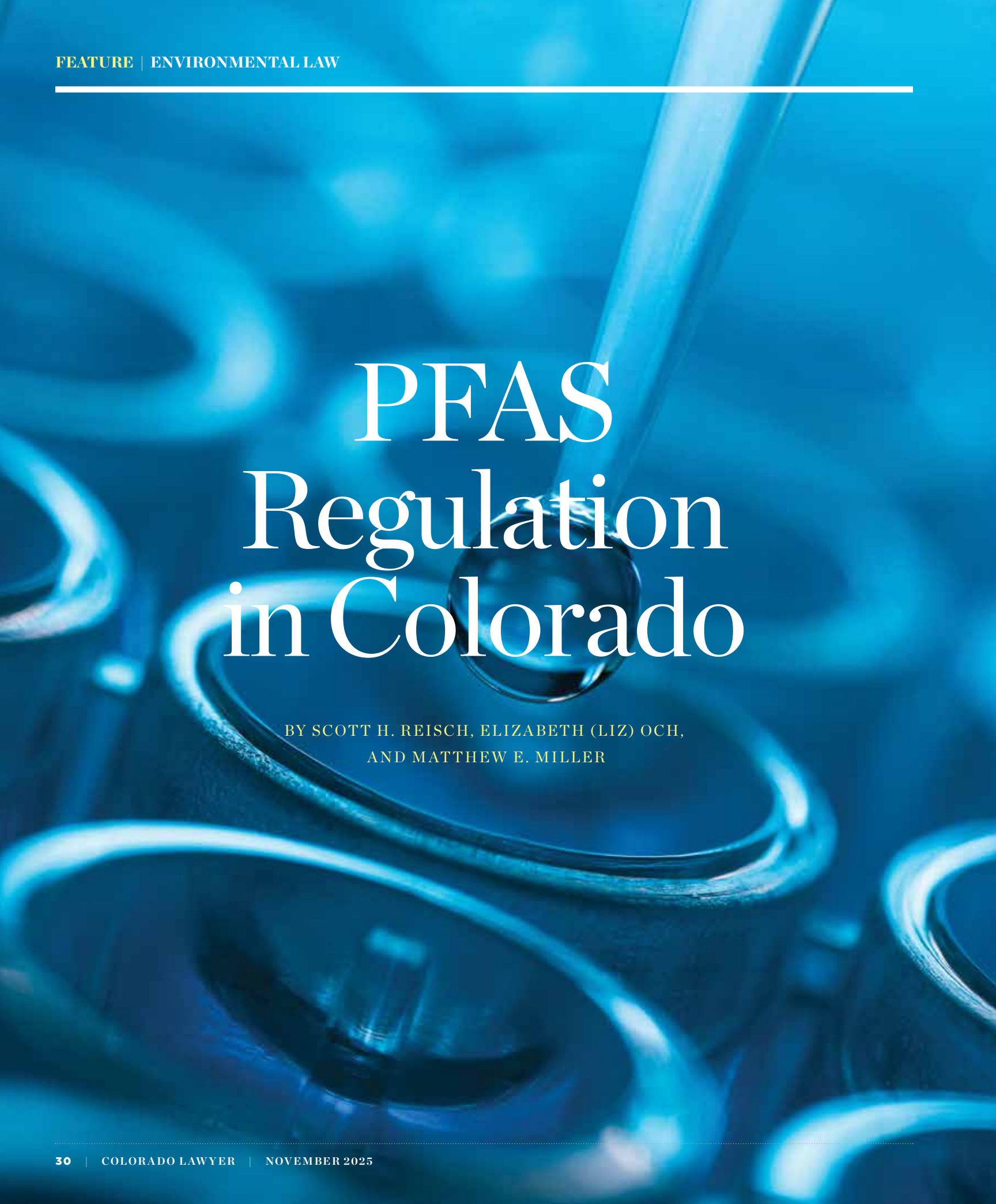

PFAS Regulation in Colorado

BY SCOTT H. REISCH, ELIZABETH (LIZ) OCH, AND MATTHEW E. MILLER

This article provides a high-level, practical overview of PFAS regulation in Colorado, focusing on how federal and state PFAS requirements impact key industries and what Colorado practitioners should know when advising clients.

It seems like every few months, there is a story in the press about per- and polyfluoroalkyl substances, a class of chemical substances known as PFAS.[1] Due to their chemical structure, PFAS are highly resistant to oil, water, heat, and chemicals, and thus have been used in numerous manufacturing sectors, including aerospace, automotive, and electronics, and in a wide variety of consumer products, including nonstick cookware, water- and stain-resistant fabrics, cleaning products, food packaging, and cosmetics. The same qualities that make PFAS useful also make them persistent in the environment,[2] and, therefore, a concern to regulators.

Over the past few years, federal and state governments have increasingly adopted requirements regarding PFAS. Regulating PFAS was a key focus of the Biden administration, which established drinking water standards for six types of PFAS[3] and listed two types of PFAS—perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA)—as "hazardous substances"[4] under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund).[5] The latter effort marked the first time in CERCLA's history that the US Environmental Protection Agency (EPA) had added chemicals to CERCLA's list of hazardous substances. While the second Trump administration has rolled back many Biden administration initiatives, it has been more restrained with respect to PFAS regulation, which was a significant focus of the first Trump administration. For example, in a September 2025 court filing, the Trump administration announced its intent to maintain and defend the aforementioned CERCLA listings of PFOS and PFOA.[6] That filing followed a May 2025 Trump administration announcement that it would maintain the Biden administration's drinking water standards for PFOS and PFOA, even as it extended the compliance deadline by two years and proposed to eliminate drinking water standards for four other PFAS chemicals.

> "Over the past few years, federal and state governments have increasingly adopted requirements regarding PFAS."

At the state level, Colorado has adopted and is pursuing its 2024 PFAS Action Plan, designed to: (1) identify and minimize Coloradans' exposure to PFAS; (2) assess and provide information on PFAS health risks; and (3) limit the amount of PFAS entering the environment and address known PFAS contamination.[7]

Federal and state developments, along with those in the courts,[8] will continue to impact Colorado clients who own or develop real estate in Colorado; who operate industrial facilities that use or have used PFAS in their processes or in their firefighting foam; who own land where sewage sludge has been applied as a soil conditioner or fertilizer; or who own or operate landfills, drinking water, or wastewater systems.

This article distills some of the most significant recent federal and state developments involving PFAS regulation into practical takeaways for impacted industries and their Colorado counsel.

PFAS Primer

The term PFAS refers to a large group of synthetic compounds that feature chemical bonds between carbon and fluorine atoms. PFAS were first manufactured in the 1940s, and today there are thousands of chemically unique PFAS compounds.[9]

Scientists are studying the potential impacts of PFAS on human health and the environment. The Colorado Department of Public Health and Environment (CDPHE) acknowledges that "[w]e don't know whether PFAS will cause a specific health impact for an individual," but currently takes the position that there is evidence that "some PFAS" adversely impact human health.[10] CDPHE concludes that "[t]he science around PFAS is always changing" and "[t]he strength of evidence for some health effects may increase or decrease as we learn new information."[11]

In light of alleged health concerns, regulatory scrutiny of PFAS has intensified in recent years at the federal and state levels, leading to prohibitions, restrictions, and reporting requirements with respect to PFAS in various products and settings. Further, there are increased efforts to monitor and reduce PFAS in drinking water systems and the environment, and to increase public awareness about PFAS. Below, we discuss some of the most significant PFAS-related laws, policies, and programs applicable in Colorado.

Advising on Transactions Involving Real Estate

The risk of liability for environmental cleanup costs is a major concern in the real estate industry and in transactions involving real property. CERCLA imposes liability for the cleanup of hazardous substances, without regard to fault, on four classes of "potentially

responsible parties" (PRPs), including current and former owners and operators of "facilities" at which hazardous substances "have come to be located."[12] CERCLA liability may be imposed through an EPA order (if EPA determines the contamination may pose an "an imminent and substantial endangerment to the public health or welfare or the environment"), EPA cost recovery claims (if EPA incurs cleanup costs), or private lawsuits (for example, by a future owner or neighbor who incurs cleanup costs).[13] Cleanup costs under CERCLA can run into the millions of dollars.

In 2024, EPA employed its authority under CERCLA § 102 for the first time to issue a final rule naming PFOS and PFOA (and their respective salts and structural isomers) as "hazardous substances" under CERCLA.[14] Industry groups challenged the rule in the US Court of Appeals for the D.C. Circuit, and after the case was held in abeyance for months pending new EPA leadership's review of the rule, in September 2025 EPA stated in a court filing that it "has decided to keep the Rule in place" and asked the court to lift the abeyance.[15] In the meantime, the rule is in effect and has given real estate owners and developers another contamination risk to worry about.

In fact, the risk of PFAS contamination is not something landowners can ignore even if they want to. Now that PFOS and PFOA are hazardous substances under CERCLA, under the relevant industry standard, ASTM E-1527-21, and EPA's "All Appropriate Inquiries Rule," every Phase I environmental site assessment (Phase I) must evaluate the presence of PFOS and PFOA at the real property being assessed.[16] A Phase I is an investigation performed by a qualified environmental professional designed to identify conditions indicative of releases and threatened releases of hazardous substances or petroleum products through a site inspection, records review, and targeted interviews. It is common to perform a Phase I when real estate is sold because various CERCLA defenses to liability require a Phase I prior to a real estate purchase.[17] Even where property ownership is not changing hands (e.g., in a merger, stock deal, financing, or leasing), parties often obtain a Phase I before closing a transaction involving real estate because it can provide useful information about the potential for contamination at a site, and lenders and insurers may require a Phase I to support underwriting loans and insurance policies, respectively.

Thus, Phase I consultants will be looking for evidence of current or past PFAS[18] use at the subject property as well as nearby properties (from which contamination could migrate via groundwater). Properties that are being used or have been used by industries that commonly used PFAS may receive greater scrutiny. If a Phase I identifies a PFAS risk, depending on the nature of the risk, a buyer may insist on sampling or contractual protection from liability, and insurers may exclude PFAS risks in pollution legal liability or representations and warranties policies. It will be critically important for practitioners to work closely with their clients and consultants to ensure that PFAS risks are carefully assessed, and not overstated or understated.

> "In fact, the risk of PFAS contamination is not something landowners can ignore even if they want to."

Even if the industry groups ultimately prevail in their court challenge to the CERCLA rule, it is unlikely that Colorado real estate clients will be able to disregard PFAS contamination given legal requirements under state law, the risk that EPA subsequently would attempt a new listing based on a revised record, and the conservative approach that lenders and insurers take to cleanup liability.

Advising Potentially Responsible Parties at Contaminated Properties

The addition of PFOS and PFOA to the list of chemicals considered "hazardous substances" under CERCLA will have significant impacts on current and former owners and operators of sites contaminated with PFAS, as well as other PRPs.

First, for those who are already PRPs at Superfund sites and participating in cleanups, litigation, or allocation proceedings—or for those who have already settled their liability at an existing site—the presence of PFAS at contaminated sites may result in additional cleanup costs. Low cleanup standards and the same characteristics that have made PFAS useful—chemical stability—may make remediation of PFAS difficult and more expensive. At some sites, EPA may require additional work to investigate or remediate PFOS or PFOA, which could in turn expand the number and types of PRPs at the site. EPA also may revisit sites for which remedies have already been selected, through its five-year review process[19] or otherwise, to require remediation of PFOS or PFOA at those sites. At other sites, the new listing may have little impact. Indeed, EPA has asserted that cleanup technologies used to remediate PFAS are often the same technologies used to remediate other contaminants, so any cost increase to address PFAS will be "incremental."[20] The example of Lowry Landfill in Colorado may be instructive. In the last Five Year Review, EPA concluded that PFAS was unlikely to be an issue at that site because the same treatment system being used for other contaminants would likely address PFAS as well. Nevertheless, EPA recommended sampling the water treatment plant effluent for PFOS and PFOA.[21]

Second, it is possible that the CERCLA listing will expand the number and types of sites that are subject to CERCLA liability.[22] PFAS were commonly used in aqueous film-forming foam (AFFF), which was historically used at fire stations, airports,[23] chemical plants, gas stations, and numerous facilities that use

or store flammable materials, due to AFFF's ability to rapidly suppress highly dangerous fires. PFAS also have been detected in sewage sludge applied to farmland as a soil conditioner or fertilizer. The use of PFAS in AFFF and its presence in sewage sludge may result in CERCLA cleanups at properties not commonly subject to CERCLA claims in the past (e.g., fire stations or agricultural land).[24] The Biden administration attempted to assuage concerns about the impact of the CERCLA rule on cleanup liability by issuing an "Enforcement Discretion and Settlement Policy" alongside the final rule stating that it intends to "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."[25] EPA specifically identified "community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly owned airports and local fire departments, and farms where biosolids are applied to the land" as entities it does not intend to pursue for response actions or costs under CERCLA.[26] The Trump administration reiterated in a court filing EPA's intent to establish "a clear liability framework that ensures the polluter pays and passive receivers are protected."[27] However, EPA enforcement is just one piece of the CERCLA liability puzzle, and absent new legislation or aggressive EPA involvement in individual cases,[28] nothing in EPA's policy will impact the ability of private parties to pursue CERCLA claims related to PFAS.

Third, the CERCLA listing will enhance the ability of PRPs, such as current owners and operators of contaminated sites, to recover costs from other PRPs based on the latter's contribution of PFOS or PFOA to the site. CERCLA provides both a cost-recovery and a contribution cause of action for a party to recover its cleanup costs from other PRPs.[29] An owner or operator can bring a cost-recovery action under CERCLA § 107(a) to recover cleanup costs it actually occurred, provided that certain criteria are met.[30] A contribution action under CERCLA § 113(f) is available during or following a civil action or a judicial or administrative settlement, such as receipt of a consent order with EPA.[31] Of course, CERCLA defendants may have various defenses to liability,[32] but even the threat of CERCLA liability can result in hefty settlements to avoid the costs and risks of CERCLA litigation, which can sometimes go on for years.

Fourth, current owners and operators of sites that experience releases of PFOS or PFOA may now have reporting obligations under CERCLA §§ 103 and 111(g) and § 304 of the Emergency Planning and Community Right-to-Know Act.[33]

Finally, the current owner of a site contaminated with PFAS may be able to enroll the property in Colorado's Voluntary Cleanup Program, CRS §§ 25-16-301 et seq. This program may be attractive to a current owner as a way to address PFAS contamination under state oversight, potentially leading to a no-action determination (if the site is not found to be a threat to human health) or to an approved clean-up plan and regulatory closure of the site. Participation in the program also ensures that, with some exceptions, EPA will not take further action at the site under CERCLA.[34]

Advising Facilities That Discharge PFAS

PFAS standards for drinking water and PFAS limits in wastewater (both of which are designed in part to protect drinking water quality) have been in flux at both the federal and state levels. In 2024, under the Biden administration, EPA promulgated enforceable drinking water standards (maximum contaminant levels or MCLs) pursuant to the Safe Drinking Water Act for six types of PFAS, including PFOA and PFOS, and set a 2029 deadline for public water systems to comply with the new standards.[35] In May 2025, however, the Trump administration

announced it intended to issue a proposed rule in the fall of 2025 extending the compliance deadline to 2031 with respect to the PFOA and PFOS MCLs, and to rescind the MCLs altogether for the other four types of PFAS covered by the Biden administration's rule.[36] In parallel, a court challenge to the Biden-era rule, initially paused while the Trump administration determined its position, resumed in mid-September, with EPA filing a motion to vacate the Biden rule's MCLs for the other four types of PFAS while indicating that the agency intends to defend the MCLs for PFOA and PFOS.[37] At the state level, in August 2025, the Colorado Water Quality Control Commission (WQCC) revised Regulation 11 (5 CCR 1002-11), which sets forth Colorado's primary drinking water regulations to address PFAS.[38] CDPHE explained that the amendment to Regulation 11 will conform to (and be no more stringent than) whatever federal PFAS MCLs regulations are in effect at a given time; Regulation 11 will automatically stay or delay any requirements in the state rule that have been changed or removed in a new federal rule, until such time as the WQCC revises Regulation 11 to reflect the updated federal rule.[39]

In the meantime, industrial facilities that discharge PFAS-containing wastewater to surface water or groundwater must ensure that their wastewater meets state wastewater requirements designed to protect state water quality. The cornerstone of Colorado's approach to PFAS in wastewater since 2020 has been WQCC Policy 20-1, which interprets the state's "narrative-based" (i.e., qualitative) water quality standards in the context of PFAS.[40]

Specifically, Policy 20-1 adopts numerical "translation levels" for several key PFAS (such as PFOA, PFOS, certain of their parent constituents, and perfluorononanoic acid).[41] In that regard, if sampling data show a "reasonable potential" for a discharge to cause an exceedance of water quality standards in a drinking water source receiving the discharge, CDPHE is likely to impose effluent limits corresponding to the translation values in the facility's discharge permit.[42] For example, Policy 20-1 adopts a stringent effluent limit of 70 nanograms per liter (ng/L) for PFOA and PFAS concentrations, individually or combined.[43]

Importantly, however, Policy 20-1 also provides CDPHE with discretion to tailor regulatory requirements to individual circumstances. For example, rather than imposing effluent limits, CDPHE may simply require monitoring and reporting of PFAS concentrations or impose practice-based controls requirements, such as implementing pollution-control technologies.[44] These options may allow regulated entities to operate without strict effluent limits while gathering more data or implementing best management practices. Further, with respect to stormwater discharges, Policy 20-1 clarifies that "limits or use conditions will apply only to those permittees using or possessing materials containing PFAS" and that "[g]iven the ubiquitous nature of PFAS, it is not the [WQCC's] intent that this policy be used to require numeric effluent limits for PFAS in stormwater discharges."[45]

Notably, Policy 20-1 indicates that large industrial facilities are likely to be required to conduct source investigations to identify potential sources of PFAS and evaluate control options. Similarly, CDPHE may require municipal wastewater facilities, which receive and treat wastewater from a variety of sources before discharging to state waters, to evaluate PFAS in the effluent received from their industrial customers.[46] Accordingly, "indirect dischargers," who send their wastewater to a local publicly owned treatment works (POTW) rather than discharging directly to state waters, will be compelled by their POTWs to control PFAS so that the POTW in turn can meet Policy 20-1's requirements. Likewise, businesses that are significant dischargers of PFAS-containing wastewater will face pressure to identify and reduce sources of PFAS in their supply chain.

Advising Facilities With High-Risk Fire Potential

Colorado strictly regulates PFAS-containing firefighting foam, which historically has been used to suppress liquid-based fires such as those involving oil, gasoline, and chemicals.

Since 2019, Colorado has prohibited the discharge or other use of firefighting foam containing intentionally added PFAS for training purposes or for testing fire systems.[47] (Like many other states, Colorado recognizes that PFAS may be incidentally present in products, and thus this statute and various others do not regulate products unless PFAS was intentionally added during manufacturing, for example, to impart a functional or technical effect.) Further, since 2021, Colorado law has barred manufacturers of firefighting foam to which PFAS has been added from knowingly selling, offering for sale, distributing for sale, or distributing the foam, subject to certain exceptions, such as for certain gasoline and fuel storage and distribution facilities, for use at chemicals plants, when required or authorized by federal law, when in accordance with Federal Aviation Administration (FAA) guidance, or when required for a military purpose.[48]

More recently, since 2024, the state has generally prohibited the discharge or other release of any firefighting foam containing intentionally added PFAS and mandated immediate containment and reporting of any such release, again with exceptions for use when required or authorized by federal law, when in accordance with FAA guidance, or when required for a military purpose.[49] However, if CDPHE determines by rule that aforementioned federal laws, FAA guidance, or military requirements no longer apply to a particular industry or sector, CDPHE must promulgate rules prohibiting use of PFAS-containing foam in such contexts no sooner than two years after the agency's determination.[50] In addition, and not subject to these exceptions, since 2024, Colorado law has specifically prohibited the use of firefighting foam with intentionally added PFAS at airport hangars in Colorado's public airports.[51]

In light of the foregoing, entities whose operations involve significant amounts of fuel or chemicals should evaluate whether their facilities' fire-suppression systems use PFAS-based foam. If so, they should evaluate whether they are exempt from the state's firefighting foam prohibitions and, if warranted, should consider transitioning to viable effective firefighting alternatives at their facilities.

Advising Retailers, Distributors, and Manufacturers of PFAS-Containing Products

Retailers, distributors, and manufacturers of consumer products or materials used for fracking are subject to current and impending state bans and disclosure requirements related to the sale

PRODUCTS WITH PFAS RESTRICTIONS OR DISCLOSURE REQUIREMENTS IN CO	RESTRICTION OR REQUIREMENTS	EFFECTIVE DATE
Artificial turf	New installation banned, but preexisting turf may be maintained	January 1, 2026
Carpets and rugs	Sale and distribution banned	January 1, 2024
Children's/baby products, such as strollers, car seats, changing pads, bassinets, and crib mattresses	Sale and distribution banned	January 1, 2024
Cleaning products other than those used for floor maintenance in medical settings	Sale and distribution banned	January 1, 2026
Cleaning products for floor maintenance in medical settings	Sale and distribution banned	January 1, 2028
Cookware	Sale and distribution banned	January 1, 2026
	Labeling and marketing regulations apply	January 1, 2024, but expiring January 1, 2026
Cosmetics	Sale and distribution banned	January 1, 2025
Dental floss	Sale and distribution banned	January 1, 2026
Fabric treatments	Sale and distribution banned	January 1, 2024
Food equipment intended primarily for use in commercial settings that comes into direct contact with food	Sale and distribution banned	January 1, 2028
Food packaging	Sale and distribution banned	January 1, 2024
Fracking fluids and materials, as used in oil and gas operations	Sale and distribution banned	January 1, 2024
Furniture (upholstered)	Sale and distribution banned	January 1, 2025, for indoor upholstered furniture; January 1, 2027, for outdoor upholstered furniture
Menstruation products	Sale and distribution banned	January 1, 2026
Outdoor apparel for severe wet/snowy conditions designed for experts and not marketed for general consumer use, including for mountaineering, whitewater kayaking, and offshore fishing	Sale and distribution banned	January 1, 2028
Ski wax	Sale and distribution banned	January 1, 2026
Textile articles (including clothing, bags, and accessories) primarily used in households and businesses, not medical, professional, or industrial settings	Sale and distribution banned	January 1, 2028
Textile furnishings, such as drapes, tablecloths, bedding, and towels	Sale and distribution banned	January 1, 2025, for indoor textile furnishings; January 1, 2027, for outdoor textile furnishings

and distribution in Colorado of a wide variety of products containing intentionally added PFAS. In addition, businesses that have manufactured or imported PFAS or PFAS-containing articles in any year since 2011 may be subject to a federal law that requires them to report PFAS-related information to EPA in 2026 or 2027.

The Colorado Perfluoroalkyl and Polyfluoroalkyl Chemicals Protection Act as amended in 2024 prohibits, on different timelines, the sale and distribution in the state of products intentionally manufactured with PFAS in a range of products and settings.[52] The accompanying table identifies products with intentionally added PFAS that are subject to restrictions or disclosure requirements in Colorado, and on what timeline.[53]

Although EPA has acknowledged that different types of PFAS may pose different levels of risk, Colorado defines "PFAS chemicals" broadly to mean "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."[54] Sellers and distributors of affected products should consider auditing their product lines for potential PFAS and evaluating whether and how their supply chain agreements address PFAS.

In addition to this Colorado requirement, companies that have manufactured or imported PFAS (broadly defined) or PFAS-containing articles for a commercial purpose in any year since 2011 are subject to EPA reporting requirements pursuant to regulations promulgated under the Toxic Substances Control Act.[55] In particular, such manufacturers and importers will be required to report information regarding uses, production volumes, disposal, exposures, and hazards associated with the manufactured/imported PFAS or PFAS-containing articles.[56] Following successive extensions of the reporting deadlines, the identified deadline for most entities is now October 13, 2026, while small businesses reporting data solely on importing PFAS-containing articles have until April 13, 2027, to submit reports. However, EPA indicated in May 2025 that it intended to issue a separate notice of proposed rulemaking "in the near future" for further comment on the appropriate reporting period, among other matters.[57]

Advising Agricultural Operations and Biosolids Preparers

Colorado has taken steps to address PFAS in the agricultural context as well, including in the context of biosolids. Biosolids are nutrient-rich organic materials derived from treated sewage sludge. They are commonly used as soil conditioner or fertilizer to improve soil health and crop yields in agricultural contexts and are sometimes applied to forests, golf courses, and turf farms.[58] Because PFAS have been used in so many products and applications, PFAS can accumulate in biosolids during wastewater treatment and, according to CDPHE, can potentially impact agricultural soils, crops, and water.[59]

Since 2023, CDPHE has implemented a Biosolids-PFAS Interim Strategy (interim strategy) pursuant to its authority under the Colorado Water Quality Control Act.[60] The interim strategy establishes monitoring and reporting requirements for certain "preparers" of biosolids. A "preparer" is either the entity that generates biosolids during treatment of domestic sewage in a domestic wastewater treatment works (e.g., a POTW) or the entity that derives a final product material from biosolids.[61] Preparers that meet certain criteria (e.g., generating at least 30 dry tons of biosolids per year, or distributing materials derived from biosolids in another state) must collect representative samples of biosolids and analyze them for PFAS at frequencies ranging from annually to monthly, depending on the amount of biosolids in question, and must timely report the analytical data to CDPHE.[62] Further, if the concentration of PFOS is 50 micrograms per kilogram or greater, the preparer must develop and implement a Source Control Program to reduce or eliminate potential sources of PFAS (other than sources associated with domestic sewage sources in a domestic wastewater treatment works) and must report to CDPHE the measures taken to investigate and reduce such sources. Inevitably, like many of the other

requirements discussed above, requirements on preparers will put pressure on companies up the supply chain to identify and reduce PFAS in their products and processes.

CDPHE has noted that its proactive approach to better understanding and reducing PFAS in biosolids aligns with EPA's January 2025 draft risk assessment of PFOS and PFOA in sewage sludge and biosolids, which was open for public comment until August 14, 2025.[63] The assessment and comment period were meant to inform EPA's potential future regulatory actions under the Clean Water Act, but it is not clear whether or when the Trump administration will finalize the assessment or address its findings.[64] EPA has recommended that farmers should consider testing drinking water wells, among other actions, if they have concerns about the levels of PFOS and PFOA in biosolids applied to their farms.[65]

Advising Local Governments

Local governments face their own PFAS challenges given the presence of PFAS in landfills, water systems, and wastewater, although local governments are likely not among EPA's enforcement priorities for PFAS as outlined in its enforcement discretion policy.[66] Colorado has two key programs as part of its 2024 PFAS Action Plan to provide funding opportunities for local governments to invest in PFAS sampling, assessment, and removal from groundwater and surface water and drinking water.

The PFAS Cash Fund (fund) is a state-funded program administered by CDPHE that supports projects identifying, assessing, and reducing alleged impacts of PFAS on human health and the environment.[67] The fund was created by legislation in 2020 to help prevent further contamination and reduce exposure to PFAS. Eligible entities include governmental agencies, tribes, public water systems, counties, local health departments, fire departments, and domestic wastewater treatment works. The program provides fundings for three categories of activities—sampling, emergency assistance, and infrastructure—and is to be renewed on October 1 each year through 2026. The fund has subsidized over 80 projects since 2022.[68] The fund is backed entirely by the state, and its funding could be impacted by future state budget cuts.[69]

The Emerging Contaminants in Small and Disadvantaged Communities Grant Program is a separate program funded by EPA and administered by CDPHE's Water Quality Division.[70] The grants are intended to assist public water systems in small or disadvantaged communities with planning, design, and infrastructure funding to reduce public health risks from emerging contaminants, including PFAS. To apply for a grant, a community must qualify as a small or disadvantaged community as defined in the Safe Drinking Water Act, among other requirements. CDPHE awarded grants in January 2024 and January 2025 and anticipates future funding periods will be open twice per year (in January and June) in 2026, 2027, and 2028, subject to available allocations of funds from EPA or until funding is exhausted. EPA has allocated close to $1 billion to the program for fiscal year 2025, including $42 million designated for Colorado.[71]

Conclusion

PFAS regulation continues to evolve. The Trump administration has withdrawn some of the PFAS initiatives advanced by the Biden EPA, modified others, and not yet announced its plans for the remainder. Regardless of the approach at the federal level, Colorado has signaled that it will continue to prioritize remediation of PFAS through its 2024 PFAS Action Plan. One thing is clear: PFAS will continue to be a concern for businesses operating in Colorado, and Colorado practitioners should stay abreast of this ever-changing landscape when advising clients. CL



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NOTES

1. *See, e.g.*, Fast, "New EPA Data Show More Towns Have PFAS in Their Water. Is Yours One?," USA Today (Aug. 15, 2025), https://www.msn.com/en-us/news/us/new-epa-data-show-more-towns-have-pfas-in-their-water-is-yours-one/ar-AA1Kv75x?ocid=BingNewsVerp; Shankman, "Nantucket Has a PFAS Problem in Its Drinking Water. It's His Job to Solve It," *Bos. Globe* (June 24, 2025), https://www.bostonglobe.com/2025/06/24/science/nantucket-pfas-officer; Tabuchi, "'Don't Touch My Pan!' France Bans Toxic PFAS, Except in Cookware," *N.Y. Times* (Feb. 28, 2025).

2. EPA, "PFAS Explained," https://www.epa.gov/pfas/pfas-explained.

3. *See* PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532 (Apr. 26, 2024) (final rule).

4. *See* Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39,124 (May 8, 2024) (final rule). The Biden administration also promulgated a rule prohibiting the manufacture or processing of 329 types of PFAS, 89 Fed. Reg. 1,822 (Jan. 11, 2024) (final rule), and, as required by Congress, added certain types of PFAS to the list of chemicals covered by the Toxics Release Inventory, 89 Fed. Reg. 43,331 (May 17, 2024) (final rule), 90 Fed. Reg. 573 (Jan. 6, 2025) (final rule).

5. 42 USC §§ 9601 et seq.

6. EPA's Unopposed Motion to Lift Abeyance and Set Briefing Schedule at 2, *Chamber of Com. of the United States v. EPA*, No. 24-1193 (D.C.Cir. Sept. 17, 2025), Doc. No. 2135418 ("EPA has completed its review and has decided to keep the Rule in place.").

7. CDPHE, "PFAS Action Plan," https://cdphe.colorado.gov/chemicals-from-toxic-firefighting-foam-

pfas/pfas-action-plan.

8. *See, e.g.*, "Chemours, DuPont, Corteva Settle New Jersey PFAS Claims for $875 Million," Reuters (Aug. 4, 2025), https://www.reuters.com/sustainability/climate-energy/chemours-dupont-corteva-settle-new-jersey-pfas-claims-875-million-2025-08-04 (noting that "[l]awsuits accusing major chemical companies of polluting U.S. drinking water with toxic PFAS chemicals led to over $11 billion in settlements in 2023").

9. *See* CDPHE, "Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)," https://cdphe.colorado.gov/pfas; EPA, "Our Current Understanding of the Human Health and Environmental Risks of PFAS," https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas.

10. CDPHE, "PFAS and Your Health," https://cdphe.colorado.gov/pfas/pfas-health.

11. *Id.*

12. 42 USC §§ 9607(a)(1) (current owner/operator liability), 9607(a)(2) (imposing liability on former owner/operators only if they owned or operated the property at the time of disposal), 9601(9) (defining "facility").

13. 42 USC §§ 9606 (EPA authority to issue orders), 9607 (cost recovery claims), 9613 (contribution claims).

14. *See* Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39,124 (May 8, 2024) (final rule).

15. EPA's Unopposed Motion to Lift Abeyance and Set Briefing Schedule, *supra* note 6 at 2.

16. 40 CFR pt. 312 (requiring an investigation to identify conditions indicative of releases and threatened releases of hazardous substances); ASTM E-1527-21, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (requiring an assessment of the presence of "recognized environmental conditions").

17. *See, e.g.*, 42 USC §§ 9601(35), (40), 9607(b)(3) (establishing the "innocent landowner" and "bona fide prospective purchaser" defenses). *See also* Memorandum from EPA Assistant Administrator for Enforcement and Compliance Assurance Susan Bodine to regional counsels and Superfund national program managers, "Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ('Common Elements')" (July 29, 2019), https://www.epa.gov/sites/default/files/2019-08/documents/common-elements-guide-mem-2019.pdf.

18. Although EPA designated only PFOS and PFOA and their salts and structural isomers as hazardous substances, Phase I consultants typically cast a wider net and inquire about any PFAS use.

19. By statute, EPA is required to assess sites undergoing remedial actions every five years to "assure that human health and the environment are being protected." 42 USC § 9621(c).

20. Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. at 39,129.

21. EPA Region 8, "Fifth Five-Year Review Report for Lowry Landfill Superfund Site, Arapahoe County, Colorado" 35–36 (Jan. 10, 2022), https://semspub.epa.gov/work/08/100011323.pdf.

22. EPA does not expect the PFAS designation to "substantially increase" the number of sites on its National Priorities List, noting that "more often than not, PFOA and PFOS are likely to be co-located with or commingled with other substances." Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. at 39,129.

23. FAA regulations have required airports to use AFFF since at least 2004. *See* 14 CFR § 139.317. In 2023, FAA began to authorize the use of fluorine-free foam (F3) instead, and certain types of F3 are now approved to be used instead of AFFF. *See* FAA, "Fluorine-Free Foam (F3) Transition for Aircraft Firefighting," https://www.faa.gov/airports/airport_safety/aircraft_rescue_fire_fighting/f3_transition.

24. CDPHE conducts a survey of fire departments every three years to determine how, where, and when they used PFAS-containing firefighting foam. *See* CRS § 25-5-1308. Sewage sludge is discussed further in the "Advising Agricultural Operations and Biosolids Preparers" section of this article.

25. Memorandum from EPA Assistant Administrator for Enforcement and Compliance Assurance David M. Uhlmann to regional and deputy regional administrators and regional and deputy regional counsels, "PFAS Enforcement Discretion and Settlement Policy Under CERCLA" (Apr. 19, 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf.

26. *Id.* at 3.

27. Declaration of John Evans in Support of EPA's Unopposed Motion to Lift Abeyance and Set Briefing Schedule at 3, *Chamber of Com. Chamber of Com. of the United States v. EPA*, No. 24-1193 (D.C.Cir. Sept. 17, 2025), Doc. No. 2135418 ("EPA will continue to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected.").

28. EPA also could provide "contribution protection" to individual PRPs through settlements to protect them from contribution claims by private parties. *See* 42 USC § 9613(f)(2).

29. *See* 42 USC §§ 9701, 9613(f)(1), 9613(f)(3)(b). Although CERCLA authorizes both cost recovery and contribution actions, every court of appeals to consider the issue has found that a party eligible to pursue a contribution claim under CERCLA § 113(f) must pursue that cause of action and is precluded from maintaining a § 107 cost-recovery claim for the same costs. *See Stratus Redtail Ranch LLC v. Int'l Bus. Machs. Corp.*, No. 19-CV-02611, 2020 WL 5406127, at *4 & n.6 (D.Colo. Sept. 9, 2020) (citing decisions by other circuits and deciding same).

30. *Young v. United States*, 394 F.3d 858, 863 (10th Cir. 2005). Among other things, the cleanup costs must be "necessary" and incurred in accordance with EPA's National Contingency Plan. 42 USC § 9607(a)(4)(B).

31. *See* 42 USC § 9613(f)(1), (f)(3)(b); *United States v. Atl. Rsch. Corp.*, 551 U.S. 128, 138–39 (2007). *See also Guam v. United States*, 593 U.S. 310, 320 (2021) (an administrative order must explicitly resolve a party's CERCLA liability to form the basis for a § 113(f) contribution claim).

32. *See supra* note 17 (identifying certain defenses to CERCLA liability).

33. *See* 42 USC §§ 9603, 9611(g), 11004.

34. *See* 42 USC § 9628(b); Memorandum of Agreement Between CDPHE and EPA Region VIII (Apr. 11, 1996), https://19january2021snapshot.epa.gov/sites/static/files/2015-09/documents/co_moa.pdf.

35. PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532, 32,745–46 (Apr. 26, 2024) (final rule) (establishing the MCL for PFOS and PFOA at 4 ng/L). *See* 40 CFR § 141.61(c)(2). By comparison, the MCL for trichloroethylene, a common industrial solvent that EPA has classified as a human carcinogen, is 5,000 ng/L. 40 CFR § 141.61(a), tbl.1.

36. EPA, "EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS," news release (May 14, 2025), https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos.

37. *Am. Water Works Ass'n v. EPA*, No. 24-1188 (D.C.Cir. Sept. 11, 2025), Doc. No. 2134523.

38. CDPHE, "Per- and Polyfluoroalkyl Substances (PFAS) Rule," https://cdphe.colorado.gov/dwpfas. CDPHE staff advised via email in mid-August that the new rule will be published in the *Colorado Register* in late August or early September and will become effective in mid-October 2025, although we note that as of mid-September, the new rule had not yet been published. Correspondence with B. Pilson, CDPHE compliance monitoring section manager (Aug. 18, 2025) (on file with authors).

39. Correspondence with B. Pilson, *supra* note 38.

40. *See* 5 CCR §§ 1002-31:31.11(1)(a)(iv), 1002-41:41.5(A); WQCC Policy 20-1, "Policy for Interpreting the Narrative Water Quality Standards for Per- and Polyfluoroalkyl Substances (PFAS)" (issued July 14, 2020, extended to July 31, 2028, on June 9, 2025) (hereinafter "Policy 20-1") (citing 5 CCR 1002-31, § 31.11(1)(a)(iv), and 5 CCR 1002-41, § 41.5(A)(1)), https://cdphe.colorado.gov/wqcc-policies. Colorado also administers a pretreatment permitting program designed to prevent pass-through of hazardous materials and interference at publicly owned treatment works. *See* CDPHE, "Water Quality Pretreatment," https://cdphe.colorado.gov/water-quality-pretreatment.

41. Policy 20-1, *supra* note 40 at 1, 5–6, 9–10.

See also Memorandum from CDPHE Water Quality Control Division Clean Water Program Manager Nicole Rowan to WQCC Chair Kevin Greer and CDPHE Environmental Boards and Commissions Director Trisha Oeth, "DRAFT Policy 20-1 for July 13–14, 2020 [WQCC] Administrative Action Hearing" 1 (July 1, 2020) (hereinafter "Policy 20-1 Memo"), https://drive.google.com/file/d/19Fnfb0C7yaQwUqhe_5ZFu6FNXm3vwDlF/view.

42. *See* Policy 20-1, *supra* note 40 at 15–16; Policy 20-1 Memo, *supra* note 41 at 5–6, 20.

43. Policy 20-1, *supra* note 40 at 10.

44. *See* Policy 20-1, *supra* note 40 at 15; Policy 20-1 Memo, *supra* note 41 at 20.

45. Policy 20-1, *supra* note 40 at 16.

46. *See* Policy 20-1, *supra* note 40 at 15; Policy 20-1 Memo, *supra* note 41 at 24.

47. CRS § 24-33.5-1234(1). In this context, PFAS means fluorinated organic chemicals containing at least one fully fluorinated carbon atom. *Id.* §§ 24-33.5-1234(3), 25-5-1302(7).

48. *Id.* § 25-5-1303.

49. *Id.* § 25-5-1303.5.

50. *Id.* § 25-5-1303.5(3)(b).

51. *Id.* § 25-5-1309.

52. *See id.* §§ 25-15-601 to -605.

53. *See id.* §§ 25-15-604 (for all items other than artificial turf), -605 (artificial turf).

54. *Id.* § 25-5-1302(7).

55. Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 88 Fed. Reg. 70,516, 70,519, 70,533 (Oct. 11, 2023) (final rule). *See* EPA, "TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances," https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping. EPA has estimated that 1,462 types of PFAS were covered by this rule as of February 2023.

56. Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 88 Fed. Reg. at 70,518, 70,530–33.

57. Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Change to Submission Period, 90 Fed. Reg. 20,236, 20,236 (May 13, 2025) (interim final rule).

58. CDPHE, "PFAS and Biosolids," https://cdphe.colorado.gov/water-Biosolids-PFAS; EPA, "Fact Sheet: Draft Sewage Sludge Risk Assessment for PFOA and PFOS: Information for Farmers" 1 (Jan. 2025) (hereinafter "EPA Biosolids Fact Sheet for Farmers"), https://www.epa.gov/system/files/documents/2025-01/fact-sheet-farmers-draft-sewage-sludge-risk-assessment-pfoa-pfos.pdf.

59. *See supra* note 58.

60. CDPHE, "Colorado Biosolids-PFAS Interim Strategy," https://drive.google.com/file/d/1bZk4wBZ8AK3nDTSQFVi4R1R7KO4L2Fk6/view. *See* 5 CCR 1002-64 ("Regulation 64") (regulating biosolids pursuant to the Colorado Water Quality Control Act, CRS §§ 25-8-101 et seq.).

61. Colorado Biosolids-PFAS Interim Strategy, *supra* note 60 at 1. *See* 5 CCR 1002-64.9(DD).

62. The interim strategy requires sampling in accordance with EPA Method 1633, which currently requires testing 40 specifically enumerated PFAS compounds. Colorado Biosolids-PFAS Interim Strategy, *supra* note 60 at 4. Otherwise, neither the interim strategy nor Regulation 64 further defines PFAS.

63. "PFAS and Biosolids," *supra* note 58; EPA, "Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS)," https://www.epa.gov/biosolids/draft-sewage-sludge-risk-assessment-perfluorooctanoic-acid-pfoa-and-perfluorooctane.

64. *See, e.g.*, H.R. 4754, 119th Cong. § 507 (2025) (appropriations bill prohibiting EPA from spending funds to implement, administer, or enforce the draft risk assessment).

65. "EPA Biosolids Fact Sheet for Farmers," *supra* note 58 at 3.

66. *See supra* note 25.

67. CDPHE, "PFAS Grant Program," https://cdphe.colorado.gov/pfas-projects. Neither CDPHE's website nor the legislation creating the fund further defines PFAS, *see* CRS § 8-20-206.5(6)–(7), but PFAS is elsewhere statutorily defined as fluorinated organic chemicals containing at least one fully fluorinated carbon atom, *see id.* § 25-5-1302(7).

68. CDPHE, "PFAS Grant Summaries," https://cdphe.colorado.gov/chemicals-from-toxic-firefighting-foam-pfas/projects-and-programs-addressing-chemicals-from/pfas.

69. Paul and Woods, "Colorado Lawmakers Must Cut $1 Billion From State's Current Budget Because of GOP Federal Tax and Spending Bill," Colorado Public Radio (July 30, 2025), https://www.cpr.org/2025/07/30/colorado-budget-cuts-billion-dollars-one-big-beautiful-bill. *See* Correspondence with S. Mitchell, CDPHE PFAS program coordinator (Aug. 11, 2025) (on file with authors).

70. EPA, "Emerging Contaminants (EC) in Small or Disadvantaged Communities Grant (SDC)," https://www.epa.gov/dwcapacity/emerging-contaminants-ec-small-or-disadvantaged-communities-grant-sdc.

71. Memorandum from EPA Drinking Water Capacity and Compliance Assistance Division Director Marietta Echeverria to EPA regional water division directors, "Allotments of FY 2025 Infrastructure Investment and Jobs Act (IIJA) Appropriations for the *Emerging Contaminants (EC) in Small or Disadvantaged Communities (SDC) Grant*, Authorized Under Section 1459A(a)–(j) of the Safe Drinking Water Act" (June 17, 2025), https://www.epa.gov/system/files/documents/2025-06/fy25-ecsdc-funding-memo-final.pdf.