PFAS - EPA INTERIM GUIDANCE ON HOW TO SAY GOODBYE TO YOUR "FOREVER CHEMICALS"

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In response to Congressional direction in the National Defense Authorization Act for Fiscal Year 2020, Public Law No: 116-92, on 18 December 2020, the Environmental Protection Agency (EPA) issued “Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances” (Interim Guidance) as part of its continuing efforts to regulate the large body of perfluoroalkyl and polyfluoroalkyl substances, collectively referred to as “PFAS.” *See*, Interim Guidance.

EPA issued the Interim Guidance, not as a rulemaking or policy statement, but to provide current scientific information on disposing of or destroying PFAS and PFAS-containing materials. PFAS are often referred to as the “forever chemicals” because they do not break down easily or quickly in the environment. Thus, they present a unique challenge for disposal/destruction. The Interim Guidance outlines three methods that may be effective and are currently available for disposal or destruction—landfill disposal, underground injection disposal, and thermal treatment for destruction (incineration)—and discusses the data gaps and challenges for each, along with noting the need for further research into these methods for future guidance. EPA intends for this information to inform the decision making process of those managing the destruction/disposal of this material.

The Interim Guidance identifies six waste streams that commonly contain PFAS:

1. Aqueous film-forming foam (used in fire suppression);
2. Soil (directly through land application or spills, or indirectly through particles released from stack emissions, for example) and biosolids (the Interim Guidance refers to the definition in 40 C.F.R. Part 503 for “sewage sludge,” also called “biosolids”);
3. Textiles, other than consumer goods, treated with PFAS;
4. Spent filters, membranes, resins, granular carbon, and other waste from water treatment;
5. Landfill leachate containing PFAS; and
6. Solid, liquid, or gas waste streams containing PFAS from facilities manufacturing or using PFAS.

Congress specifically identified these six areas in the National Defense Authorization Act for Fiscal Year 2020 as the waste EPA was required to address through issuance of the Interim Guidance. As a result, while EPA recognizes the information could be useful to other PFAS and PFAS-containing materials, the Interim Guidance only covers these six materials.

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The Interim Guidance addresses the three disposal and destruction techniques currently used by industry discussed above: landfill disposal, underground injection disposal (liquid phase only), and thermal treatment for destruction (incineration). None is favored or rejected by EPA. However, as EPA clearly recognizes, the science behind potential migration of PFAS and PFAS-containing chemicals into the environment during any of these three disposal/destruction methods is still in its infancy. Accordingly, the Interim Guidance recognizes that in some cases it may be best to store PFAS and PFAS-containing materials for a period of two to five years while scientific advances in this area are made.

EPA's inclusion of destruction in commercial incinerators, cement kilns, and lightweight aggregate kilns in the Interim Guidance was not surprising. EPA acknowledged data gaps related to temperatures, residence times, and emission characterization data. EPA had planned an experimental burning in a New Jersey incinerator to learn more about how PFAS reacts to incineration; however, that test was canceled due to vocal objections by environmental groups concerned about potential resulting air pollution. The New Jersey Department of Environmental Protection said protestors misunderstood the testing, thinking PFAS-containing firefighting foam shipped from New York would be burned, when in truth the experiment involved burning CF4, a chemical with similar bonding properties to PFAS chemicals, but that is considered a safe, nontoxic surrogate compound to PFAS.

EPA has pledged to move forward over the next three years with its efforts to further study thermal destruction of PFAS, but individual states are acting in the meantime. New York adopted a state law banning incineration of PFAS-containing aqueous film-forming foam. The PFAS Waste Incineration Ban Act of 2019 (H.R. 2591) was introduced during the 116th Congress but was not adopted into law. The bill would have not only banned the incineration of PFAS-containing firefighting foam, but would also have required EPA to identify and then ban incineration of other wastes containing PFAS. It is unclear whether such legislative actions will be a priority going forward.

The Interim Guidance is just one part of EPA's larger PFAS Action Plan. The Biden administration is expected to aggressively continue EPA's current work on the items listed in that Action Plan, including setting maximum contaminant levels for PFAS in drinking water and designating certain PFAS as CERCLA hazardous substances. Congress is also expected to push for PFAS legislation such as the PFAS Action Act, which among other things would designate PFAS as a CERCLA hazardous substance and mandate the promulgation of a national primary drinking water standard.

Public comment on the Interim Guidance is invited and closes on 22 February 2021. Comments must include Docket ID No. EPA-HQ-OLEM-2020-0527 and can be submitted at: Public Comment (preferred method) or by mail or hand delivery.

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