How the EPA's New PFAS Hazardous Substance Designation Under CERCLA Impacts You

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Effective July 8, 2024, entities throughout the country, including those in New Jersey, will be required to immediately report releases of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) that meet or exceed the reportable quantity. Such new reporting requirements are the result of the United States Environmental Protection Agency's (EPA) release of its final rule, which designated PFOA and PFOS, including their salts and structural isomers, as hazardous substances under Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Final Rule).

There are thousands of per- and polyfluoroalkyl substances (PFAS) chemicals, and they are found in many different consumer, commercial, and industrial products. PFOA and PFOS are but two specific chemicals that belong to the PFAS group. Because PFOA and PFOS are commonly found in everyday products, the ramifications of their new classification as hazardous will be widespread and far-reaching.

For example, the Final Rule will have a significant impact on due diligence in commercial real estate transactions. Parties involved in commercial real estate transactions will need to expand the anticipated scopes of Phase I and Phase II investigations because these compounds will no longer be outside the scope of the requirements for Phase I Environmental Assessments. Because of strict liability implications for owners of affected properties, such expansion will likely affect price negotiations, property values, and future environmental liability to remediate PFOA and PFOS contamination. In general, it will increase the risk of purchasing, selling, and/or redeveloping PFOA and PFOS-contaminated property. In addition, the inclusion of PFPA and PFOS as hazardous substances may lead to the governing agencies attempting to re-open cases.

Porzio's collaborative team of Real Estate, Land Use, and Environmental attorneys can help those affected navigate the new Final Rule. Contact the authors to learn how we can assist with effectively drafting purchase and sale contracts, conducting environmental due diligence, and evaluating environmental risk assessment and apportionment.