November 2025 (Volume 1, Edition 4)

In this edition of GableGotwals' PFAS Pulse, we track the latest developments in per- and polyfluoroalkyl substances ("PFAS") regulation and litigation. Recent developments include:

- **EPA announces rollback of portions of the Toxic Substances Control Act ("TSCA") PFAS reporting rule**
- **EPA issues FAQs on pesticides containing fluorinated carbon**
- **Federal judge dismisses attempt to make EPA regulate PFAS in biosolids**
- **Senate to hold hearing on cleanup and disposal policy for PFAS**

Taken together, these developments underscore that PFAS oversight is evolving but not easing. Companies should remain vigilant as EPA continues to refine its regulatory approach.

EPA proposes major revisions to TSCA PFAS reporting rule.

EPA has taken its most significant step yet toward narrowing the scope of PFAS reporting under TSCA. On November 13, 2025, EPA published a proposed rule revising its 2023 PFAS Reporting Rule.

The revision introduces a narrower, more targeted framework designed to be "more practical and implementable and reduce unnecessary, or potentially duplicative, reporting requirements for businesses while maintaining the ability to obtain important use and safety information on PFAS," according to EPA's press release announcing the changes.

As PFAS regulation expands under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Safe Drinking Water Act ("SDWA"), and state programs, understanding the trajectory of TSCA reporting that led to EPA's latest shift on TSCA reporting is critical to long-term compliance planning.

A. How We Got Here

Congress quietly, yet remarkably, expanded TSCA through the National Defense Authorization Act ("NDAA"), which added Section 8(a)(7), requiring EPA to collect information from anyone who manufactured a PFAS substance in any year since January 1, 2011.

In October 2023, EPA issued a sweeping final rule implementing the NDAA mandate, which included the following:

- Mandatory reporting for all PFAS manufactured *or imported* from 2011-2022
- Coverage extending to PFAS contained in articles
- No *de minimis* thresholds
- No exclusions for byproducts, impurities, intermediates, or research and development
- One-time retrospective reporting capturing more than 1,400 PFAS

Even with the reporting requirements limited to "known or reasonably ascertainable," companies faced a massive burden auditing records and supply chains dating back to 2011.

EPA's own cost estimate ran into the billions. Industry compliance efforts were also significant, leading to repeated deadline extensions, first to January 2026, then on May 13, 2025, through an interim final rule, pushing the reporting deadline window to April 13, 2026 – October 13, 2026 for standard filers and April 13, 2027 for small manufacturers reporting solely as article importers.

As the deadlines kept getting pushed, EPA simultaneously signaled an openness to substantive revisions. In an April 2025 press release, EPA stated its intent to implement the TSCA reporting rule "to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers."

B. November 2025 Proposed Rule: Four Exemptions and New Deadlines

EPA's new proposed rule introduces four major exemptions and new deadlines that would dramatically narrow the universe of obligated companies.

1. Imported Article Exemption

This is the most consequential revision. Under the 2023 rule, a company that imported a single PFAS-treated article in 2011 was obligated to report, even if it had no chemical expertise, no supplier visibility, and no reasonable ability to identify PFAS content. The new proposal removes article importers entirely.

EPA's rationale for removing article importers is threefold: (1) article importers typically lack "known or reasonably ascertainable" PFAS information; (2) upstream PFAS manufacturers will still capture information EPA needs; and (3) Congress did not intend to sweep article importers into Section 8(a)(7).

This change alone will remove thousands of businesses from reporting obligations.

2. De Minimis Concentration Threshold (0.1%)

EPA proposes exempting PFAS present below 0.1% in mixtures or articles and is seeking comment on whether a 1% threshold would better reflect real-world data availability during the 2011-2022 lookback period. Given the analytical and recordkeeping gaps for most companies, this exemption may become a practical necessity.

3. Byproducts, Impurities, and Non-Isolated Intermediates

These proposed exemptions align TSCA PFAS reporting with the Chemical Data Reporting ("CDR") rule under TSCA, excluding PFAS inadvertently generated during manufacturing processes. For refineries, chemical plants, and manufacturing operations where PFAS may be produced unintentionally through thermal processes or trace reactions, this would be a significant exemption.

4. Research and Development PFAS

PFAS manufactured solely for R&D on the basis that these substances are not manufactured at volumes or with the intent to meaningfully contribute to commercial exposure.

5. Revised Reporting Window

EPA proposes opening the reporting period 60 days after the effective date of the final rule and keeping it open for three months.

C. EPA Is Soliciting Comment

EPA is specifically seeking input on the following items:

- Whether to limit reportable PFAS only to those with CAS Registry Numbers
- Whether to add production-volume thresholds
- Whether the economic analysis accurately accounts for sunk costs already incurred
- Whether the *de minimis* level should be 0.1%, 1%, or another value

D. Closing Thoughts on TSCA Reporting

EPA's proposed revisions represent the most substantial overhaul of TSCA PFAS reporting since the rule's 2023 publication. While the agency is reducing burdens on article importers and small manufacturers, it is not backing away from PFAS regulation.

EPA continues to expand PFAS reporting under the Toxics Release Inventory ("TRI"), with automatic annual additions under the NDAA. In 2025, EPA proposed rules clarifying supplier notification obligations for PFAS in mixtures and trade name products, and EPA delayed but did not rescind its January 2025 rule adding nine new PFAS to TRI. Suppliers must notify customers with the first shipment of a TRI-listed PFAS in the calendar year it is added.

Companies that manufactured or imported PFAS between 2011 and 2022 remain obligated and should continue preparing for reporting in 2026-2027. Supply-chain mapping, document preservation, and internal PFAS compliance systems remain essential.

EPA issues FAQs on pesticides containing fluorinated carbon.

EPA's Office of Pesticide Programs ("OPP") has released a set of FAQs addressing pesticides that contain a fluorinated carbon, an increasingly important topic as regulatory definitions of PFAS diverge across programs. The FAQ is non-binding, but clarifies OPP's current posture under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), and how this approach fits within today's broader PFAS regulatory landscape.

A. No PFAS definition adopted for pesticides yet.

The FAQ reiterates that EPA has not adopted a PFAS definition for pesticide registration. Instead, OPP continues to evaluate each active ingredient and degradate case-by-case, focusing on hazard exposure, substance persistence, and bioaccumulation factors.

This approach contrasts with both the TSCA definition used by EPA's Office of Pollution Prevention and Toxics ("OPPT") and the broader Organization for Economic Cooperation and Development ("OECD") structural definitions. OPP expressly declines to adopt either definition for pesticides, emphasizing instead that structural classification (PFAS or otherwise) does not dictate regulatory outcome.

B. Fluorinated pesticides will receive the same FIFRA review.

EPA emphasizes that pesticides containing fluorinated carbons undergo the same FIFRA registration review as any other active ingredient. If standard data are not sufficient, EPA requires additional studies before determining whether the product meets FIFRA's "no unreasonable adverse effects" standard.

C. EPA acknowledges benefits of some fluorinated pesticides.

EPA notes that certain short-chained fluorinated pesticides, especially those containing only a single fluorinated carbon, may present lower toxicity and environmental risk compared to legacy

pesticides such as organochlorines, e.g., DDT, aldrin, dieldrin, chlordane, most of which have been banned in the United States. EPA also highlights potential advantages such as resistance management modes of action and reduced-risk designations.

D. Takeaways on fluorinated carbon atoms in pesticides.

EPA is very clear that the FAQ does not interpret statutes or amend regulations, nor does it signal any pending rulemaking. Instead, the document functions as guidance on OPP's existing framework. The practical implications for registrants and manufacturers are that they (1) should expect chemical-specific environmental fate and degradate scrutiny to continue or increase; (2) fluorination alone is not a regulatory risk factor, but persistence and bioaccumulation data remain critical; and (3) consider whether supplemental studies may be prudent to proactively address EPA requests in future registration cycles.

Further, registered fluorinated pesticides remain lawful and vetted under FIFRA's existing framework, but users should continue to actively monitor supply chains and related regulatory programs that may affect the use of certain substances with fluorinated carbon atoms.

Federal judge dismisses attempt to make EPA regulate PFAS in biosolids.

On September 29, 2025, the U.S. District Court for the District of Columbia dismissed a high-profile lawsuit, *Farmer v. EPA*, in which agricultural producers, environmental organizations, and local governments sought to force the EPA to identify and regulate PFAS in biosolids under the Clean Water Act ("CWA").

A. No non-discretionary duty under the CWA.

Judge Friedrich dismissed the CWA claims for lack of subject-matter jurisdiction, holding that while EPA must review biosolids regulations every two years, the CWA imposes no deadline requiring EPA to identify or regulate additional pollutants.

B. Biennial reports are not final agency action.

The court also dismissed the plaintiffs' Administrative Procedure Act ("APA") claims because EPA's biennial sludge report is informational, is not a final agency action, and imposes no legal obligations.

C. Court provides pathways for future PFAS regulatory pressure.

Although the court declined to compel regulatory action, it left meaningful options on the table. Most notably, the court emphasized that interested parties may petition EPA for rulemaking, and any EPA denial of such a petition may be subject to judicial review. The decision also dismissed the CWA claims without prejudice, permitting a future lawsuit under an alternative theory.

The key takeaways from the ruling are: PFAS in biosolids remains a live policy issue, but the court will not compel EPA to regulate absent a statutory deadline. For more background on PFAS in biosolids, check out PFAS Pulse, Volume 1, Edition 1, here, and an article on legislative attempts to regulate PFAS in biosolids in Oklahoma here.

Senate to hold hearing on cleanup and disposal policy for PFAS.

On November 19, 2025, the U.S. Committee on Environment and Public Works will hold a hearing focused on PFAS cleanup and disposal. Witnesses include industry leaders and Congressional Research Service experts. A link to the proceedings can be found here.

EPA's April 2024 updated Interim Guidance on PFAS destruction and disposal highlights three primary pathways for destruction or disposal: thermal destruction, hazardous waste landfills, and Class I underground injection wells.

EPA underscores significant data gaps for each method and recommends a precautionary, risk-based approach. Interim storage may be appropriate for high-PFAS-content or containerized materials while research continues.

New analytical tools, including EPA's new OTM-50 analytical method, aim to improve understanding of thermal byproducts and protect communities near disposal facilities. EPA will continue to update the guidance at least every three years as required by the National Defense Authorization Act.

Conclusion

In sum, these developments reflect a PFAS regulatory landscape that is tightening in some areas and recalibrating in others but unmistakably moving forward. Companies across the supply chain should treat PFAS compliance as an ongoing, strategic priority and remain prepared for continued evolution in PFAS regulations in 2026 and beyond.

Thank you for reading this edition of PFAS Pulse. Feel free to reach out to GableGotwals' Environmental and Natural Resources team with any questions.

Tim Sowecke

405-568-3308

tsowecke@gablelaw.com

Tyler A. Self

405-235-5589

tself@gablelaw.com