National Primary Drinking Water Regulation/Safe Drinking Water Act: U.S. Environmental Protection Agency Federal Appellate Court Motion Seeking Partial Vacatur of PFAS Rule



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

09/15/2025

The United States Environmental Protection Agency ("EPA") filed a Motion for Partial Vacatur ("Motion") on September 11th in the United States Court of Appeals for the D.C. Circuit. See USCA Case #24-1188.

The Motion addresses the rule issued in 2024 by EPA under the Safe Drinking Water Act regulating six per- and polyfluoroalkyl substances ("PFAS") as drinking water contaminants.

Safe Drinking Water Act Maximum Contaminant Levels were set for each of the six PFAS. These Maximum Contaminant Levels would have to be met by Safe Drinking Water Act regulated public water systems.

The American Water Works Association and the Association of Metropolitan Water Agencies, along with other organizations, filed a challenge in the United States Court of Appeals for the D.C. Circuit to the PFAS rules. A number of environmental organizations and others have opposed this challenge.

EPA under the Biden Administration defended the rule. However, the current EPA in its Motion states that:

…after further reviewing the statute pursuant to a publicly announced reconsideration process, EPA agrees with petitioners that parts of the rulemaking process were unlawful and parts of the Rule are thus invalid.

The Motion requests partial vacatur, stating:

1. EPA requests vacatur of its determination to regulate three PFAS individually—perfluorononanoic acid, perfluorohexane sulfonic acid, and hexafluoropropylene oxide dimer acid and to regulate mixtures of those three PFAS and a fourth PFAS, perfluorobutane sulfonic acid, through a "hazard index".

2. EPA requests vacatur of the Maximum Contaminant Level Goals (MCLG) and Maximum Contaminant Levels EPA set for those PFAS.

EPA states that it does not seek vacatur and intends to defend the portions of the rule governing perfluorooctanoic acid and perfluorooctanesulfonic acid.

A copy of the Motion can be downloaded here.